

**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 Posing Clarification Questions About July 3 Rate Application, Addressing Two General Motions, Noting Correction of Discrepancy in LUMA's Proposed Provisional-Rate Rider Amount, and Granting Requests to Intervene

Hearing Examiner's Order Posing Clarification Questions About July 3 Rate Application, Addressing Two General Motions, Noting Correction of Discrepancy in LUMA's Proposed Provisional-Rate Rider Amount, and Granting Requests to Intervene

I. Clarification questions for the LUMA, PREPA, and Genera

These questions constitute introductory informal discovery, based on my partial review of the July 3, 2025, Application. For LUMA, the responses do not need a pleading and they do not need multiple paragraphs about procedural history. Simply provide short, nonargumentative answers in a Word document, emailed to all. If you must include a pdf, make it searchable. For PREPA and Genera, we will discuss my questions at the upcoming conference (July 14, 9.30am).

LUMA

1. Re Mr. Figueroa's testimony, Ex. 1.0: Explain fully the total provisional revenue requirement amount attributable to LUMA alone. The explanation should show, among other things, the relationship between the \$396.8M in high-priority, noncontroversial items (Table 12, bottom) and the 970M in Table 10 (top). The response should include an equation displaying the relationship to the total provisional revenue requirement of the following: Outage Event amounts, inflation adjustment, the 2% contingency amount, and the high-priority-and-noncontroversial items. Include, if helpful, a revised Table 10 or Table 12 that makes these relationship clear. Also provide an explanation that traces these amounts to specific cells in Ex. 1.06.

2. Explain fully these items in Ex. 1.0 Figure 10: "Other" (\$576M) and "Net Operating Income" (\$178M).



3. Re Ex. 1.0, Figure 10: What was LUMA's basis for including for PREPA and Genera provisional-rate values equal to the permanent-rate values?

PREPA

With apologies, I don't understand what is PREPA's proposed provisional rate. Ms. Zapata testifies that "PREPA is requesting a provisional rate adjustment to secure the funds necessary to meet its statutory and contractual obligations to the PREPA Employee Retirement System ('PREPA ERS')." (Ex. 32 at 8:18-20.) And she describes the proposed provisional rate as "truly a measure of last resort." (Ex. 32 at 12:22-13:1) But I see in her testimony no number associated with these statements, other than the very large number in this sentence: "For Fiscal Year 2026, PREPA requires \$307,475,422.00 to fully fund its pension obligations." (Ex. 32 at 11:6.) I see no connection between this \$307M and any provisional rate.

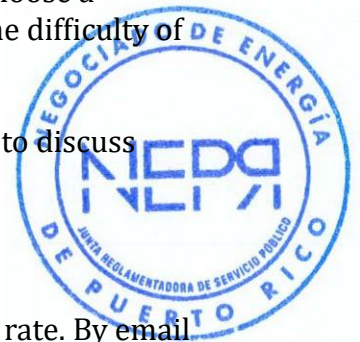
Has PREPA confused provisional rate with emergency rate? A provisional rate, properly understood, is not a "last resort." It should have some relationship to the proposed permanent rate. In fact, in the investor-owned utility context, the provisional rate is most often identical to the proposed permanent rate, but made provisional to allow for refunds back to the effective date in case the regulator's final decision produces a permanent rate below the proposed rate. In Puerto Rico's very different P3 context, there is no ready way to refund to customers monies already spent by PREPA and its two key contractors. The Energy Bureau therefore required the three companies to limit the revenue requirement underlying their proposed provisional rate to the FY2025 budgeted amount, plus inflation (those two items constituting the "default FY2026 budget"), plus the cost of items that the companies deemed "high-priority and noncontroversial." (April 21 Order at 6) That approach reduces the probability that the Energy Bureau would ultimately choose a permanent rate lower than the provisional rate, which action would create the difficulty of finding funds to pay refunds when the funds had already been spent.

I ask PREPA to have its CEO or CFO available at the July 14 conference to discuss these points.

Genera

The testimonies of Genera's CEO and CFO do not discuss a provisional rate. By email I asked counsel to confirm its absence. Counsel responded by email (July 8, 11:55 am) as follows: "On behalf of Genera, we hereby confirm the testimonies of the CEO and CFO do not reference a provisional rate, as our client did not propose one. Following discussions with LUMA prior to filing, our client opted to align with LUMA's approach, which pursues the optimal provisional rate." See this Order's Appendix for the email exchange.

I do not understand this answer. First, there is, as far as I know, no such thing as an "optimal provisional rate." There is an Optimal Budget and a Constrained Budget, but there is no "optimal provisional rate." Second, what LUMA "pursue[d]" for its provisional rate was



what the Energy Bureau required: FY25 revenue requirement, plus inflation, plus high-priority-and-noncontroversial additions. (April 21 Order at 6.) Genera has done nothing of the kind; rather, it apparently expected LUMA to include, within the consolidated provisional rate, Genera's unadjusted proposal for a permanent rate.

