GOVERNMENT OF PUERTO RICO
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

MOTION IN COMPLIANCE WITH ORDER DATED MARCH 10TH, 2025

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority (PREPA), through its undersigned counsel, and respectfully States and Prays as follows:

1. During the March 7, 2025, conference, various legal and practical questions arose regarding the regulatory framework and implementation of provisional rates. As a result, on March 10, 2025, the Hearing Examiner issued an order directing the parties to submit responses to the legal and practical questions outlined therein.
2. PREPA hereby submits its responses to the questions set forth in the order as "Annex A" to this motion.
3. PREPA reserves the right to supplement or amend its responses should further clarifications or additional information become necessary.

WHEREFORE, PREPA respectfully requests that this Honorable Hearing Examiner take notice of PREPA's compliance with its order from March 10th, 2025.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 13th day of March 2025.

CERTIFICATE OF SERVICE: We hereby certify that this document was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at https://radicacion.energia.pr.gov/login, and courtesy copies were sent via e-mail to Counsels of record at: RegulatoryPREBOrders@lumapr.com; julian.angladapagan@us.dlapiper.com; yahaira.delarosa@us.dlapiper.com; margarita.mercado@us.dlapiper.com, hrivera@jrsp.pr.gov; pvazquez.oipc@avlawpr.com; legal@genera-pr.com; regulatory@genera-pr.com; lrn@roman-negron.com agraitfe@agraitlawpr.com; epo@amgprlaw.com;loliver@amgpraw.com; acasellas@amgprlaw.com; Robert.berezin@weil.com; Gabriel.morgan@weil.com; corey.brady@weil.com; ramos@ramoscruzlegal.com; tlauria@whitecase.com; ccolumbres@whitecase.com; iglassman@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; ntisarul.Islam@weil.com; Christine.Song@millerbuckfire.com;

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Annex A

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)?

Act 57-2014, Section 6.25(e), allows the Puerto Rico Energy Bureau ("Energy Bureau") to establish provisional rates. The statute does not explicitly prohibit the implementation of two consecutive provisional rates within the same proceeding.

PREPA understands that the question should be whether the Energy Bureau may amend a provisional rate. PREPA's position is that it can. An amended provisional rate is possible and not contrary to Act 57-2014.

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?

If the incremental charge that converts the original 2017 rates into provisional rates is embedded within a rider, an alternative approach may be to adjust the rider without formally instituting a second provisional rate. This approach could align with the principle of avoiding redundant rate-setting procedures while ensuring compliance with Act 57-2014. However, the Energy Bureau must assess whether such an adjustment would constitute a "material change" in the rate structure, requiring a separate regulatory process.

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?

A single reconciliation at the conclusion of the entire rate case, rather than after each phase, appears consistent with this provision. The law does not mandate multiple reconciliations, and conducting only one final reconciliation would simplify the process.

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?

Under Section 6.25(c) of Act 57-2014, the 180-day review period begins upon the formal determination that "the rate review request is complete." The statute does not define "completeness" exhaustively, allowing the Energy Bureau discretion in structuring its review process.

If the rate case consists of a single proceeding with distinct revenue requirement and rate design phases, the Energy Bureau may delay the completeness determination until all pre-filed testimony on rate design is received. This approach ensures that all critical inputs are incorporated before triggering the statutory review period. There is no explicit prohibition against such an approach.

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)?

Article 4.006(c) of Act 201-2003 provides that the Court of Appeals may review final decisions, orders, and resolutions of administrative agencies. 4 LPRA sec. 24y(c). See *AAA v. UIA*, 200 DPR 903, 910–11 (2018).

Likewise, Sections 4.1 and 4.2 of Act 38-2017 establish that judicial review is available for final adjudicative orders, resolutions, and rulings issued by administrative agencies or officials. A final order or resolution is one that concludes the administrative proceedings. *Junta Examinadora v. Elías*, 144 DPR 483, 490 (1997). A final resolution has the characteristics of a judicial judgment. *Id*. The legislative intent was to prevent judicial review of interlocutory orders or resolutions that could unnecessarily disrupt the administrative process. *Id*. Consequently, a petition for certiorari under the civil procedure rules to review an interlocutory determination is incompatible with the administrative process. See *AAA v. UIA*, 200 DPR 903 (2018).

