

**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 Order
Requiring PREPA Filing on Managing Federal
Funds

Hearing Examiner's Order Requiring PREPA Filing on Managing Federal Funds

Yesterday, June 12, 2025, I learned of two resolutions issued by PREPA's Governing Board. Resolution 5183, dated April 30, 2025, repealed Resolution 5020, dated November 30, 2022. Both resolutions are attached to this Order.

Resolution 5020 had "[a]uthorize[d] the President of the Governing Board to formally authorize and give consent to LUMA to act as the sole entity allowed to manage grant applications" relating to "T&D Reconstruction Projects." That consent occurred. Resolution 5183 now states that "the Executive Director of PREPA shall be the sole entity authorized to approve" the T&D Reconstruction Projects. Resolution 5183 adds that

[t]he Executive Director shall ensure compliance with all federal and local regulations governing the management of federal funds . . . and shall have the capacity to delegate this authority if necessary. However, LUMA, as the Operator, remains responsible for executing transactions in compliance with federal requirements, as established under Section 5.9 of the [T&D OMA.

PREPA's April 30, 2025, action is relevant to this proceeding on rates because it has the potential to affect rates. Given a total funding amount necessary to make Puerto Rico's electric system cost-effective and reliable, any shortfall in federal funds means that rates must rise to make up the difference. I therefore require PREPA, in its submission of a revenue requirement and accompanying testimony due July 3, 2025, to address the questions and subjects attached to this order. PREPA is free to submit any additional information that will help the Energy Bureau determine, based on objective information, whether to include in PREPA's budget amounts reasonably necessary to carry out the functions described in Resolution 5183.

Be notified and published.



Scott Hempling
Hearing Examiner




CERTIFICATION

I certify that the Hearing Examiner, Scott Hempling, has so established on June 13, 2025. I also certify that on June 13, 2025, a copy of this Order was notified by electronic mail to javrua@sesapr.org; mvalle@gmlex.net; arivera@gmlex.net; jmartinez@gmlex.net; jgonzalez@gmlex.net; katiuska.bolanos-lugo@us.dlapiper.com; Yahaira.delarosa@us.dlapiper.com; margarita.mercado@us.dlapiper.com; carolyn.clarkin@us.dlapiper.com; andrea.chambers@us.dlapiper.com; sromero@sbgblaw.com; gcastro@sbglaw.com; jennalvarez@sbgblaw.com; jfr@sbgblaw.com; regulatory@genera-pr.com; legal@genera-pr.com; hriviera@jrspr.gov; contratistas@jrspr.gov; victorluisgonzalez@yahoo.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; Rachel.Albanese@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; 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; juan@londoneconomics.com; mmcgill@gibsondunn.com; LShelfer@gibsondunn.com; jnieves@cstlawpr.com; arrivera@nuenergypr.com; apc@mcvpr.com. I also certify that on June 13, 2025, I have proceeded with the filing of the Order issued by the Puerto Rico Energy Bureau.

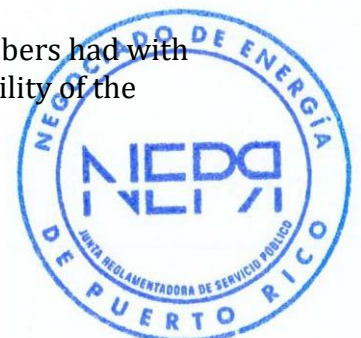
I sign this in San Juan, Puerto Rico, on June 13, 2025.




