

**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 Setting Deadlines Relating to Provisional Rates; Granting Requests to Intervene of SESA and Walmart; Clarifying Provisional-Rate Terminology; Providing for Limited Informal Communications; and Correcting Testimonial Error

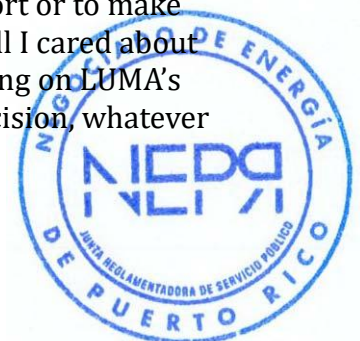
Hearing Examiner's Order Setting Deadlines Relating to Provisional Rates; Granting Requests to Intervene of SESA and Walmart; Clarifying Provisional-Rate Terminology; Providing for Limited Informal Communications; and Correcting Testimonial Error

I. Provisional rates

LUMA's rate application submitted on July 3, 2025, requests provisional rates. The main discussions of that request appear in LUMA's July 3 Motion at pp.33-35, Mr. Figueroa's testimony (LUMA Ex. 1.0) at pp.69-86, and in the various testimonies and other exhibits cited in those two sources.

To help the Energy Bureau act on LUMA's request expeditiously, I would like the parties' participation in the following steps with the following deadlines:

- **Thursday, July 10, noon Atlantic:** Requests of information to LUMA relating to its request for provisional rates. Make those requests on the Accion platform, not in formal filings.
- **Friday, July 11, noon Atlantic:** Objections to, statements of support for, or comments about LUMA's request for provisional rates. This document must be a formal filing. There is no obligation to make statements of support or to make comments. I added those items only to avoid a perception that all I cared about were objections. The point is that the Energy Bureau will be acting on LUMA's request expeditiously, so it wishes to have, before making its decision, whatever reactions the parties wish to offer.



- **Monday July 14, 9.30am Atlantic:** Virtual conference at which (a) LUMA can respond, to the extent feasible, to the questions it has received about the provisional rate; and (b) the Energy Bureau's consultants, and other parties, can ask LUMA additional questions about its request. When that discussion of the provisional-rate request has ended, I will allow questions, if any, seeking clarification from LUMA, Genera, or PREPA about their general rate application. I will confine those questions to those relating to how the application and specific spreadsheets and other exhibits are organized. When that discussion ends, we will assess together whether additional technical conferences on the general application would be useful.

II. Requests to intervene

I grant the requests of the Solar and Energy Storage Association of Puerto Rico (SESA) and Wal-Mart Puerto Rico, Inc. (Walmart), both submitted on July 3, 2025. These grants are subject to the conditions stated in this Order. For each of SESA and Walmart I apply the seven criteria required by Section 3.5 of Puerto Rico's Uniform Administrative Procedures Act.

SESA

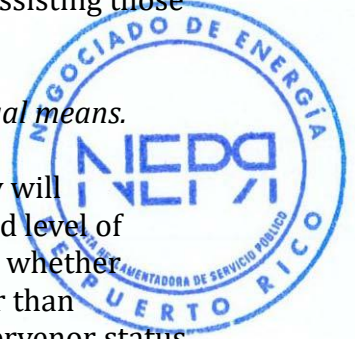
SESA describes itself as “a non-profit trade association representing Puerto Rico's solar and energy storage industries.” Its membership, SESA says, “includes companies from the entire spectrum of businesses involved in the industry, including manufacturing, sales, installation, operation, maintenance and financing of solar and energy storage systems.”

(1) Whether the petitioner has an interest that may be adversely affected by the adjudicative proceeding.

The rate levels, revenue allocations, rate designs, and structure of tariff riders can affect the decisions that customers make about whether to install solar systems and energy storage systems. Since SESA's members make their money doing or assisting those installations, their interests could be affected, positively or negatively.

(2) Whether the petitioner's interests can be adequately protected by other legal means.

