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 **SUBJECT:** Revisions and Additions to February 12 Order on Rate Case Procedures

RESOLUTION AND ORDER

On February 12, 2025, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued an order addressing the procedures by which it will establish new rates ("February 12 Order"). Today's order revises one aspect of the February 12 Order and establishes other procedures. Except as modified by the provisions of this Resolution and Order, the February 12 Order shall remain in full force and effect.

I. One formal proceeding rather than two

Part I.F of the February 12 Order described a plan to have two separate formal proceedings, plan, as described next.

In determining the formal procedure for this rate case, the Energy Bureau wishes to achieve the following goals:

1. Minimize the financial effects on customers of paying imprecise rates. The existing rates can be imprecise because the revenue requirement, the inter-customer-group revenue allocations, or the rate designs for each customer class are not accurate. Minimizing the effects of the imprecise rates requires that any changes be retroactive to the earliest possible date.

2. Minimize the period during which customers are paying the imprecise.

3. Create hearing procedures that are fair to all participants, and that produce decisions efficiently and expeditiously, but that do not strain the participants' and the Energy Bureau's resources.

These three goals have led the Energy Bureau to make the six decisions described next.

First: The rate case will consist of a single proceeding with two phases. Phase I will address revenue requirement and, to the extent possible, revenue allocation. Phase II will address rate design (including any revenue allocation issues not decided in Phase I).

Second: Each of the two phases will have its own filing requirements, application, pre-filed testimony, discovery, evidentiary hearing, and briefs. The Hearing Examiner may allow the schedules for the two phases to overlap. To initiate the filing procedure, the following shall occur:

Pre-petition revenue requirement filing: There will be a pre-petition subject to the following:

a) On April 30, 2025, LUMA[1] shall submit a revenue-requirement application, including all testimony and workpapers required for the revenue-requirement

[1] LUMA Energy LLC and LUMA Energy ServCo LLC ("jointly referred as "LUMA").

portion of a rate review, other than Schedules A-1 and A-2.

b) Around May 12, 2025, LUMA shall supplement the filing to provide Schedules A-1 and A-2. An upcoming order from the Hearing Examiner will provide more guidance on this filing.

c) These materials will not constitute the formal rate modification petition; rather, they are intended solely to give the Energy Bureau and any authorized intervenors an advance review window. Because it has been eight years since the last rate case, the Energy Bureau will use this preliminary filing to identify whether additional information is needed, and to provide further guidance—particularly regarding rate design—before LUMA's final filed. In the two months between April 30 and July 3, the Energy Bureau, through its Hearing Examiner, may hold technical conferences on rate design, then the Energy Bureau will issue supplemental filing requirements for rate design on or around June 4.

Budget status prior to approval of provisional tariff: Until a provisional tariff is approved, the Puerto Rico Electric Power Authority ("PREPA") (which includes LUMA, Genera PR LLC ("Genera"), and other PREPA components) shall continue to operate under the most recently approved budget. The Energy Bureau may revisit that determination when it grants a provisional tariff.

Early intervention: Persons wishing to intervene may do so **upon or after the April 30, 2025 prepetition filing**. The Hearing Examiner shall rule on such motions promptly so intervenors receive access to all documents filed before the formal petition. Upon receipt of the formal petition, the Energy Bureau shall ratify previously granted interventions and, subject to the limitations set forth below, may permit additional interventions.

Third: After the participants have submitted their briefs in Phase I, the Hearing Examiner will close the evidentiary record for all subjects covered by Phase I. At that point, there will be no Energy Bureau order establishing a new revenue requirement. The Hearing Examiner might, for purposes of Phase II on rate design, require participants to assume a specific revenue requirement. Said, assumed, revenue requirement will not reflect any final order and will not bind the Energy Bureau when it issues, at the close of Phase II, its final order, on rate review which will encompass the revenue requirement, revenue allocation, and rate design matters.

Fourth: LUMA shall file its formal, complete rate review petition on or about July 3, 2025, including both the revenue requirement and rate design components, so that the petition is, from LUMA's perspective, compliant with the applicable filing requirements. Upon receipt of that July filing, the Energy Bureau will make a completeness determination in two steps:

1) On or about July 18, 2025, the Energy Bureau expects to determine whether all required schedules have been provided; and if not, require any missing items.

