

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

NEPR

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**IN RE:** PUERTO RICO ELECTRIC POWER  
AUTHORITY RATE REVIEW

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

**PREPA'S RESPONSE TO "HEARING EXAMINER'S ORDER POSING CLARIFICATION  
QUESTIONS ABOUT JULY 3 RATE APPLICATION"**

**TO THE HONORABLE ENERGY BUREAU,**

**COMES NOW**, the Puerto Rico Electric Power Authority ("PREPA"), through the undersigned legal counsel and, very respectfully, state and pray as follows:

1. On July 8, 2025, the Hearing Examiner, Mr. Scott Hempling, entered the *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* ("July 8th Order"). With regards to PREPA's request for provisional rates, the Hearing Examiner asserted the following:

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.

2. PREPA hereby addresses the Hearing Examiner's statements and questions regarding PREPA's request for provisional rates, as asserted in the July 8th Order.

3. As a preliminary point, PREPA notes that its direct testimony and related filings used “provisional rate” to mean solely the incremental rate applicable during the provisional period. On that basis, PREPA stated it was requesting a provisional rate to fund its PREPA Employees Retirement System (“PREPA ERS”) obligations. Consistent with the definitions in the Hearing Examiner's July 7, 2025, Order, PREPA now clarifies that it seeks a “provisional-rate rider amount” to cover the PREPA ERS obligations.

4. **Provisional-rate rider amount:** In its revenue-requirement submission, PREPA deliberately refrained from specifying the provisional-rate rider amount needed to fund its PREPA ERS obligations. This was neither an oversight nor an act of bad faith. The Energy Bureau has repeatedly affirmed that LUMA is responsible for preparing and submitting all rate filings and has cautioned parties against duplicating work—and the associated costs. Accordingly, PREPA understood it was only required to provide LUMA with the precise dollar figure required for PREPA ERS funding. LUMA would then calculate and present to the Energy Bureau the provisional rates requested by each party, including PREPA's. Notwithstanding, in attention to the Hearing Examiner's July 8<sup>th</sup> Order, PREPA hereby informs that the provisional-rate rider amount needed to fund the PREPA ERS obligations is \$0.0192/kWh, based on LUMA's sales forecast.<sup>1</sup>

5. **Relationship between PREPA's request for provisional rates and permanent rates:** PREPA's request for a provisional-rate rider amount is inseparably tied to its permanent-rate proposal. The provisional-rate rider amount would finance PREPA ERS obligations during the interim period, and PREPA likewise proposes to incorporate these ERS payments as a rider into the permanent rates to ensure their long-term funding.

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<sup>1</sup> PREPA's calculated the provisional-rate rider as follows:

|                               |              |
|-------------------------------|--------------|
| LUMA Sales Forecast           | \$16,022,316 |
| PREPA ERS Funding requirement | \$307,475    |
| \$/kWh                        | \$0.0192     |

6. **Emergency vis-à-vis provisional rate:** PREPA respectfully submits that it has not confused an emergency rate adjustment with a provisional rate. PREPA notes that its reference to “provisional rate” meant solely the incremental rate applicable during the provisional period.

7. Section 6A(d) of Act 83 of May 12, 1941, as amended, known as the “Puerto Rico Electric Power Authority Act”, 22 L.P.R.A. § 196a (“Act 83”), establishes that the Energy Bureau:

may approve a rate modification due to emergency circumstances, as provided in Act No. 21 of May 31, 1985, as amended, known as the ‘Uniform Rate Revision and Modification Act’. These emergency rates shall not be considered temporary rates as defined in this Act or in Act No. 57-2014, and shall remain in ‘effect while the emergency lasts, but never for a term exceeding one hundred eighty (180) days after their approval.

8. Similarly, Section 6.25(d) of Act No. 57, as amended, known as the *Puerto Rico Energy Transformation and RELIEF Act* (“Act 57”), 22 L.P.R.A. § 1054x, establishes that a temporary rate adjustment due to emergency or temporary events can be requested by an electric power company.

9. On its part, Section 6.25(e) of Act No. 57, establishes that “temporary rates” may be established by the Energy Bureau during the process of evaluating a rate modification request.

10. In *Resolution and Order* dated February 12, 2025, the Energy Bureau recognized that “Act 57-2014 (6.25 (e)-(f)) and Act 83 (§6A(e)-(f)) refer to provisional rates also as ‘temporary rates’” and clarified that “in this proceeding, ‘provisional rate’ shall mean the same as ‘temporary rate’ under those laws.”

11. Pursuant to Section 6.25(e) of Act 57, PREPA is requesting a provisional-rate rider amount sufficient to fund its PREPA ERS obligations during the provisional period. These pension payments are not covered by the 2017 rates currently in effect. Because the Energy Bureau is now reviewing the pending 2025 Rate Application, which is a rate-modification petition for purposes of Act 57, seeking a provisional rider is the appropriate mechanism to address this unfunded cost. Once permanent rates are approved, the PREPA ERS obligations will be incorporated into the new rate structure.

12. Finally, PREPA clarifies that it described including the PREPA ERS obligations in the provisional and ultimately the permanent rates as a "measure of last resort" to assure ratepayers that every other funding option was thoroughly explored and exhausted before turning to rate recovery.

13. PREPA requests the Energy Bureau and Hearing Examiner to take notice of the foregoing for all legal purposes.

**WHEREFORE**, PREPA respectfully requests the Energy Bureau and Hearing Examiner to take notice of the foregoing.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico this 14<sup>th</sup> day of July 2025.

**CERTIFICATE OF SERVICE:** We hereby certify that this document was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and courtesy copies were sent via e-mail to the LUMA Energy, LLC, through: Margarita Mercado, [margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com); Jan Albino López, [Jan.AlbinoLopez@us.dlapiper.com](mailto:Jan.AlbinoLopez@us.dlapiper.com); Yahaira De la Rosa, [yahaira.delarosa@us.dlapiper.com](mailto:yahaira.delarosa@us.dlapiper.com); Ingrid Azize, [ingrid.azize@us.dlapiper.com](mailto:ingrid.azize@us.dlapiper.com); Carolyn Clarkin, [carolyn.clarkin@us.dlapiper.com](mailto:carolyn.clarkin@us.dlapiper.com); Andrea Chambers,

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