This proceeding is the sole proceeding in which a government agency will determine rate levels, revenue allocations, rate designs, and the structure and level of tariff riders. Also relevant is the question introduced into this proceeding on whether there should be a separate customer class for net-metering customers. Other than intervening in this proceeding, with the appellate rights that accompany intervenor status, there is no way for SESA's members to protect their interests, as those interests will be affected by the Energy Bureau's rate decisions.



(3) Whether the petitioner's interests are already adequately represented by existing parties to the proceeding.

SESA correctly states that “[n]o party currently participating in this proceeding represents the specific interests or operational realities of Puerto Rico's solar and storage distributed energy resources (“DER”) sector.” The term “currently” matters. As stated in the Conditions section below, if allied interests seek intervention, I will require cooperation to avoid duplication.

(4) Whether the petitioner's participation may reasonably be expected to assist in developing a sound record of the proceeding.

In determining the revenue requirement, revenue allocations, and rate designs, the Energy Bureau might have to consider facts specific to solar systems and energy storage systems. Examples are costs of upgrading distributions systems to accommodate those systems, and the effect on billing determinants of customers' migration to solar. No other current party brings the technical and business experience offered by SESA's members. That SESA might offer that experience in ways that its opponents might view as subjective rather than objective is no reason to deny this intervention. In any event, the Energy Bureau is capable of distinguishing bread from baloney. Relative to other parties, SESA's experience is unique.

(5) Whether the petitioner's participation may excessively broaden the issues or delay the proceedings.

SESA says that it “does not seek to expand the scope of this proceeding and commits to abiding by all procedural deadlines and evidentiary rules established by the Bureau.” I would find this statement more convincing had SESA not already violated, or perhaps misunderstood, a prior order of mine. As the Energy Bureau stated in its Order of May 29, 2025, referencing my Order of May 22, 2025 (seeking comments on whether to add four filing requirements):

On May 23, 2025, the Energy Bureau received comments on these drafts from LUMA and from the Solar and Energy Storage Association of Puerto Rico (“SESA”). Neither entity objected to the drafts. LUMA offered several suggestions. On one of the May 22 Requirements, SESA commented on the merits, though the Hearing Examiner had requested comments only on the items' inclusion in the filing requirements, not on their merits. LUMA, according to the Hearing Examiner's order, did not comment on the merits.

I am conditioning this grant on SESA's holding to its commitment.



(6) Whether the petitioner represents or is the spokesperson for other community groups or entities.

I have no basis for questioning SESA's claim that it “serves as the organization for Puerto Rico's distributed solar and storage industry,” and that “[i]ts membership spans residential, commercial, and industrial market segments and includes firms involved in project development, installation, engineering, equipment manufacturing, financing, and operation.”

(7) Whether the petitioner may contribute information, expertise, specialized knowledge, or technical advice that otherwise would not be available in the proceeding.

As discussed under Factor 6, SESA is the only entity, as of now, that brings direct experience with solar and storage, and whose members deal directly with the customers that will pay the rates that the Energy Bureau will set.

Walmart

Walmart describes itself as

a leading commercial retailer and one of the largest private-sector employers and energy consumers in Puerto Rico. It operates numerous retail stores, distribution centers, and other facilities across the Island. Many of these locations are equipped with on-site distributed generation (“DG”) systems—primarily solar photovoltaic installations—which are interconnected with the grid and subject to the Puerto Rico Energy Bureau's regulatory oversight.



(1) Whether the petitioner has an interest that may be adversely affected by the adjudicative proceeding.

Walmart is a large consumer of electricity and a large contributor to the electric system's peak demand. It also needs reliable electricity to run its many stores and keep cool its perishable goods. Thus its financial well-being will be directly affected, positively or negatively, not only by the kWh and kW charges set by the Energy Bureau, but also by the quality of electric service that those charges support.

(2) Whether the petitioner's interests can be adequately protected by other legal means.

The same points made about SESA in criterion 2 apply here.

(3) Whether the petitioner's interests are already adequately represented by existing parties to the proceeding.

Walmart correctly states that no other party represents the interests of large commercial customers—especially one like Walmart that is both a customer and a

generator. I condition this grant on Walmart's recognizing its obligation to cooperate and coordinate with any other large commercial customers that seek to intervene.

