

**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:** Order on LUMA's Objections to  
ROI #PREPA-of-LUMA-8.

**Order on LUMA's Objections to ROI #PREPA-of-LUMA-8**

This Order addresses all of LUMA's objections to ROI #PREPA-of-LUMA-8. Yesterday afternoon and into the evening, counsel for LUMA and PREPA attempted to settle their differences—an effort that I appreciate. As I understand it, they succeeded in part. I don't know the terms of their agreement; I know only what specific remaining differences they asked me to resolve. I also know, from their post-settlement email exchanges shared with all counsel, that a solid working relationship evades them.

It is normally not a good idea for a hearing examiner to ignore two parties' agreement, then rule on issues that the parties might have settled. I am doing so here, for two reasons.

- The Energy Bureau's consultants, and I, have our own interests in the information sought by PREPA. So even if PREPA agreed to drop certain questions, for some of them I still would like the answers.
- I must do what I can to save everyone time and money, and to keep the focus on producing the best outcome for Puerto Rico. For this proceeding to succeed—for this entire multi-party public-private partnership to succeed—counsel for the three companies, and their principals, must work better together. They must share this purpose: cost-effective performance, and just-and-reasonable rates, for PREPA's customers. Excessive information requests and reflexive resistance to appropriate requests don't help.

This Order first addresses what LUMA calls its threshold objection. It then resolves each of LUMA's specific objections.



## **Threshold question: The OMAs' effect on PREPA's administrative-law right to ask questions**

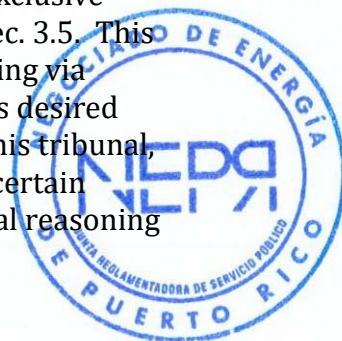
In its Response to ROI #PREPA-of-LUMA-8, LUMA argues that the T&D OMA deprives PREPA of the right to seek discovery. Genera, in its objections to ROI #PREPA-of-Genera-9, made similar arguments based on the LGA OMA. Their positions have no legal support. My decision on this question applies equally to the provisional-rate phase and the permanent-rate phase of this proceeding.

*The “relationship,” generally:* LUMA says that “[t]he relationship between LUMA and PREPA is governed by” the T&D OMA. Objections at 1-2. LUMA misunderstands “the relationship.” Between LUMA and PREPA there is more than one relationship. There is the relationship governed by the OMA. That relationship involves control and operation of the PREPA-owned T&D assets, the movement of money from customers to PREPA to LUMA, the principal-agent relationship for various purposes, and other matters addressed in the OMA. But those OMA items are not the totality of relationships between PREPA and LUMA. There is also a relationship between LUMA and PREPA that is governed by administrative law. In that relationship, each entity—and PREPA is a distinct corporate entity—has a right, in this and any other adjudication, to question the other and to comment on the positions of the other. That relationship preexisted the OMA and was not removed by the OMA. Nowhere in the OMA did PREPA give up its rights under Puerto Rico administrative law.

A simple hypothetical illustrates the error. Suppose a LUMA-operated truck rammed into and damaged a PREPA-owned truck. Normally the victim could sue based on tort law. Is LUMA saying that “the relationship” created by the T&D OMA precludes PREPA from doing so? The “relationship” created by the OMA is bounded by the terms of the OMA. The OMA does not address torts and it does not address administrative proceedings (except, for the latter, as I will discuss shortly).

*Principal-agent relationship:* LUMA stresses that the PREPA-LUMA relationship is a principal-agent relationship. Objections at 1-4. If LUMA is suggesting that in a principal-agent relationship, the principal has no say about how the agent acts, LUMA errs. We have principal-agent case law because we have principal-agent disputes. Principals question their agents' performance. Principals sue their agents. In those lawsuits, principals have a statutory right to question their agents. PREPA is just asking questions.

*“Exclusive remedies”:* LUMA says that the T&D OMA “sets forth PREPA's exclusive remedies to access information from LUMA.” Objections at 4, citing T&D OMA sec. 3.5. This statement is false. The word “exclusive” nowhere appears in section 3.5. Supplying via argument a word absent from the text, when that absence undermines counsel's desired interpretation, is mischaracterization. It is inconsistent with counsel's duty to this tribunal, it wastes my time, and it must stop. Counsel seems to think by granting PREPA certain rights, the T&D OMA necessarily zeroes-out all other rights. That is not how legal reasoning works.

