

**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:** LUMA’s Response to Hearing  
Examiner’s Two Follow-Up Questions

<b>NEPR</b>
<b>Received:</b>
<b>Mar 17, 2025</b>
<b>5:22 PM</b>

**LUMA’S RESPONSE TO HEARING EXAMINER’S TWO FOLLOW-UP QUESTIONS**

**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**

1. A virtual conference was held on March 7, 2025 in this proceeding. During said conference, participants exchanged thoughts regarding alternative procedures by which the Honorable Puerto Rico Energy Bureau (“Energy Bureau”) would establish a new revenue requirement and a new rate design. Following a series of undertakings in light of legal and practical considerations raised during the March 7<sup>th</sup> Virtual Conference, on March 10, 2025, the Hearing Examiner, Mr. Scott Hempling (“Hearing Examiner”), issued an order titled *Hearing Examiner’s List of Legal and Practical Questions to Consider* (“March 10<sup>th</sup> Order”).

2. The March 10<sup>th</sup> Order sought participants’ insight as to: i) the viability and legality, under Act 57-2014<sup>1</sup>, of establishing two provisional rates within a single proceeding, or alternatively the adjustment of the incremental charge rider after the revenue requirement phase, with only one reconciliation upon conclusion of the entire rate case; ii) the legal requirements for issuing the formal determination of completeness that triggers the 180-day period within which the Energy Bureau must issue a final order on rates; iii) the possibility of issuing two separate “Final Orders”, at the end of each Phase, without the “Final Order” on revenue requirements triggering appeal rights under Puerto Rico administrative law; iv) the possibility of keeping the provisional rate in effect through the entire time needed to conduct evidentiary procedures on both the revenue requirement and the rate design, pursuant to “just cause” language contained in Act

<sup>1</sup> *Puerto Rico Energy Transformation and RELIEF Act*, Act 57-2014, P.R. Laws Ann. Tit. 22 §§ 1051- 1056, 22 LPRA §§ 1051-1056 (2024), as amended.

83-1941<sup>2</sup>; and lastly, v) a practical question pertaining to addressing the possibility of the Energy Bureau setting permanent rates that are lower than the provisional rates.

3. On March 13, 2025, LUMA submitted input on several of the questions contained in the March 10<sup>th</sup> Order.

4. On March 14, 2025, the Hearing Examiner issued two follow-up questions. LUMA hereby responds.

## **II. LUMA's Response**

5. LUMA's response to the Hearing Examiner's question number 1 of the March 10<sup>th</sup> Order was a good faith attempt to move from LUMA's initial position that the provisional rate that is approved for effectiveness July 1, 2025 would remain in place without modification until the permanent rate with the authorized revenue requirement and authorized rate design is approved, and that one reconciliation would occur after the permanent rate is approved for any under or overcollections. LUMA's response was provided in order to accommodate the Hearing Examiner's suggestion that adjusting the provisional rate after the revenue requirement phase could be accomplished as a mathematical exercise without having to approve a second provisional rate in order to reduce the time period where potentially a revenue requirement above the authorized revenue requirement could be recovered while the Energy Bureau was still reviewing the rate design to be approved as part of the permanent rate. LUMA's response was an attempt to satisfy the concerns raised by the Commissioners and the bondholders to reduce the provisional rate to reflect the approved revenue requirement. LUMA used the Hearing Examiner's alternatives to provide input about which of the two alternatives that he suggested (i.e. an adjustment to the provisional rate, or two provisional rates) would be most aligned with subsections (e) and (f) of Section 6.25 of Act 57-2014, which LUMA understands should be interpreted to allow the Energy Bureau to adopt a provisional rate in connection with a rate review petition.

6. LUMA's response is that an adjustment to the provisional rate to reflect changed circumstances or new information relevant to the rate review petition does not appear to be inconsistent with the statutory language of a provisional rate associated with a single rate review petition under consideration by the Energy Bureau, whereas the statute does not envision two provisional rates associated with a single rate review petition. LUMA appreciates that any of the

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<sup>2</sup> *Puerto Rico Electric Power Authority Act*, Act No. 83 of May 12, 1941, P.R. Laws Ann. Tit. 22 §§ 191-218, 22 LPRA §§ 191-218 (2024), as amended, ("Act 83").

alternatives posed by the Hearing Examiner require interpretation in light of the particular circumstances of the upcoming rate review process.

7. Absent the special circumstances of the current rate review process whereby the revenue requirement and rate design inquiries will be done in separate phases, LUMA's view is that the better reading of Section 6.25(e) of Act 57-2014 regarding provisional rates is for the Energy Bureau to adopt one provisional rate that remains in effect during the period of time needed by the Energy Bureau to evaluate the rate modification request, which evaluation includes both the revenue requirement and rate design determinations.

8. If the Energy Bureau adopts the Hearing Examiner's proposal to adjust the incremental charge rider for the provisional rate after the conclusion of the revenue requirement phase, LUMA envisions that the reconciliation required by Section 6.25(f) would be done after the rate design phase and refunds or surcharges for the period of the initial provisional rate would be retroactive back to July 1, 2025. For the adjusted provisional rate, the reconciliation would be back to the time of the adjustment. In each case, the refunds or surcharges would ensure that LUMA collects the authorized permanent rate and not more or less for the entire time the provisional rates were in effect.