Sonia Seda Gaztambide
Clerk

Questions and Subjects for PREPA Relating to Resolution 5183

1. Explain the legal basis for the PREPA Governing Board's premise that it has the power, directly or through PREPA's Executive Director, to unilaterally remove activities from LUMA's control and place them under PREPA's control. Consider all statutes and contracts, with particular attention to the term "irrevocably" in section 5.6(a) of the T&D OMA. Consider also the policy premises stated in Act 120-2018's Statement of Motives.
2. What is PREPA's legal understanding of who, as between PREPA and LUMA, has control of the federal funding area as of today, June 13, 2025? How about during the multiweek or multimonth period that could be consumed by the activities required by the OMA's dispute resolution provisions? What happens if LUMA does not release control during this interim period, while PREPA exercises control? How will PREPA explain that situation to the federal officials tasked with granting the funds and wondering who is in charge?
3. Describe all factors considered by the PREPA Governing Board in deciding to issue Resolution 5183.
4. Describe all actions that PREPA has taken since issuing Resolution 5183. How has PREPA funded those actions, given that the FY2025 budget reflects LUMA's having responsibility for acquiring and managing federal funds? I am unaware of any PREPA request to the Energy Bureau for a budget amendment relating to Resolution 5183.
5. Besides decisionmaking about federal funds, what other matters addressed by the T&D OMA does the PREPA Governing Board think it has the power to unilaterally remove from LUMA and place under PREPA's control? Provide all legal bases. If the answer is "No other matters, only federal funds," explain the legal reason why PREPA's asserted power to make unilateral changes in what LUMA does and what PREPA does applies only to the area of federal funds.
6. Identify the individuals who will have responsibility for carrying out the functions that Resolution 5183 moves from LUMA to PREPA. Provide their resumes, and a narrative explanation of their skills and experience relating to those functions. I may decide to order their prefiled testimony, and their appearance at the evidentiary hearing.
7. Identify who within PREPA will oversee the work carried out by the individuals performing the functions. I may decide to order their prefiled testimony, and their appearance at the evidentiary hearing.
8. Identify with precision the costs, including but not limited to personnel costs, in PREPA's proposed revenue requirement that are associated with carrying out Resolution 5183. Specify the activities, and necessary types and amount of personnel, associated with these costs.
9. Provide all reasons why PREPA will carry out the functions more effectively than LUMA, or any other entity. The response should have facts, not adjectives or adverbs; specifics, not generalities.
10. In this area of procuring and managing federal funds, describe all efforts that PREPA has made with LUMA toward a working relationship that best uses each company's strengths.
11. Describe all communications that PREPA executives or Board members had with LUMA executives, before and after April 30, 2025, about the possibility of the Governing Board's approving Resolution 5183.



12. It is my understanding that in the area of federally funded projects, the Energy Bureau has several requirements. Those requirements include the Energy Bureau's approval of a project before anyone applies for the federal funds. Other requirements include periodic reporting on the status of all federal fund requests. It is also my understanding that the T&D OMA requires that all filings with the Energy Bureau be made by LUMA. (a) Is PREPA expecting that though it controls the funding process, LUMA will continue to make these filings with the Energy Bureau? (b) If so, has PREPA considered whether that split responsibility is efficient—and has it worked with LUMA to make the process efficient? (c) What new resources will PREPA need to undertake or oversee these responsibilities—of getting the Energy Bureau's approvals and reporting on funding status?





PUERTO RICO
ELECTRIC POWER AUTHORITY

PREPA

GOVERNMENT OF PUERTO RICO

RESOLUTION 5183

TO REPEAL RESOLUTION 5020 AND AUTHORIZE THE EXECUTIVE DIRECTOR OF PREPA AS THE SOLE ENTITY RESPONSIBLE FOR THE MANAGEMENT OF GRANT APPLICATIONS RELATED TO THE TRANSMISSION AND DISTRIBUTION SYSTEM

WHEREAS: On November 30, 2022, the Governing Board of the Puerto Rico Electric Power Authority ("PREPA") adopted Resolution 5020, which authorized the President of the Governing Board to formally authorize and give consent for LUMA to act as the sole entity allowed to manage grant applications through the Grants Portal and with the ultimate authority to review and approve all documents filed therein in connection with the Transmission and Distribution ("T&D") Reconstruction Projects; and

WHEREAS: PREPA is a public corporation and an instrumentality of the Government of Puerto Rico, created by Act 83 of May 2, 1941, as amended ("Act 83"), to provide reliable electrical energy and to manage the electrical grid in a manner consistent with public interest, financial responsibility, and compliance with federal regulations; and