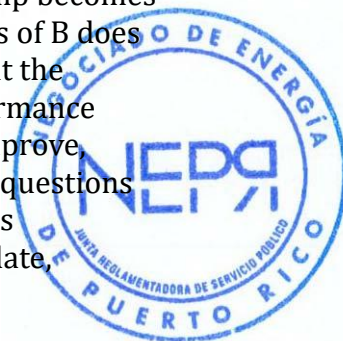


My reasoning about section 3.5 applies also to section 5.15(c)(i), on information access (cited by LUMA, Objections at 4. That provision imposes a duty on LUMA to provide information; it doesn't restrict PREPA's rights to seek information.

*"Dispute resolution"*: LUMA says that the OMA contains the exclusive procedures for resolution of disputes under the OMA. See Objections at 4-5; and T&D OMA sec. 15.1 ("the procedures set forth in this Article 15 (Dispute Resolution) . . . shall constitute the sole and exclusive procedures for the resolution of such Disputes"). Under the OMA, yes; under Act 57, no. PREPA's decision to ask ROIs in a rate case is not a "Dispute" about the OMA. It is not, to quote section 15.1, a "dispute among the Parties arising out of, relating to or in connection with this Agreement or the existence, interpretation, breach, termination or validity [of the Agreement]." In fact, asking questions is not a dispute, period. If I ask the waiter why my dinner is cold, I am not having a dispute; I am asking a question. On hearing the answer I might have a dispute, but the question is not a dispute. And to head off LUMA's next argument: If on receiving answers PREPA wants to dispute LUMA's rate proposal, no OMA provision prevents that action, because PREPA's opposition to a LUMA-proposed rate is not a "dispute among the Parties arising out of, relating to or in connection with this Agreement or the existence, interpretation, breach, termination or validity [of the Agreement]."

*Other OMA provisions*: In arguing against PREPA's right to ask questions in this rate proceeding, LUMA cites the roles and duties under T&D OMA sections 5.1, 5.6, and 6.1. Section 5.1 deals with LUMA's duty to "provid[e] the O&M Services" and "operate and maintain the T&D System." In Section 5.6(a), PREPA "irrevocably authorize[s]" LUMA to represent PREPA before the Energy Bureau "with respect to any matter related to the performance of any of the O&M," and to prepare necessary filings. Section 6.1 describes PREPA's rights and responsibilities "with respect to the operation, management and maintenance of the T&D System." Neither PREPA's submission of ROIs, nor LUMA's obligation to respond, is inconsistent with those provisions. PREPA's questioning is no more interfering with LUMA's T&D operations than my questioning, or anyone else's questioning. A principal that asks questions of the agent is not interfering with the agent. And nothing about LUMA's exclusive role in proposing rates affects PREPA's administrative-law right to question the inputs into those rates—or the rates themselves.

*"Adversarial"*: LUMA complains that by asking questions, PREPA is acting in an "adversarial manner"—conduct that, in LUMA's view, violates the OMA. Objections at 3-4. As for adversaries—as discussed above, sometimes a principal-agent relationship becomes adversarial, but it is still a principal-agent relationship. And A's asking questions of B does not necessarily make A an adversary of B. Questions might imply skepticism, but the answers can eliminate the skepticism. Indeed: An agent whose priority is performance should welcome opportunities through the principal's questions to prove, or improve, performance. LUMA might not like the questions. LUMA might not like that the questions are coming from PREPA. But those facts don't make PREPA an adversary. What is adversarial here is not PREPA's legitimate questions; but rather LUMA's boilerplate, insufficiently explained dismissals of those questions.



*“Support”*: LUMA cites Section 5.6(g)’s statement that “[e]ach of [PREPA] and Administrator shall support [LUMA’s] proposed rate changes to ensure that adequate amounts are available for inclusion in any Budget and provided that the rates are reasonable and customary.” Asking questions does not conflict with support. More importantly, LUMA misreads the phrase “shall support.” The section 5.6(g) phrase “to ensure ...” signals that the relevant “support” is the support needed to prepare the rate filing, by providing the information that LUMA needs to reflect all costs. In this context, “shall support” means “shall support with information”; it does not mean “shall remain silent in the adjudication,” “shall deprive the Energy Bureau of its expertise,” or “shall refrain from asking questions that help the Hearing Examiner build the necessary evidentiary record.”