2) No later than 60 days from LUMA's formal petition, the Energy Bureau expects to determine whether the petition is formally complete. In making that determination, the Energy Bureau will consider whether the information contained in the petition is of sufficient quality and clarity to support a finding of just and reasonable rates—a consideration not to be confused with a determination of the merits. A determination of completeness at that time will trigger the statutory 180-day decision clock of Act 57-2014[2], § 6.25(c), subject to a 60-day extension.

Concurrently in this stage, LUMA shall provide all notices under part II.C of the February 12 Order. At this stage of the proceeding, it is expected that all interested parties have already submitted their petitions to intervene and, if permitted, are actively participating in the prefiling phase discovery process. Nevertheless, the Hearing Examiner may allow limited

[2] *Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014").

intervention and discovery for new parties at this point. In evaluating any such late requests to intervene, the Hearing Examiner will carefully consider, in addition to the requirements for intervention under the applicable law, whether the interests of the putative intervenor are already adequately represented in the proceeding and whether allowing such intervention would cause undue delay or otherwise disrupt the orderly conduct of the process, factors that will receive particular attention at this stage.

Fifth: LUMA may include, with its formal petition, a request for provisional rates. Accompanying this request for a provisional rate must be an amendment to the existing budget, as explained in Part II.C below.

Sixth: At the end of Phase II, the Energy Bureau will issue a single final order addressing all matters arising in Phase I and Phase II. That single final order will set new permanent rates. That final order will also reconcile the new permanent rates with the provisional rates. Therefore, making the permanent rates effective as of the date provisional rates went into effect. Counting from the statutory completeness date, the Energy Bureau will issue its final order within 180 days (plus up to 60 days if the statutory extension is invoked) of the notice of completeness determination. This schedule places the anticipated final order in March or April 2026.

II. Provisional rates: Three matters

A. Duration of the provisional rates

If the Energy Bureau approves provisional rates, Section 6A(e) of Act 83-1941 allows those rates to remain in effect from the date of their effectiveness until the effective date of the new permanent rates established by the final Order issued after the completion of Phase II.

Section 6A(e) states:

> 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 [LUMA] 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 [Energy Bureau] extends such term for just cause.

The Energy Bureau views the 60 days as referring to the time period, starting with the final rate order, during which "the new bill is implemented."

B. Revision of the original provisional rates

Questions have arisen about whether the Energy Bureau has the power, during a single rate proceeding, to authorize a provisional rate at the beginning of the proceeding and then change that provisional rate midway through the proceeding. On this question, the statute does not speak expressly. To avoid triggering legal challenges that could delay this proceeding or create doubt about the lawfulness of our interlocutory or final orders, we intend not to change the provisional rate midway through this proceeding. We do, however, share our tentative thoughts on various points made by the participants.

1. Whether the statute permits two provisional rates

Genera and Bondholders argue that the Energy Bureau has authority under Act 57, section 6.25(e) to approve two provisional rates relating to the same LUMA rate filing.

Section 6.25(e) refers to one provisional rate. The subsection's first sentence refers to "a" temporary rate. The second sentence refers to "the" temporary rate. In the subsection's last sentence, that implication becomes explicit: "*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." The "said" temporary rate

is "the" temporary rate originally established. That rate, that single rate, "shall remain in effect" for the entire described period.

Consistent with this reasoning is the last sentence of section 6.25(f), which reads: "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 Energy Bureau and the permanent rate approved by the Energy Bureau." This sentence makes clear that at the end of the proceeding, when a final order issues, there is a single reconciliation of the newly determined permanent rate with a single provisional rate—that provisional rate being "*the* temporary rate established by the Energy Bureau". As LUMA states in its March 13 Response, at 4, "Even if the Energy Bureau deals with each part separately, the rate review itself does not end until new permanent rates go into effect. It is *one* rate process."