(4) Whether the petitioner's participation may reasonably be expected to assist in developing a sound record of the proceeding.

I agree with Walmart that its large-customer role enables it to offer unique information based on experience. That experience includes not only that of a customer paying both consumption and demand charges but also the experience of dealing with outages, interconnections, distributed generator performance, and the shopping needs of small customers seeking to ease their outage experience.

(5) Whether the petitioner's participation may excessively broaden the issues or delay the proceedings.

I have no basis for finding that Walmart's participation as an intervenor will involve issues outside the scope of this proceeding.

(6) Whether the petitioner represents or is the spokesperson for other community groups or entities.

While Walmart's size makes it unique, its large-customer concerns will likely reflect those of other large customers—customers whose continuing presence in Puerto Rico brings jobs and assists economic growth. It is essential to have that perspective in this proceeding.

(7) Whether the petitioner may contribute information, expertise, specialized knowledge, or technical advice that otherwise would not be available in the proceeding.

As discussed under criterion 4, Walmart brings the perspective of a customer with large consumption and large demand, a customer that is also a generator, a customer that serves other customers, and a customer that can draw on national experience. No other participant, at present, offers these benefits to this proceeding.

Conditions

As discussed above, I grant these two requests conditioned on SESA and Walmart each accepting the proceeding's scope, and each accepting my authority to require their coordination and cooperation with any later-intervening entities that share their interests. The procedural schedule's tightness and the issues' complexity leave no room for diversion or duplication.



III. Terminology related to “provisional rate”

Confusion has arisen because in their Direct Testimonies, Mr. Figueroa and Mr. Shannon use the term “provisional rate” differently. Mr. Figueroa uses the term to refer to the total proposed base rate—the rate that is the sum of the existing 2017 rate plus the increment that he proposes for the provisional-rate period; i.e., the period between September 1, 2025, and the 2026 date on which the permanent rate appears on the bills. Mr. Shannon uses the term to refer not to that total base rate but only to the increment.

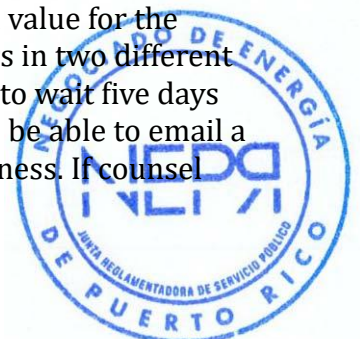
Mr. Figueroa’s use is the correct use. To avoid confusion, refer to the increment as the “provisional-rate rider amount.” So the provisional rate is the sum of the existing base rate and the provisional-rate rider amount. That summed-up amount is what the customers will pay (separate from the fuel rider, the PPCA rider, and the three subsidy riders) for the provisional-rate period.

IV. Limited use of informal communications

During preparation of the rate design filing requirements, I authorized, after permitting time for objections, informal, nonargumentative communications between LUMA’s team and Energy Bureau consultants. See my Orders of May 8 and May 12, 2025. This informality saved time and caused no concern. I wish to repeat that approach in the two contexts discussed next. If there is any objection, provide it formally by **this Friday, July 11, 2025 at noon**. Unlike the last time, for these two new items I am not going to require summaries or recordings or offers of participation to others. These next two items involve only quick phone calls or emails for clarifications, not preparation of filing requirements.

Requests for technical support in using the discovery platform: Accion created and hosts the discovery platform. The Accion employees who perform that technical function are different from the Accion employees who advise the Energy Bureau on substance, with two exceptions. I want Accion’s people to assist intervenors directly and expeditiously. These interactions can occur via email (support@acciongroup.com), telephone, or Teams. During these interactions, there will be no discussion of substantive merits.

Communications between Energy Bureau consultants and parties to clarify discovery requests: The Energy Bureau’s consultants, including me, will have questions about the Application’s many pages. For questions seeking additional information or backup, the consultants will use the discovery platform. But sometimes, all we need is clarification, as in “Where do we find the calculations that support the specific proposed value for the provisional-rate rider amount?” or “Why are there two different numbers in two different locations for the same item?” For such questions, we don’t need or want to wait five days for an answer. There is no time to lose. So I would like our consultants to be able to email a witness directly. To do so, we need please the email address for each witness. If counsel wish, we can copy counsel on the message.