Genera's deviation from the Energy Bureau's requirement, whether rooted in intention, oversight, or overwork, creates an awkwardness. Whereas LUMA, to adhere to the requirement, restrained itself by limiting its provisional-rate revenue requirement (and thus its spending options) to some percentage of its proposed permanent revenue requirement (79%, if I understand Mr. Figueroa's Table 10—970/1231), Genera has shown no such restraint. Implicitly it insists on a provisional revenue requirement equal to 100% of its proposed permanent revenue requirement. Is Genera assuming that for the next eight months it will spend what it wants for its permanent rate, whereas LUMA will spend only what the Energy Bureau allows? What if the Energy Bureau's final order on permanent rates allows for Genera an amount lower than what Genera spent? Is Genera committing to make refunds from its own corporate funds? If not, how will the refunds occur? These are the questions that flow unavoidably from Genera's decision to propose no provisional rate.

I need to know the basis for Genera's insistence on this different treatment. I also need to know what Genera advises the Energy Bureau to do about it. I therefore require Genera to make its CEO or CFO available at the July 14 conference.

II. Genera's July 7 Motions

I grant Genera's Motion, filed July 7, 2025, to withdraw the version of Exhibit 22.2 inadvertently filed by Genera on July 3, 2025, and to replace it with a new Exhibit 22.2. I **direct the Energy Bureau's Secretary** to immediately seal the original version so that it is not available to the public, as it contains attorney work product. I **direct all counsel** to immediately delete permanently all copies of the original version, whoever may possess those copies.

I grant Genera's Motion, filed July 7, 2025, to submit Spanish summaries of its testimony.

III. Correction of discrepancy in provisional-rate rider amount

In case parties have not yet noticed: Mr. Shannon's Direct Testimony, Exhibit 20.0, states that LUMA's proposed provisional-rate rider amount is \$0.077896 per kWh. Somewhere in the stack of Application documents is an errata stating that the correct amount is \$0.073915. The correct amount does appear in the spreadsheet, Ex. 20.03.



IV. Requests to Intervene

On July 7, 2025, I received requests to intervene from Mr. Victor Luis González and from the Institute of Competitiveness and Economic Sustainability (“ICSE” as its Spanish acronym). As explained below, I grant both requests based on the seven criteria required by Section 3.5 of Puerto Rico's Uniform Administrative Procedures Act. below. I condition both grants as stated at the end of this section.

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

Mr. González has a longstanding interest in renewable energy, in particular generation from solar PV. He has combined his personal interest with business experience and investment dollars. These interests will be affected by this proceeding, for the same reasons stated in my order of July 7, 2025, admitting as intervenor the Solar Energy and Storage Association (SESA).

ICSE describes itself as a nonprofit, nonsectarian organization, not associated with any interest group or particular economic interest, that advocates for “sound regulatory practices that promote the most competitive outcomes to our economy . . . without favoring specific groups’ interests.” ICSE says that in the Title III proceeding, it has “highlight[ed] the risks of disproportionately overcharging the productive sectors, particularly industrial and commercial consumers.” ICSE’s broad interests could be adversely affected in this proceeding, in which other parties might be asserting only their own economic interests.

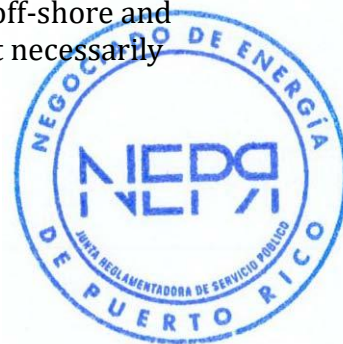
(2) Whether the petitioner's interests can be adequately protected by other legal means.

For the same reasons that I gave in my July 7, 2025, order admitting SESA and Walmart, Mr. González’s interests cannot be adequately protected by other legal means.

My application of Item 2 to Mr. González applies equally to ICSE.

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

There is some possibility that Mr. González’s interests will be adequately represented by SESA, because the interests in promoting solar energy overlap. But Mr. González brings personal, hands-on, operational and investment experience—including investment in utility scale renewables, in industrial, commercial and residential solar systems, in microgrids, in off-grid PV systems, in negotiating PPOAs, and in off-shore and on-shore wind development in Puerto Rico. That hands-on experience is not necessarily brought by a trade association, as distinct from its members.



I agree with ICSE that its “balanced” and broad perspective is not necessarily represented by other parties. As well, it is not clear to me that any other party is, in ICSE’s words, “advocating for an open, transparent, and competitive electric market as their guiding principle[].” A party that focuses on effective regulation, including protecting the Energy Bureau’s institutional role, can make a unique contribution to this proceeding.

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

Mr. González brings 40 years of experience with energy issues in Puerto Rico. He says that he has overseen the investment, procurement, construction, and operation of \$2 billion dollars in renewable energy assets in the Commonwealth. His participation in prior proceedings has brought evidentiary value—and color.