Therefore, under Puerto Rico administrative law (Act 38-2017), an administrative determination becomes appealable when it is a "final order." If the Energy Bureau issues two separate orders—one concluding Phase 1 and another concluding Phase 2—the key question is whether the Phase 1 order constitutes a final, appealable decision. PREPA's position is that there is no viable legal way to prevent appeal rights from being triggered by a final resolution.

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?

The Energy Bureau should clearly state that the Phase 1 order remains subject to further proceedings and does not constitute a final adjudication of the rate case. However, even with such clarification, it could still be interpreted as a final determination subject to judicial review.

4. Duration Limitation for Provisional Rates

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?

PREPA interprets the 60-day period referenced in Section 6A(e) as applying to the implementation of the new bill after the rate is approved. Therefore, the provisional rate could remain in effect for the entire proceeding.

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?

Act 57-2014 does not explicitly include the "just cause" language but does not contradict Act 83-1941's provision allowing extensions. However, the Supreme Court of Puerto Rico has addressed the meaning of establishing just cause. In *Febles v. Romar Pool Construction*, 159 DPR 714, 720 (2003), the Supreme Court stated that demonstrating just cause requires specific and well-supported explanations, properly evidenced in the filing, that allow the court to conclude that there was a reasonable excuse for the delay. Vague, generic, or formulaic justifications do not satisfy the just cause requirement. Given the complexity of this proceeding, if just cause were required to extend the term, we believe that the requirements established by the Supreme Court of Puerto Rico would be met.

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?

PREPA interprets the phrase as referring to the date on which the new bill is implemented. An interpretation tying it to "the period of time needed" could impose an impractical deadline, given the complexity of rate cases.

5. Addressing Potential Overpayments from Provisional Rates 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?

Assuming that in fact the permanent rate is less than the provisional rate, there is one clear precedent – the implementation of the 2017 Permanent Rate, which occurred almost three (3) years after the establishment of the 2016 provisional rate.

In its January 10, 2017 Resolution and Order determining the revenue requirement and rates of PREPA for the fiscal year 2017, the Energy Bureau set a permanent rate that was below the provisional rate. In such case, PREPA was required to reconcile the difference between the provisional rate and the permanent rate in accordance with both the provisions of applicable law and the applicable Energy Bureau resolution and orders, where "the difference will be reconciled on customer bills over the same number of months during which the provisional rates were in effect, starting when the permanent rate go into effect."[1]

[1] In re: Case No. CEPR-AP-2015-0001, "Final Resolution and Order", p. 2

As indicated in the Energy Bureau's June 28, 2019 Resolution and Order[2], "Act 57-2014 does not specify the mechanism through which the electric service company will reconcile the provisional and permanent rates. Therefore, it is up to the Energy Bureau to determine such mechanism."

Through this same Resolution and Order, the Energy Bureau determined that the applicable approach to reconcile the Provisional Rate with the Permanent Rate is to "calculate the allowed revenue associated with the Provisional Rate on a per kWh basis, using the level of actual sales during the reconciliation period."

Using this mechanism, the Energy Bureau determined PREPA was to refund ~$123.0M to its customers through a True-Up Provisional Rate Increase ("TUP") rider equal to -0.7771¢/kWh over a period of one (1) year (implemented from July 1, 2019 to June 30, 2020).

[2] In re: Case No. CEPT-AP-2015-0001, "Determination on the Permanent Rates Quarterly Rider Factors for the period of July-September 2019; Determination on Permanent Rates Yearly Rider Factors for the period of July 2019-June 2020; Determination on reconciliation of the Permanent Rate and the Provisional Rate; Determination on the reconciliation of fuel and purchased power costs for the emergency period after hurricanes Irma and Maria".