

**GOVERNMENT OF PUERTO RICO  
PUBLIC SERVICE REGULATORY BOARD  
PUERTO RICO ENERGY BUREAU**

**NEPR**

**Received:**

**Jul 10, 2025**

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**IN RE:**

PUERTO RICO ELECTRIC POWER  
AUTHORITY RATE REVIEW

**CASE NO.:** NEPR-AP-2023-0003

**SUBJECT:** Urgent Request for Partial  
Reconsideration of July 8<sup>th</sup> Order.

**URGENT REQUEST FOR PARTIAL RECONSIDERATION OF JULY 8<sup>TH</sup> ORDER**

**TO THE HONORABLE HEARING EXAMINER  
AND THE PUERTO RICO ENERGY BUREAU:**

**COMES NOW GENERA PR LLC** (“Genera”), as agent of the Puerto Rico Electric Power Authority (“PREPA”),<sup>1</sup> through its counsel of record, and respectfully state and request the following:

**BACKGROUND**

1. On January 23, 2023, the Puerto Rico Electric Power Authority (“PREPA”), the Puerto Rico Public-Private Partnerships Authority (“P3A”), and Genera executed the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* (“LGA OMA”), pursuant to which Genera would assume the operation and maintenance of Puerto Rico’s thermal generation assets.

2. On June 30, 2023, the Puerto Rico Energy Bureau (“Energy Bureau”) issued a Resolution and Order initiating the adjudicative process to review PREPA’s rates. In its Resolution and Order, the Energy Bureau recognized several changes in Puerto Rico’s

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<sup>1</sup> Pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* (“LGA OMA”), dated January 24, 2023, executed by and among PREPA, Genera, and the Puerto Rico Public-Private Partnerships Authority, Genera is the sole operator and administrator of the Legacy Generation Assets (as defined in the LGA OMA) and the sole entity authorized to represent PREPA before the Energy Bureau with respect to any matter related to the performance of any of the O&M Services provided by Genera under the LGA OMA.

electricity system since the last rate review proceeding, including the transfer of transmission and distribution (T&D) function to LUMA Energy LLC and LUMA Energy ServCo LLC (jointly referred to as “LUMA”) and the operation of legacy generation assets to Genera.

3. On February 12, 2025, the Energy Bureau issued a Resolution and Order establishing the scope and procedures for the rate case (“February 12<sup>th</sup> Order”). The February 12<sup>th</sup> Order states that “[t]he Application for new rates must propose provisional rates along with permanent rates”. *Id.* at page 6. The Energy Bureau made clear in its February 12<sup>th</sup> Order that “LUMA must file its application for both provisional and permanent rates with sufficient lead time to accommodate” certain matters.

4. In its February 12<sup>th</sup> Order, the Energy Bureau designated Mr. Scott Hempling as Hearing Examiner limiting his authority to the following: “resolving all discovery disputes between the parties; establishing and modifying procedural schedules; determining witness sequence and logistics for evidentiary hearings; addressing any other procedural or logistical matters that arise during the proceeding; and issuing any procedural orders to facilitate the orderly conduct of the proceeding.”. February 12<sup>th</sup> Order, at page 8.

5. On April 21, 2025, the Energy Bureau issued a Resolution and Order regarding Revisions and Additions to February 12 Order on Rate Case Procedures (“April 21<sup>st</sup> Order”). In the April 21<sup>st</sup> Order, the Energy Bureau delegates “to the Hearing Examiner what he deems necessary to clarify” the Energy Bureau prior orders and reiterating that participants may appeal his decisions to the Energy Bureau. April 21<sup>st</sup> Order, at page 7.

6. On April 25, 2025, the Hearing Examiner issued an Order on Rate Case Procedures (“April 25<sup>th</sup> Order”). The Hearing Examiner recognized LUMA will be

responsible for filing the formal application including, among others, an application for provisional rates, no later than July 3, 2025. *See* April 25<sup>th</sup> Order, at page 1.

7. In compliance with the April 25<sup>th</sup> Order, on July 3, 2025, LUMA filed its *Motion Submitting Rate Review Petition* (“Rate Review Petition”).