*“Cooperation”*: LUMA cites section 6.1(vii) of the T&D OMA, requiring PREPA to “cooperate with [LUMA] and Administrator in obtaining and maintaining all Governmental Approvals.” LUMA severs “cooperation” from its context. In this provision, PREPA’s cooperation means providing LUMA the information necessary to obtaining the government approvals. It doesn’t mean going on mute when PREPA has a question or disagrees with a LUMA proposal. It doesn’t mean shelving PREPA’s expertise or putting a cap on its curiosity. PREPA’s questioning doesn’t impede LUMA’s operational responsibilities or obstruct its performance under the OMA. PREPA’s questions, like all parties’ questions, help me do my job, which is to create an evidentiary record on which the Commissioners can make the best possible decision.



## **Rulings on ROI #PREPA-of-LUMA-8**

**(Original ROIs in italics; rulings in nonitalic indented segments.  
Internal numbers are those used by the parties)**

If in the discussion below I say that the question is legitimate, LUMA must answer unless I expressly say otherwise. With the large number of questions and the short time left for answering provisional-rate questions due Tuesday 22 July, LUMA can legitimately ask PREPA to agree to a later response time for some of these questions, provided that LUMA treats PREPA no differently than it treats other parties. -

*1. Has LUMA determined the procedural steps required to integrate PREPA's FY2026 pension funding requirement and request into the provisional rate request? Can LUMA provide details on the process and timing for amending and correcting the provisional rate request to include this critical element?*

Legitimate question, but LUMA need not answer yet. On procedure and timing, the Energy Bureau or I will determine it in the near future. It is best to make all the updates at once, to avoid multiple versions of the provisional revenue requirement. As for the technical steps, they should be straightforward but if PREPA has questions on how LUMA will calculate and show the integration, PREPA can ask and LUMA will answer.

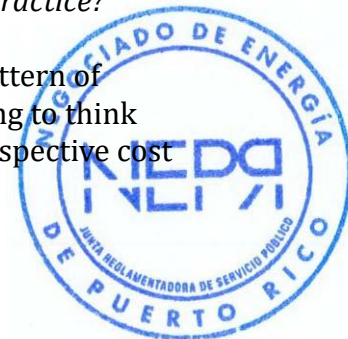
*2. Regarding LUMA's Funding Summary*

*a. Explain the rationale and justification for the \$120 million Outage Reserve amount, which is significantly above the \$30 million required under the T&D O&M Agreement.*

Legitimate question. LUMA answered in its Application.

*i. LUMA stated in its Temporary Rate Petition to PREB that it is common practice in utility ratemaking to incorporate storm cost recovery riders. Why has LUMA waited four (4) years to propose this common practice?*

Legitimate question. Relevant because if there is a past pattern of LUMA's not acting prudently in advance of storms, or failing to think ahead generally, the result can artificially increase the prospective cost of dealing with storms.





- ii. *How does LUMA currently recover the cost of unbudgeted outage events?*

Legitimate question. LUMA's response avoids the question's intent, possibly because the question is unclear. Answer this question: For outage events where there are insufficient funds in the Outage Event account, what funds does LUMA use, and what activities for which those funds would have been spent are not performed? If LUMA doesn't know, say so.

- iii. *Has LUMA ever included a provision for Outage Costs in any budget request to PREB, such as in the Annual Operating Budget?*

Legitimate question. If the answer is no, explain why. Relevant because if the failure to seek Outage Costs in the budget meant that LUMA addressed outages using funds planned for other services, the current quality of the system, which requires costs to fix, could have been adversely affected by the shift in funds. If LUMA's decisionmakers have not made good decisions in the past, this rate case must understand why to ensure improvement.

- iv. *Are LUMA's Outage Costs in excess of and separate from its annual Operating Budget?*

Legitimate question, to the extent the question is asking about the current rate proposal. The problem is that I don't understand the question. Which outage costs? Prospective or past? Parties to work out.

- v. *What kind of expense does LUMA consider Outage Costs to be? Operating? Capital? Or some other type of expense in a special category?*

Legitimate question but unclear. I will rephrase: LUMA requests funds for outage costs. Identify the types of costs that are under that umbrella, and state whether they are capex or opex or some other category.

- vi. *Are LUMA Outage Costs a part of any public reporting protocol, such as the quarterly or annual reports on operating expenses?*

Legitimate question. LUMA's nonanswer violates discovery protocol. Answer yes or no and explain.