ICSE also satisfies this criterion. Through its able, experienced counsel and retained experts, ICSE has brought value to other proceedings, including the 2015-2017 Rate Case, IRP proceedings, the investigation into cash flow concerns, and various Energy Bureau efforts on demand response, energy efficiency, distributed energy resources, and renewable energy integration. Its institutional memory will assist this proceeding.

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

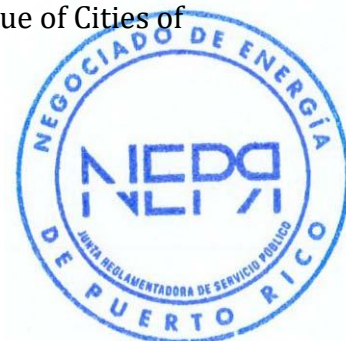
I have no reason to expect that Mr. González’s participation will excessively broaden the issues. I have made clear in past conferences that this proceeding sets rates. With the possible exception of addressing net-metering arrangements, it does not establish policy on renewable energy.

ICSE has given me no basis for concern about this factor.

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

Mr. González states that he speaks only for himself.

While ICSE does not purport to speak for others officially, its institutional purposes are rooted in public-interest principles that I assume align with the values of Puerto Rico’s citizens. Moreover, ICSE describes itself as having been a “conciliatory force with various interest groups” in the energy sector, working with such entities as the Puerto Rico Bar Association, the United Retailers Center of Puerto Rico, the Association of Private Colleges and Universities of Puerto Rico, Colegio de Profesionales del Trabajo Social de Puerto Rico, Junta de Asociaciones con Pensionados y Jubilados de Puerto Rico, the League of Cities of Puerto Rico, among others.



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

See Item (4) above. Mr. González states that he has personally “overseen the development of over 400MW of PV systems, 250 MW of BESS (4-hours) and created over 3,000 jobs.”

ICSE’s experience with utility regulation in Puerto Rico, which dates back to Puerto Rico electricity regulation’s 2014 origins, is unique among the parties.

Conditions

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

Be notified and published.



Scott Hempling
Hearing Examiner

CERTIFICATION

I certify that the Hearing Examiner, Scott Hempling, has so established on July 8, 2025. I also certify that on July 8, 2025, a copy of this Order was notified by electronic mail to 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@jrsp.pr.gov; contratistas@jrsp.pr.gov; victorluisgonzalez@yahoo.com; Cfl@mcvpr.com; nancy@emmanuelli.law; jrinconlopez@guidhouse.com; Josh.Llamas@fticonsulting.com; Anu.Sen@fticonsulting.com; Ellen.Smith@fticonsulting.com; Intisarul.Islam@weil.com; kara.smith@weil.com; rafa.ortiz.mendoza@gmail.com; rolando@emmanuelli.law; jan.albinolopez@us.dlapiper.com; Rachel.Albanese@us.dlapiper.com; varoon.sachdev@whitecase.com; jdiaz@sbgblaw.com; javrua@sesapr.org; Brett.ingerman@us.dlapiper.com; agraitfe@agraitlawpr.com; jpouroman@outlook.com; epo@amgprlaw.com; loliver@amgprlaw.com; acasellas@amgprlaw.com;



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LShelfer@gibsondunn.com; jnieves@cstlawpr.com; arrivera@nuenergypr.com;
apc@mcvpr.com. I also certify that on July 8, 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 8, 2025.





Sonia Seda Gaztambide
Clerk

Appendix: Email Exchange (July 8, 2025)

From: Jorge Fernandez-Reboredo <jfr@sbgblaw.com>
Sent: Tuesday, July 8, 2025 11:54 AM
To: Scott Hempling <shempling@scotthemplinglaw.com>; Gabriela A. Castrodad García <gcastrodad@sbgblaw.com>
Cc: Stephen Romero Valle <sromero@sbgblaw.com>; José J. Díaz Alonso <jdiaz@sbgblaw.com>; Jorge Fernandez-Reboredo <jfr@sbgblaw.com>
Subject: RE: Genera's proposed provisional rate

Mr. Hempling,

On behalf of Genera, we hereby confirm the testimonies of the CEO and CFO do not reference a provisional rate, as our client did not propose one. Following discussions with LUMA prior to filing, our client opted to align with LUMA's approach, which pursues the optimal provisional rate.

Please do not hesitate to contact us should you require any additional information or clarification.

Kindly,

Jorge Fernandez-Reboredo

Socio | Partner



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From: Scott Hempling <shempling@scotthemplinglaw.com>
Sent: Tuesday, July 8, 2025 9:37 AM
To: Alejandro López Rodríguez <alopez@sbgblaw.com>; Gabriela A. Castrodad García <gcastrodad@sbgblaw.com>; Jorge Fernandez-Reboredo <jfr@sbgblaw.com>
Subject: Genera's proposed provisional rate

Counsel,

I see no reference to a provisional rate in the testimonies of your CEO and CFO. Did you not propose one? Be sure your answer is solely informational. I want to make sure I have not missed anything.

Scott Hempling, Attorney at Law LLC