8. On July 8, 2025, the Hearing Examiner contacted Genera’s counsel via email off the record with the following message:

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.

*See* July 8<sup>th</sup> Order, Appendix.

9. Genera’s counsel generously and in good-faith answered the Hearing Examiner’s informal and *informational* question.

10. In the afternoon of July 8, 2025, the Hearing Examiner issued an Order titled *Hearing Examiner’s Order Posing Clarification Questions About July 3 Rate Application, Addressing Two Genera Motions, Noting Correction of Discrepancy in LUMA’s Proposed Provisional-Rate Rider Amount, and Granting Requests to Intervene*, including certain questions addressed to Genera, LUMA and PREPA in an informal discovery process and scheduling a Virtual Conference for July 14, 2025, at 9:30 a.m.

11. Relevant to this Motion, the Hearing Examiner stated as follows regarding 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.

*See* July 8<sup>th</sup> Order, at 2-3.

## LEGAL BASIS AND DISCUSSION

### A. Hearing Examiner’s Extra Limitation of His Delegate Powers

12. Article 6.11(b) of Act No. 57-2014 allows the Energy Bureau “to refer or delegate any adjudicative matter to hearing examiners... Any hearing examiner designated to preside over a hearing or investigation **shall have the powers expressly delegated by the PREB in the designation order.**” 22 L.P.R.A. § 1054j(b) (emphasis added).

13. The Puerto Rico Supreme Court has provided that:

[T]he title of hearing examiner or administrative judge, by itself, does not define the nature of their functions and, therefore, of the product of their work. It is also imperative to evaluate the powers that have been delegated to them and the type of decisions they issue. The scope and consequences of their determinations will depend “on what the statute provides, the procedural structure of the agency, and the authority vested in the examiner or judge.” *Tosado Cortés v. AEE*, 165 D.P.R. 377, 386-87 (2005) (citing D. Fernández Quiñones, *Derecho Administrativo y Ley de Procedimiento Administrativo Uniforme* 190 (2da ed. 2001).

14. In the February 12<sup>th</sup> Order, the Energy Bureau **explicitly limited** the Hearing Examiner’s authority to the following: “[1)] resolving all discovery disputes between the parties; [(2)] establishing and modifying procedural schedules; [(3)] determining witness sequence and logistics for evidentiary hearings; [(4)] addressing any other procedural or logistical matters that arise during the proceeding; and [(5)] issuing any procedural orders to facilitate the orderly conduct of the proceeding.”. February 12<sup>th</sup> Order, at page 8. Additionally, the Energy Bureau expanded the Hearing Examiner’s authority to clarify the Energy Bureau’s prior orders. *See* April 21<sup>st</sup> Order.

15. **Nowhere in the February 12<sup>th</sup> Order, the April 21<sup>st</sup> Order or any prior Resolution and Order did the Energy Bureau grant the Hearing Examiner any authority to conduct discovery.** On the contrary, the Energy Bureau limited the Hearing Examiner’s participation in discovery procedures to resolving disputes between the parties and other procedural and logistical issues regarding the procedures.

16. Even though the Hearing Examiner’s authority has been expressly limited by the Energy Bureau and has not been granted authority to conduct discovery, the Hearing Examiner opted to communicate directly with Genera to address what he –erroneously– believes is a deficiency in the testimonies provided as part of the Rate Review Petition filed

by LUMA; to divulge the so-called informal off the record communication with Genera's counsel in its July 8<sup>th</sup> Order, and to address questions to the parties –to be discussed at a hearing scheduled for Monday, July 14, 2025– which he qualified as “introductory informal discovery”, *see* July 8<sup>th</sup> Order, at page 1. In doing so, the Hearing Examiner acted beyond his delegated authority which resulted in an *ultra vires* order.

17. Specifically, regarding Genera, in the July 8<sup>th</sup> Order, the Hearing Examiner did not address any discovery dispute between Genera and another party. On the contrary, the Hearing Examiner could potentially be creating a dispute between himself and a party.