- vii. *Has LUMA ever reported its Outage Costs to PREB?*

Same as vi.

- viii. *What is the total cumulative amount incurred by LUMA for Outage Event Costs from its Interim Service Commencement date until June 30, 2025?*



Legitimate question. Another failure to answer. In this rate case, LUMA is asking for funds equal to prior underfunding. Whether there were actual costs associated with the underfunding is relevant to LUMA's funding request, though there is a bit of a retroactive-ratemaking feel to the request. I say "feel," because technically, retroactive ratemaking is changing after the fact a rate that the regulator already has approved and the utility already has charged. That is not precisely what we have here.

- ix. *What are the annual amounts incurred by LUMA for Outage Event Costs? (for each year, FY2022, FY2023, FY2024, and FY2025)*

Same decision as in viii.

- x. *Has LUMA disbursed funds and incurred expenses for Outage Event recovery in excess of the funding made available by the Government of Puerto Rico?*

Same decision and same reasoning as in viii. LUMA: "Funding made available by the Government of Puerto Rico" is not an unclear phrase. It means any funds from any government body.

- xi. *Does LUMA have full discretion over the classification of its expenses as Outage Costs, and is there any public accountability or external oversight to ensure that these costs are reasonable and conform with the definition of outage costs?*

Legitimate question but unclear. Answer this question: Other than the PREB, to what bodies, governmental (federal or state) or nongovernmental, is LUMA accountable in deciding whether to treat a cost as eligible for recovery through the Outage Event account? Put another way, what reporting rules or accounting rules, if any, apply?

- xii. *Has LUMA incurred any expenses classified as Outage Costs that could have potentially been eligible for federal reimbursement?*

Legitimate question; relevant because customers should not pay for costs that federal reimbursements can cover.

- xiii. *Has LUMA reclassified any expenses that are currently considered LUMA Outage Cost that were originally accrued and reported as LUMA T&D Federally Funded Capex? Stated another way, has LUMA "moved" any expenses from T&D Federally Funded Capex into T&D Outage Costs?*

Legitimate question; I don't understand LUMA's response. Parties work it out.



xiv. *Is LUMA's request for \$120 million per year for two (2) years, totaling \$240 million, solely for past outage events and recovery work?*

1. *Why were these funds not recoverable from FEMA under Public Assistance Program Category B (Emergency Protective Measures)?*

Both questions legitimate. LUMA's response is a nonresponse.

xv. *The projected value for GridCo Storm Reserve Account in FY2028 is zero. LUMA does not appear to include a reserve for anticipated outages after the recovery of \$240 million during FY2026 to FY2027. Why not?*

Legitimate question, but LUMA answered. LUMA is saying, as I understand it, that it doesn't need to project costs right now because it is proposing to use a rider, which assume means pay as we go rather than fund in advance. Or the rider's base value in the rider can be discussed and determined in the permanent-rate phase. If I misunderstand LUMA's answer, LUMA must clarify.

b. *Explain the rationale and basis for LUMA's Net Operating Calculation. What is the rationale for a Net Operating Income line item in a budget for a state-owned public utility totaling \$177 million, which would be in addition to the profits derived by the two private operators via the respective O&M Fixed & Performance Fees?*

Legitimate question, but LUMA has addressed it in its application. If PREPA can't find the explanation, ask LUMA.

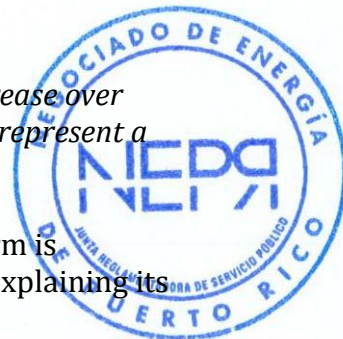
c. *How did LUMA determine the provision for Bad Debt Expense? Please provide detailed data on collections performance to-date and the analysis to justify the provision for bad debt expense, which appears to be approximately 3% of total revenue requirement.*

Legitimate question. LUMA must answer fully to the extent that the answer is not in Annex V of the Rate Review Application, filed on July 3, 2025, Response: ROI-LUMA-AP-2023-0003-20250324-PREB-072.

## 2. *LUMA Provisional Rate Budget (FY2026)*

a. *LUMA's request for a ~\$971 million O&M Budget represents a 40% increase over the FY2025 Budget. Explain LUMA's budgeting methodology. Does this represent a true bottoms-up budget?*

Denied. Nonuseful question. As for "budgeting methodology," term is unclear. In any event, LUMA's application has hundreds of pages explaining its





numbers. Study the application, then see if you have questions about the methodology.