As support for their position, Bondholders say that section 6.25(e) "specifically contemplates that the Energy Bureau has discretion to 'decide whether it shall revise the amount of the temporary rate.'" [3] Bondholders' reading of section 6.25(e) is incorrect. The relevant sentence states:

> 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.

The Energy Bureau's authority to "revise the amount of the temporary rate" thus exists only when "the requestor [of the provisional rate] contests the establishment of the temporary rate or the amount thereof." The language is not a general authorization to modify a provisional rate.

ICSE[4] argues that a second provisional rate would be permissible if one views that second provisional rate as resulting from the Energy Bureau's reconsideration of the first provisional rate.[5] "Reconsideration," as we understand the term, involves a correction to a decision that has not yet gone into effect. Our hypothetical situation here is different: It is a change in a rate that has gone into effect—a change that is not a correction, but rather a change resulting from our establishing a new provisional revenue requirement.

ICSE says that multiple reconciliations "mean a more mathematically precise (i.e., 'more' just and reasonable) proceeding by the PREB."[6] The truth of that statement does not make its implementation lawful. A reconciliation, by definition, necessarily involves a true-up of the provisional rate with a permanent rate. A permanent rate will exist only if there is a final order. A final order means that proceeding closes. So, effecting a reconciliation after the revenue requirement phase, turning the provisional rate into a permanent rate, means that the rate design phase becomes a distinct legal proceeding. And that means that the rate design result can be reconciled back only to the permanent rate decided at the end of the revenue requirement proceeding. Our goal, however, is to maximize the period of correction, i.e., all the way back to the date on which the provisional rates went into effect.

2. Does a rider adjustment to the original provisional rate constitute an impermissible second provisional rate?

LUMA argues that there can be only one provisional rate:

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[3] Bondholders March 13 at 6.

[4] Institute for Competitiveness and Sustainable Economy ("ICSE").

[5] ICSE March 13 at 2-3.

[6] ICSE March 13 at 3.

> [T]he statute endows the Energy Bureau with discretion to adopt *one provisional rate in connection with a single petition for rate reviews*; and (2) that an interpretation that the Energy Bureau may approve two provisional rates in connection with a single rate modification request, is at odds with the text and intent of Act 57-2014.[7]

But LUMA also suggests that, if the increment above the existing rate needed to create the provisional rate takes the form of the rider, the Energy Bureau can adjust the rider:

> LUMA believes that the alternative most in line with the text of the law and the nature of the provisional rate is the second alternative raised by the Hearing Examiner: an adjustment of the incremental charge rider for the provisional rate after the conclusion of the revenue requirement phase. This alternative seems consistent with the law, given that said adjustment would be made to a temporary rate that was approved in the context of a singular rate review petition and a single rate review proceeding. The fact that the provisional rate is identified separately on the bills by way of a rider, allows for the corresponding operational adjustment, representing ease of implementation and the advantage of not confusing customers with consecutive credits and surcharges. . . .[8]

In this situation, LUMA adds,

> [T]he 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.[9]

LUMA is correct that with two separate provisional rate values occurring at different points in time, we would need two separate reconciliations, one for each period. But two reconciliations implies two provisional rates, where the statute refers to only one provisional rate. The second provisional rate would seem to have to result from an order setting that provisional rate. It is not clear that an order setting a provisional rate would be a mere interlocutory order. Because of that lack of clarity, our adjusting the rider based on an announced new revenue requirement could cause confusion about whether an aggrieved party needed to seek judicial review of that new revenue requirement. We wish not to cause participants confusion in a proceeding that is already complex.

C. Differences between the provisional rates and the permanent rates

If the Energy Bureau sets provisional rates (as discussed in Part II.A above), then at the close of Phase II sets permanent rates below those previously approved provisional rates, the companies might already have spent an amount exceeding what the permanent rates support. We then would face the problem of finding money to pay refunds. The only source of those refunds would be money collected from customers to carry out operational activities. Refunds would be possible only by deferring those operational activities. In effect, the customers would be paying their own refunds—by foregoing for some period of time the benefit of operational improvements that their payments were supposed to produce. That "refund" does not make the customers whole.