18. Moreover, in its July 8<sup>th</sup> Order, the Hearing Examiner did not establish or modify procedural schedules, nor did he address a procedural or logistical matter regarding Genera and the provisional rate for which the Virtual Conference was scheduled.

19. Additionally, in its July 8<sup>th</sup> Order, the Hearing Examiner did not determine the witness sequence and logistics for evidentiary hearing, rather, it summoned Genera's CFO or CEO as witness to conduct what can only be construed as an evidentiary hearing, for which he also lacks authority to preside.

20. Lastly, the July 8<sup>th</sup> Order cannot be construed as a procedural order to facilitate the orderly conduct of the proceeding. The July 8<sup>th</sup> Order expressly seeks clarification in substantive aspects of the Rate Review Petition. No procedural matter is addressed.

21. In light of the above, Genera respectfully requests that the Hearing Examiner does not perpetuate the breach of its authority in the Virtual Conference scheduled for Monday, July 14, 2025, and limits its intervention towards Genera to the powers and authority specifically delegated to him in the February 12<sup>th</sup> Order and the April 21<sup>st</sup> Order,

which does not include any discovery-related authority other than dispute resolution between the parties, which have not yet occurred. Genera hereby asserts it will do everything within its legal rights to safeguard its due process rights during this proceeding.

## **B. Provisional Rates**

22. Regardless of the Hearing Examiner's overreach in his delegated authority, Genera would like to hereby clarify the record as to its role in this proceeding, specifically regarding the request for a provisional rate.

23. First, Genera is not authorized or required to request a provisional rate. Under the LGA OMA and the Resolutions and Orders issued by the Energy Bureau, the obligation to prepare, justify, and submit rate filings —whether provisional or permanent— rests solely with LUMA and PREPA. Genera's role under Section 7.5 of the LGA OMA and the Resolution and Orders issued by the Energy Bureau is limited to coordination, cooperation, and technical support in response to a Rate Order Modification Request, as defined in the LGA OMA. *See* LGA OMA, § 7.5.

24. The contractual framework is unequivocal: once notice is received that LUMA will initiate a Rate Order Modification Request that contemplates modifications to the O&M Budget, as defined in the LGA OMA, Genera is required to **cooperate in good faith** with LUMA and PREPA by preparing and providing support in relation to the proposed O&M budgets. *Id.* Thus, under the LGA OMA, Genera manages generation services and provides technical input regarding the O&M Budget, while LUMA and PREPA retain exclusive authority over rate proceedings, including the request for provisional rates. Genera has fully and timely complied with its obligations during this proceeding.

25. The Energy Bureau seems to fully understand this agreement. In the February 12<sup>th</sup> Order it directed LUMA as the party responsible for rate filings to propose a provisional rate consistent with the identified parameters set forth by applicable law. *See* February 12<sup>th</sup> Order, at page 8. In addition, in its April 21<sup>st</sup> Order, the Energy Bureau reiterated that “LUMA may include, with its formal petition, a request for provisional rates.”. *See* April 21<sup>st</sup> Order, at page 3. Notably and rightly so, no mention to Genera was made, in regard to a request for provisional rates. Thus, attempting to require Genera to propose a provisional rate in LUMA’s Rate Review Petition would not only breach the agreements entered into by the parties in the LGA OMA, but also contradicts the Energy Bureau’s orders.

26. Following the directives of the Energy Bureau and in accordance with the obligations under the LGA OMA, Genera submitted its input to LUMA regarding the provisional rate on July 1, 2025. This information enabled LUMA to perform the necessary calculations and determine a revenue requirement for the provisional rate. However, Genera does not possess all the data required to complete these calculations, as its responsibilities under the LGA OMA do not include revenue management.

27. Genera has timely complied with the Energy Bureau’s and the Hearing Examiner’s orders regarding the Rate Review Petition filing. Genera’s behavior throughout this proceeding has been entirely consistent with the applicable legal, contractual, and regulatory framework.

**WHEREFORE**, Genera respectfully requests that this Energy Bureau **take notice** of the aforementioned for all purposes, **reconsider and revoke** the summons of Genera’s CFO or CEO to the July 14<sup>th</sup> Virtual Conference and **order** the Hearing Examiner to act



strictly within the bounds of the authority delegated by this Energy Bureau in its February 12<sup>th</sup> Order.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 10<sup>th</sup> day of July 2025.