WHEREAS: PREPA, as the owner of the T&D System and the subrecipient of federal funds under the Federal Emergency Management Agency ("FEMA") regulations, is responsible for the review and approval of projects for the reconstruction and recovery of Puerto Rico's electrical grid; and

WHEREAS: PREPA qualifies as an eligible applicant for FEMA Public Assistance funding under 44 CFR 206.222, which states that State and local governments, including public corporations such as PREPA, are eligible to apply for assistance under the State public assistance grant; and

WHEREAS: Pursuant to 2 CFR 200.331, a subrecipient is an entity that possesses certain characteristics, including but not limited to:

- "... (2) Having its performance measured in relation to whether the objectives of a federal program were met;
- (3) Having responsibility for programmatic decision-making; and
- (4) Being responsible for adherence to applicable Federal program requirements specified in the Federal award."



WHEREAS: As a subrecipient, PREPA retains the exclusive authority and responsibility to manage federal grant applications and ensure compliance with all applicable federal and local regulations; and

WHEREAS: The Grants Portal is the platform used by state, local, tribal, and territorial (SLTT) governments and eligible non-profit organizations to manage grant applications for the Public Assistance ("PA") Program, and PREPA must exercise oversight and control over all FEMA PA projects filed within the Grants Portal; and

WHEREAS: In accordance with Section 5.9 of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("O&M Agreement"), PREPA retains the exclusive right to receive all federal funding for the T&D System and has an obligation to ensure compliance with all federal funding requirements. Furthermore, LUMA, as the Operator, shall take steps to ensure that, except for System Contracts existing as of the Service Commencement Date, the O&M Services are performed in compliance with the Federal Funding Requirements. Section 5.9(b) mandates that the parties shall cooperate and participate with any relevant Governmental Body and any Grant Manager to help seek, procure, administer, manage, deploy, and apply any Federal Funding for the restoration of the T&D System and related costs; and

WHEREAS: The delegation of grant management authority to an external operator without appropriate oversight by PREPA poses a risk to compliance, financial accountability, and the integrity of FEMA reimbursement processes; and

THEREFORE, BE IT RESOLVED that the Governing Board of PREPA hereby repeals Resolution 5020 in its entirety and rescinds all authorizations therein granted; and