V. Correction of testimonial error

Dr. Terzic's Direct Testimony states:

The role of regulation of public utilities has been described by Mr. Hempling as *"balancing' interests, most often, the interests of shareholders and consumers."*¹

To the extent that Dr. Terzic was offering this quote as my opinion, the context makes clear that he erred. The full paragraph appears in the book's introductory subsection describing various perspectives on regulation—the differing perspectives of economists, shareholders, large customers, small customers, low-income advocates, competitors, and other interest groups. The view stated in Dr. Terzic's quoted clause is not mine. The sentence containing the quote expressly attributed that view to "some"—meaning, the view of some people. The sentence immediately following begins with the word "but," signaling my intent to distinguish my own view from the above-quoted view. Here is the entire paragraph:

These value conflicts [among interest groups] cause some to view regulation's purpose as "balancing" interests—most often, the interests of shareholders and consumers. But a balance presumes opposition of interests. What courts view as customers' and shareholders' *legal* interests—legitimate interests in reasonable prices, reasonable returns, satisfied customers and satisfied shareholders—are not in opposition; they are consistent and mutually reinforcing. High-quality performance and efficient consumption benefit multiple interests: consumers, shareholders, bondholders, employees, the environment and the nation's infrastructure. What regulation must balance is not competing private interests but competing components of the public interest—e.g., long-term societal needs, short-term economic needs, investor satisfaction, affordability, efficient price signals, environmental values, and global competitiveness.



¹ LUMA Ex. 19.0 (at 10:171, emphasis in original) (quoting Hempling, *Regulating Public Utility Performance: The Law of Market Structure, Pricing and Jurisdiction* 2d edition at 2 (Amer. Bar Assoc. 2021)).

I recognize the awkwardness of a Hearing Examiner and Energy Bureau advisor commenting on a witness's use of the Hearing Examiner's writings. And I mean no disrespect to Dr. Terzic, whom I have had the privilege to know for 30 years. It is precisely because of my dual role that I felt this correction necessary.

Be notified and published.



Scott Hempling
Hearing Examiner

CERTIFICATION

I certify that the Hearing Examiner, Scott Hempling, has so established on July 7, 2025. I also certify that on July 7, 2025, a copy of this Order was notified by electronic mail to katuska.bolanos-lugo@us.dlapiper.com; Yahaira.delarosa@us.dlapiper.com; Brett.ingerman@us.dlapiper.com; margarita.mercado@us.dlapiper.com; andrea.chambers@us.dlapiper.com; carolyn.clarkin@us.dlapiper.com; jan.albinolopez@us.dlapiper.com; Rachel.Albanese@us.dlapiper.com; mvalle@gmlex.net; arivera@gmlex.net; jmartinez@gmlex.net; jgonzalez@gmlex.net; regulatory@genera-pr.com; legal@genera-pr.com; sromero@sbgblaw.com; gcastroddad@sbgblaw.com; jennalvarez@sbgblaw.com; sromero@sbgblaw.com; jdiaz@sbgblaw.com; hriviera@jrsp.pr.gov; contratistas@jrsp.pr.gov; 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; Intisarul.Islam@weil.com; kara.smith@weil.com; lramos@ramoscruzlegal.com; tlauria@whitecase.com; gkurtz@whitecase.com; ccolumbres@whitecase.com; isaac.glassman@whitecase.com; varoon.sachdev@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; rolando@emmanuelli.law; nancy@emmanuelli.law; rafael.ortiz.mendoza@gmail.com; javrua@sesapr.org; cfl@mcvpr.com; apc@mcvpr.com; mrios@arroyorioslaw.com; ccordero@arroyorioslaw.com; jcasillas@cstlawpr.com;



jnieves@cstlawpr.com. I also certify that on July 7, 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 July 7, 2025.



Sonia Seda Gaztambide
Clerk