We can reduce this risk by making it unlikely that the permanent rates will be lower than the provisional rates. Since, for this first rate-case in eight years, the Energy Bureau will not be finally approving a FY26 budget until well into the fiscal year, absent a budget amendment LUMA and Genera would operate under their existing FY 2025 budgets. (See T&D OMA sec. 7.3(d), providing that if there is not a final budget in place by July 1 of the Contract Year, the default budget is the budget "for the immediately preceding Contract Year," adjusted for

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[7] March 13 Response at 4 (emphasis in original).

[8] *Id.* at 4-5.

[9] March 17 at 3.

inflation.) Under current Energy Bureau practice, any increase in spending above the existing budget requires an amendment to that budget. We require, therefore, that LUMA file, as part of its application for a provisional rate, a proposed FY 2025 budget amendment. (That budget amendment will be separate from the full FY 2026 budget that LUMA must propose as part of its application for new permanent rates.) The proposed FY 2025 budget amendment must support the full amount by which the revenue requirement underlying LUMA's proposed provisional rate exceeds the current revenue requirement.

To help avoid a situation in which LUMA spends, during the period covered by the rate case proceeding, an amount exceeding the permanent revenue requirement that the Energy Bureau ultimately adopts, the FY 2025 budget amendment should propose only those spending increases that LUMA views as high priority and that LUMA expects would be noncontroversial. With this limitation in place, the Energy Bureau can approve the budget amendment and authorize the provisional rate necessary to finance that budget amendment, while lowering the risk that the three companies will spend amounts that exceed what the Energy Bureau ultimately approves. We stress that though the spending will be consistent with the budget, the rate is still a provisional rate. By approving that provisional rate, the Energy Bureau makes no promise about the permanent rate.

This limitation on the FY 2025 budget amendment does not apply to LUMA's proposed FY 2026 budget and its proposed permanent rate. Other than complying with the definitions of Optimal Budget and Constrained Budget established in the February 12 Order, LUMA is free to propose a FY 2026 revenue requirement that exceeds the revenue requirement underlying its proposed provisional rate.

On the possibility of overspending during the rate case proceeding, LUMA says that a refund obligation would not affect operations because the refunds would come from a "net income component" included within its proposed permanent revenue requirement. LUMA says that if the permanent rates are less than the provisional rates, 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.[10]

The problem with this explanation is that the "net income component" that LUMA refers to is synonymous with the "Margin" required by the Filing Requirements, or it is on top of that Margin. Either way, there is a problem with LUMA's idea. Schedule B-4 requires the proposed revenue requirement to include a "Margin." The Filing Requirements' Definitions section requires the Margin to be "a calculated amount, above the sum of LUMA's, PREPA's, and Genera's FY2026 budgeted operating expenses and non-reimbursable capital expenditures, that is typical of the coverage that lenders require of nonprofit borrowers with investment-grade-rated long-term debt." The Margin should satisfy lenders that PREPA has a cushion available to repay its debt. LUMA therefore should not assume that the refunds would come from the Margin rather than from operations. That's the problem if LUMA's "net income component" is synonymous with "Margin." If instead the "net income component" is on top of the Margin, it is not clearly a reasonable cost for customers to bear.

III. Application for emergency rate

If necessary to address immediate funding requirements prior to establishing a provisional rate, and LUMA submits a justified and valid emergency rate application, the Energy Bureau may approve the application and authorize an emergency rate effective as early as May 1, 2025. Pursuant to the applicable law, any such emergency rate shall not exceed 180 days in duration. It is anticipated, however, that if LUMA submits a justified provisional rate petition within that period, and the Energy Bureau determines it to be appropriate and approves it, a provisional rate may be implemented prior to the expiration of the emergency rate, thereby replacing it.

IV. Directions to the Hearing Examiner

[10] LUMA March 13, Exhibit 1.

The Energy Bureau directs the Hearing Examiner to promptly take actions as necessary to carry out this Resolution and Order. In addition, questions may arise about interpretations of, or application of, various aspects of our Orders. For example, there may be a need to clarify, expand, or reduce the scope of certain filing requirements. For administrative efficiency, we delegate to the Hearing Examiner what he deems necessary to clarify our prior orders, while reiterating that participants may appeal his decisions to the Energy Bureau.