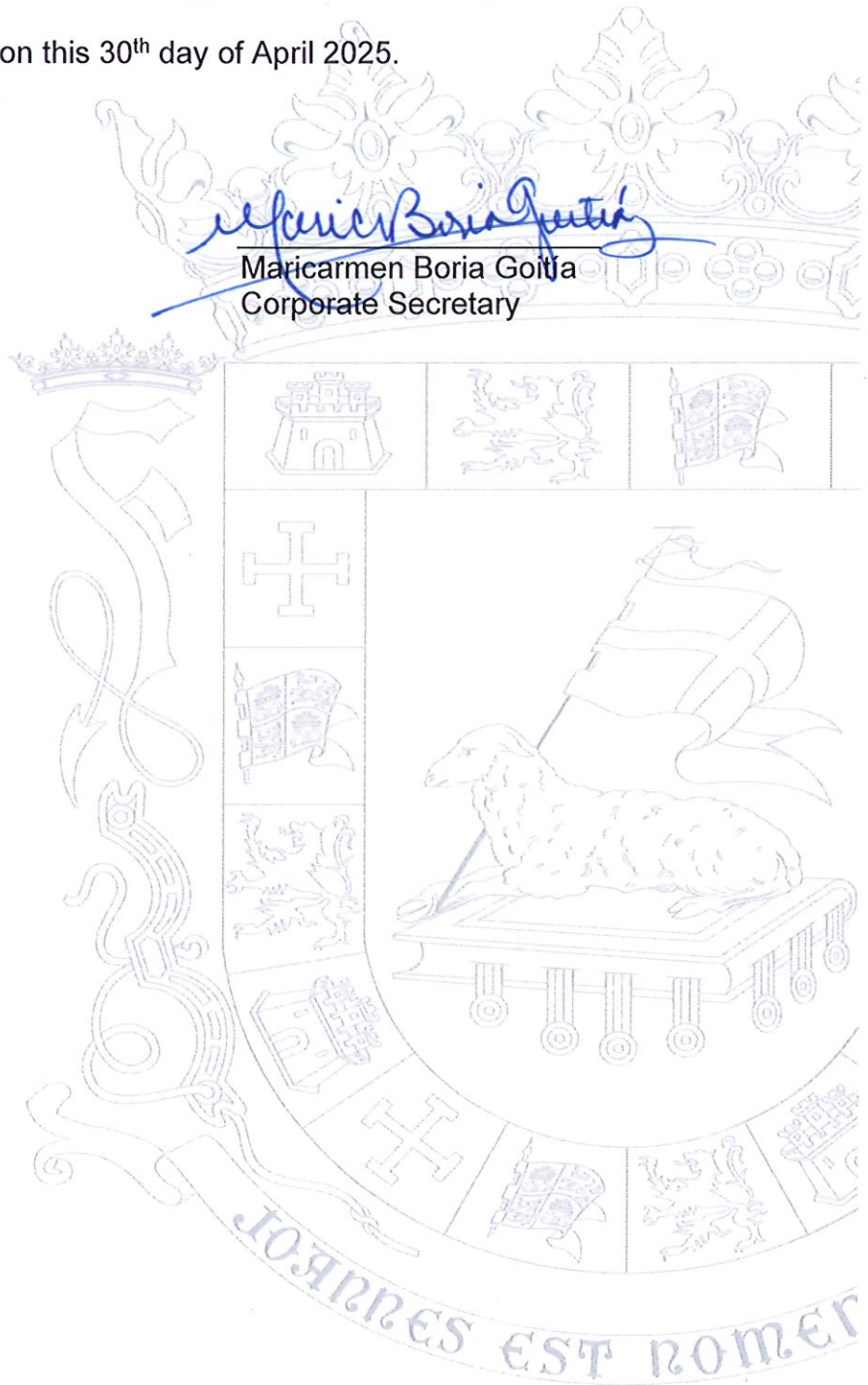
BE IT FURTHER RESOLVED that the Executive Director of PREPA shall be the sole entity authorized to approve projects within the Grants Portal, with authority limited to roles designated as Authorized Representative and Organization Admin within the system. The Executive Director shall ensure compliance with all federal and local regulations governing the management of federal funds, including but not limited to 2 CFR 200.331 and all applicable FEMA PA Program requirements, and shall have the capacity to delegate this authority if necessary. However, LUMA, as the Operator, remains responsible for executing transactions in compliance with federal requirements, as established under Section 5.9 of the O&M Agreement; and



BE IT FURTHER RESOLVED that any necessary forms or documents required to effectuate this authorization, including but not limited to COR3's "Information of Authorized Consultants and Authorized Representative(s)," shall be executed by the Executive Director of PREPA in accordance with applicable laws and regulations.

Approved in San Juan, Puerto Rico, on this 30th day of April 2025.


Maricarmen Boria Goitia
Corporate Secretary





GOVERNMENT OF PUERTO RICO

PUERTO RICO ELECTRIC POWER AUTHORITY

Governing Board | jgob@prepa.com

RESOLUTION 5020

AUTHORIZATION FOR THE MANAGEMENT OF GRANT APPLICATIONS RELATED TO THE TRANSMISSION AND DISTRIBUTION SYSTEM

WHEREAS: The Puerto Rico Electric Power Authority ("PREPA") is a public corporation and an instrumentality of the Government of Puerto Rico created by Act 83 of May 2, 1941, as amended (Act 83). PREPA was created to provide electrical energy in a reliable way contributing to the general welfare and sustainable future of the people of Puerto Rico, maximizing benefits and minimizing social, environmental, and economic impacts. In addition, PREPA provides a service based on affordable, fair, reasonable, and non-discriminatory costs that is consistent with environmental protection, non-profit, focused on citizen participation and its clients.