**ECIJA SBGB**

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In compliance with the Energy Bureaus' Resolution and Order issued on May 9<sup>th</sup>, 2025, regarding *Determination on Request for Accessibility to Processes to Ensure Citizen Participation*, Genera attaches a summary in Spanish of this motion as Exhibit A.

## CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this motion was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System and that I will send an electronic copy of this motion 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; hriviera@jrsp.pr.gov; contratistas@jrsp.pr.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; mmcgrill@gibsondunn.com; LShelfer@gibsondunn.com; jnieves@cstlawpr.com; arrivera@nuenergypr.com; apc@mcvpr.com; javrua@sesapr.org; shempling@scotthemplinglaw.com; rsmithla@aol.com; guy@maxetaenergy.com; jorge@maxetaenergy.com; rafael@maxetaenergy.com; dawn.bisdorf@gmail.com; msdady@gmail.com; mcraanston29@gmail.com; ahopkins@synapse-energy.com; clane@synapse-energy.com; kbailey@acciongroup.com; ljudd@acciongroup.com; zachary.ming@ethree.com; PREBconsultants@acciongroup.com; carl.pechman@keylogic.com; bernard.neenan@keylogic.com; tara.hamilton@ethree.com; aryeh.goldparker@ethree.com; roger@maxetaenergy.com; Shadi@acciongroup.com; regulatory@genera-pr.com; legal@genera-pr.com.

In San Juan, Puerto Rico, this 10<sup>th</sup> day of July 2025.

/s/ Jorge Fernández-Reboredo

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**Exhibit A**  
**Resumen**

*Solicitud urgente de reconsideración parcial de la Orden del 8 de julio,*  
presentada por Genera PR LLC

Mediante la presente, Genera PR LLC (“Genera”) solicita urgentemente una reconsideración parcial respecto a la Orden emitida el 8 de julio de 2025 por el Oficial Examinador del Negociado de Energía de Puerto Rico (“Negociado de Energía”).

Específicamente, Genera argumenta que el Oficial Examinador excedió sus facultades al mantener comunicaciones directas con la representación legal de Genera fuera del récord, divulgar dichas comunicaciones en su orden, y formular requerimientos que equivalen a un proceso informal de descubrimiento. Esto, según Genera, convierte la orden emitida en una *ultra vires*, toda vez que el Negociado de Energía solo delegó al Oficial Examinador funciones procesales específicas relacionadas a disputas entre partes, logística de vistas y procedimientos administrativos, pero no le confirió autoridad para conducir procesos sustantivos de descubrimiento, incluyendo el presidir vistas evidenciarias.

Además, Genera aclara que no tiene la responsabilidad de presentar tarifas provisionales en este procedimiento. Conforme al *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* (“LGA OMA”) suscrito entre la Autoridad de Energía Eléctrica de Puerto Rico (“PREPA”, por sus siglas en inglés) y la Autoridad para las Alianzas Público-Privadas, así como a las órdenes del Negociado, esa responsabilidad recae exclusivamente en LUMA Energy LLC (en conjunto “LUMA”) y PREPA. Genera solo tiene la obligación contractual de cooperar con la preparación del presupuesto de operación y mantenimiento cuando LUMA el advierte que pretende iniciar un proceso de modificación tarifaria. Por lo tanto, pretender exigirle a Genera una propuesta de tarifa provisional contradice tanto el marco contractual como las órdenes regulatorias aplicables.

En conclusión, Genera solicita al Negociado de Energía que reconsidere y revoque la citación a su CEO y CFO, y que ordene al Oficial Examinador a actuar únicamente dentro de los límites de la autoridad que le fue delegada. Genera afirma que ha cumplido cabalmente con todas sus obligaciones en el proceso de revisión tarifaria y se reserva el derecho de proteger su derecho al debido proceso de ley en el marco de este procedimiento mediante los mecanismos adecuados en derecho para ello.