V. Conclusion

Based on the foregoing analysis and determinations, the Energy Bureau **ORDERS**:

1. The rate case will consist of a single proceeding with two phases. Phase I (addressing revenue requirement and revenue allocation) and Phase II (addressing rate design), rather than two separate formal proceedings as described in the February 12 Order.

2. Each phase will have distinct evidentiary processes, but the Energy Bureau will issue a single final order addressing all matters at the conclusion of Phase II.

3. LUMA shall submit a revenue requirement application, including the revenue-requirement testimony and workpapers on April 30, 2025, and shall supplement that filing with Schedules A-1 and A-2 on 12 May 2025. These submissions are not a formal petition.

4. If necessary to address immediate funding requirements prior to establishing a provisional rate, and LUMA submits a justified and valid emergency rate application, the Energy Bureau may approve the application and authorize an emergency rate effective as early as May 1, 2025.

5. LUMA shall submit its formal petition on or about July 3, 2025, covering revenue requirement and rate design.

6. Any person may move to intervene upon or after the April 30, 2025, filing. The Hearing Examiner shall rule promptly so intervenors gain access to all pre-petition materials. When the formal petition is filed, the Hearing Examiner will ratify all interventions already granted and decide any new motions for intervention.

7. If and until the Energy Bureau authorizes provisional rates, LUMA, Genera, and PREPA shall continue to operate under the most recently approved budget.

8. If and when the Energy Bureau authorizes provisional rates, those rates shall remain in effect, as permitted by Section 6A(e) of Act 83-1941, until the final order setting permanent rates is issued and goes into effect.

9. The revenue requirement underlying LUMA's proposed provisional rate shall exceed the current revenue requirement only by an amount supported by a proposed budget amendment that includes high-priority and noncontroversial spending increases.

10. The Hearing Examiner shall take all necessary actions to implement this Resolution Order and prior Energy Bureau orders efficiently, including the authority to clarify aspects of prior orders as needed to facilitate the rate case process.

All other provisions of the February 12 Order remain in full force and effect. This Resolution and Order shall be effective immediately.

The Energy Bureau **WARNS** LUMA, Genera, and PREPA that, in accordance Art. 6.36 of Act 57-2014:[11]

[11] Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014").

(i) noncompliance with this Resolution and Order, regulations and/or applicable laws may carry the imposition of fines and administrative sanctions of up to one hundred twenty-five thousand dollars ($125,000) per day; and

(ii) for any recurrence of non-compliance or violation, the established penalty shall increase to a fine of not less than fifteen thousand dollars ($15,000) nor greater than two hundred fifty thousand dollars ($250,000), at the discretion of the Energy Bureau.

Be it notified and published.

Edison Avilés Deliz
Chairman

Ferdinand A. Ramos Soegaard
Associate Commissioner

Sylvia B. Ugarte Araujo
Associate Commissioner

Antonio Torres Miranda
Associate Commissioner

CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on April 21, 2025. Associate Commissioner Lillian Mateo Santos did not intervene. I also certify that on April 21, 2025 a copy of this Resolution and Order was notified by electronic mail to the following: 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; mvalle@gmlex.net; arivera@gmlex.net; jmartinez@gmlex.net, jgonzalez@gmlex.net; Yahaira.delarosa@us.dlapiper.com; margarita.mercado@us.dlapiper.com; andrea.chambers@us.dlapiper.com; julian.angladapagan@us.dlapiper.com; jfr@sbgblaw.com; regulatory@genera-pr.com; legal@genera-pr.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; Josef.Trachtenberg@weil.com; rafael.ortiz.mendoza@gmail.com; rolando@emmanuelli.law; jan.albinolopez@us.dlapiper.com; varoon.sachdev@whitecase.com.. I also certify that today,

April 21, 2025, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today April 21, 2025.

Wanda I. Cordero Morales
Interim Clerk

NEGOCIADO DE ENERGÍA
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO
DE PUERTO RICO