WHEREAS: Act 83 authorizes PREPA to grant contracts and formalize all the instruments that are necessary or convenient in the exercise of any of its powers.

WHEREAS: PREPA, as the owner of the Transmission and Distribution System ("T&D System") and the subrecipient of federal funds under the Federal Emergency Management Agency ("FEMA") regulations, is tasked with the process of reviewing and approving the projects for the reconstruction and recovery of Puerto Rico's electrical grid.

WHEREAS: The Grants Portal is the platform used by state, local, tribal, and territorial (SLTT) governments and eligible non-profit organizations to manage grant applications for the Public Assistance ("PA") program. Through the Grants Portal, PREPA, as well as the Central Office for Recovery, Reconstruction and Resiliency ("COR3"), must review and approve all FEMA PA projects.

WHEREAS: Under that certain Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("O&M Agreement") dated June 22, 2020, by and among PREPA, Puerto Rico Public-Private Authority ("P3 Authority") and LUMA Energy, LLC, and LUMA Energy ServCo (collectively, "LUMA" or "Operator"), LUMA became the Operator of the T&D System.

WHEREAS: As part of its obligations under the O&M Agreement, LUMA is responsible for the management and performance of the construction of improvements to the T&D System, including compliance with approved FEMA scope of work for projects that are eligible for Federal Funding and required maintenance ("T&D Reconstruction Projects").

APC



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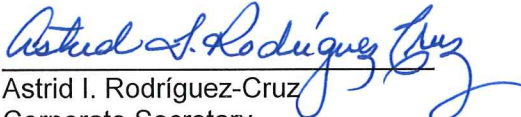
WHEREAS: In accordance with Section 5.9 of the O&M Agreement "[PREPA] shall retain the exclusive right to receive amounts from all Federal Funding for the T&D System." "Operator shall take steps to ensure that, except for Systems Contracts existing as of the Service Commencement Date, the O&M Services are performed in compliance with the Federal Funding Requirements." In addition, Section 5.9 (b) mandates that "parties shall cooperate and participate with any relevant Governmental Body and any Grant Manager to help seek, procure, administer, manage, deploy and apply any Federal Funding for the restoration of the T&D System and related costs."

WHEREAS: In accordance with Section 5.5 (b) of the O&M Agreement "[PREPA] and Operator shall cooperate with each other to address and comply with federal agency requirements, including any requirements set forth in the Federal Funding Procurement Manual (all such requirements, the "Federal Funding Requirements"), so as not to jeopardize the T&D System's eligibility to receive Federal Funding. Such cooperation shall include PREPA (i) providing the Operator with such documents and information it requests concerning the Federal Funding Requirements, (ii) sharing with Operator any specific requirements imposed by the relevant funding agency to maintain eligibility to receive Federal Funding, and (iii) making requests to such federal agencies to review [PREPA] and Operator's systems and plans to comply with Federal Funding Requirements." Further, through Section 5.9 (e) (i) of the O&M Agreement, PREPA and the P3 Authority (as Administrator of the O&M Agreement) gave their consent for LUMA to act as an agent of PREPA in connection with Federal Funding requests related to the T&D System submitted to FEMA.

THEREFORE: In compliance with the O&M Agreement and by the power vested by Act 83, PREPA's Governing Board resolves to:

Authorize the President of the Governing Board to formally authorize and give consent for LUMA to act as the sole entity allowed to manage grant applications through the Grants Portal and with the ultimate authority to review and approve all documents filed therein in connection with the T&D Reconstruction Projects; provided that the President of the Governing Board shall have the power to execute any forms or necessary documents to enable such authorization, including, without limitation, COR3's form titled "Information of Authorized Consultant's and Authorized Representative(s)".

Approved in San Juan, Puerto Rico, on this 30th day of November two thousand twenty-two.


Astrid I. Rodríguez-Cruz
Corporate Secretary