9. LUMA is not in a position to state that the Hearing Examiner's proposed alternative of an adjustment of the incremental charge rider for the provisional rate after the conclusion of the revenue requirement phase would be free of legal uncertainty. If the Energy Bureau conducts a single proceeding with a single final order setting permanent rates after the rate design phase, LUMA understands that the Energy Bureau may, in its discretion, issue an interlocutory order (non-final order) on revenue requirement, which order could potentially include an adjustment of temporary rate to reflect the product of the evidentiary hearing on the revenue requirement.

10. LUMA is hereby submitting, as *Exhibit 1* to the present Motion, its responses to the Hearing Examiner's follow-up question number 2.

**WHEREFORE**, LUMA respectfully requests the Energy Bureau **take notice** of the above; and **accept and consider** LUMA's responses to the follow up questions.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 17<sup>th</sup> 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](mailto: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,

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

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*Exhibit 1*

# Puerto Rico Electric Power Authority Rate Review

## NEPR-AP-2023-0003

### Response: RFI-LUMA-AP-2023-0003-20250314-PREB-02

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#### REFERENCE

*This reconciliation will functionally appear as reduced revenue for PREPA. However, both the provisional rate and the authorized revenue requirements will contain a net income component. If designed properly, PREPA will receive less net income than authorized while the reconciliation occurs. As a result, the refund to customers will only affect the net income component and have no impact on utility spending.*

#### REQUEST

I would appreciate an explanation of what LUMA means by “net income component.” By “net income component” is LUMA referring to the “margin,” defined in the Filing Requirements and required as a part of Schedule B-4? I have understood that amount to be not mere excess cash, like an investor-owned utility’s bank account, possibly related to retained earnings. Rather, the margin, as I understand the definition in the Filing Requirement, is an amount that PREB will require customers to fund through their rates so as to satisfy future lenders about PREPA’s ability to repay debt. If so, diminishing that amount via refunds would violate whatever lender-satisfying criteria the PREB used to set the margin. Alternatively, the availability of that margin for refunds would imply that the margin was higher than necessary to satisfy those lender-satisfying criteria. Please explain.

#### RESPONSE

To level set, the February 12<sup>th</sup> resolution and order defines the following terms:

**Net Operating Income** (i.e., the net income component or Net Income) is “the excess of **total revenue** over **operating expenses** for a **specified period**.”

**Debt Service Coverage Ratio** is “the annual **Net Operating Income** divided by the annual **debt service payments**, which include principal and interest.”<sup>1</sup>

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<sup>1</sup> See Resolution and Order, Order Establishing Scope and Procedures for Rate Case, dated February 12, 2025, ps. 23 & 25

**Margin** (in Schedule B-4) will be expressed as a **Debt Service Coverage Ratio** (e.g., a ratio such as 1.3), will be multiplied by the **debt service payments** in Schedule B-3 to calculate **Net Income**.

Both the provisional and final authorized revenue requirements will contain a **Net Income** amount which is an amount of revenue in excess of PREPA's spending for each test year. The authorized **Margin**, as pointed out in the question, is an important lender-satisfying criteria.

LUMA submits that the reconciliation will not affect the overall/annual Net Income for FY2026. The purpose of the reconciliation is to ensure that during FY2026, PREPA will have only collected its authorized revenue requirement inclusive of the authorized Net Income amount. In other words, the provisional rates and the reconciliation function in tandem to produce a net zero impact on utility spending compared to the authorized revenue requirement.

Whatever provisional and then final authorized revenue requirement is determined, assuming the sales forecast is relatively accurate, PREPA will have a positive cash flow at the end of FY2026 that is reflective of the authorized Margin and corresponding Net Income.

Table 1-1 below provides an illustrative example. In the example, the provisional revenue requirement for FY2026 is \$1,320,000 and the provisional rates are set to recover that amount. The Energy Bureau goes through the rate review process and establishes the authorized revenue requirement at \$1,200,000 for FY2026 with permanent rates going into effect April 1.

If the reconciliation occurs in the final three months of the fiscal year, the resulting total amount collected is \$1,200,000. Therefore, the utility earned its authorized revenue requirement, including margin for FY2026.

**Table 1-1. Illustrative Reconciliation**

Month	Revenue	Reconciliation <sup>2</sup>	Total
July	\$ 110,000	\$ -	\$ 110,000
August	\$ 110,000	\$ -	\$ 110,000
September	\$ 110,000	\$ -	\$ 110,000
October	\$ 110,000	\$ -	\$ 110,000
November	\$ 110,000	\$ -	\$ 110,000
December	\$ 110,000	\$ -	\$ 110,000
January	\$ 110,000	\$ -	\$ 110,000
February	\$ 110,000	\$ -	\$ 110,000
March	\$ 110,000	\$ -	\$ 110,000
April	\$ 100,000	\$ (30,000)	\$ 70,000
May	\$ 100,000	\$ (30,000)	\$ 70,000

<sup>2</sup> Reconciliation amounts will reflect overages charged back to July.

June	\$ 100,000	\$ (30,000)	\$ 70,000
<b>Total</b>	<b>\$ 1,290,000</b>	<b>\$ (90,000)</b>	<b>\$ 1,200,000</b>