*b. What confidence can LUMA provide that the budget is truly constrained?*

Denied. Nonuseful question. The answer will be “We have lots of confidence. Next question.” And LUMA’s application explained, for each budget item, what tradeoffs it considered and accepted when moving from Optimal to Constrained.

*c. Confirm whether LUMA has provided employees with annual salary increases and bonuses. If the answer is yes, provide detailed explanation and data of salary increases and bonuses paid to employees since the Service Commencement Date.*

*d. Provide employee roster and compensation for all current employees.*

*e. Provide detailed inventory of vehicle fleet with all relevant information (including but not limited to cost of acquisition, date of acquisition, model year, etc.)*

*f. Provide policies and procedures and inventory of*

*i. Company credit cards (amount of employees with credit cards and accounting detail of credit card spending)*

*ii. Company owned and paid mobile devices (including cost / year of acquisition, model)*

*iii. Company owned computers devices (including cost / year of acquisition, model)*

2.c through 2.f are denied for the reasons in my Order of July 17.

*g. Explain the tangible benefits that customers would derive from a 40% increase in LUMA’s budget.*

Denied as nonuseful. The Application contains many pages of explanation of what LUMA is trying to achieve with the new money, after 8 years of spending limits unrelated to need.

*h. LUMA presented certain examples of significant cost inflation for materials such as Pole Type Transformer, Aluminum Conductor Steel Cable, and Galvanized Steel Poles. What innovations and value-added solutions has LUMA designed to reduce the need for higher cost materials and reduce inflationary pressures on customers?*

Legitimate question, nonresponsive answer. If there are no “innovations and value-added solutions” then say so.

*i. Provide detailed budget for external consultants, professionals and outsourced services, including firm names and contract amounts.*

Legitimate question, because these costs affect rates. The PREB consultants want this information. If LUMA needs guidance on what to provide, contact PREB Consultant Guy Mazza.



## *5. Federal Cost Share Match*

- a. LUMA and Genera – provide backup and rationale for the requested Federal Cost Share Amounts, including spend curve and reimbursement assumptions?*
- b. LUMA and Genera - Provide detailed accounting of federal reimbursements currently outstanding.*
  - i. Does LUMA's and Genera's provisional rate request consider reimbursement for amounts withdrawn from the Operating Account (or any other account) for expenditures eligible for federal reimbursement?*

Legitimate questions, straightforward and not unduly burdensome.  
All parts of 5.

*6. Identify if any portions of the respective budgets (LUMA and Genera) include payments to their respective owners and affiliates (e.g. seconded employees). If the answer is yes, provide specific amounts and back-up.*

Legitimate question. Answer for three separate categories: owners, affiliates, and seconded employees. LUMA: Define seconded employees as you understand the term, and indicate whether they are employees of owners, or affiliates, or other entities.

*7. LUMA and Genera – provide accounts payable aging with detailed information (e.g. amounts owed, payment terms, supplier name, etc.)*

Denied for reasons stated in my order of 17 July.

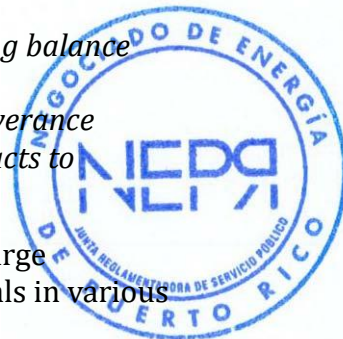
*8. LUMA's Accounts Receivable aging and allowance for doubtful accounts by customer class (RFI 72) includes two files, Attachment 1 and Attachment 2. Please explain how these files and the data therein relate to each other.*

Legitimate; no excuse for failure to answer.

*Please also provide:*

- a. List of customer accounts on Payment Plans and/or Severance Plans and the associated amounts*
- b. List of customer accounts in dispute, with objections and/or pending balance certifications and the associated amounts*
- c. Details behind the methodology for determining the Residential Severance Threshold, including any future plans and potential monetary impacts to collections.*

Items a. and b. are legitimate questions, but they involve large burdens. Work out a compromise, such by focusing on totals in various categories.



Item c. is a legitimate question. Explain the methodology,

Be notified and published.



Scott Hempling  
Hearing Examiner

### CERTIFICATION

I certify that the Hearing Examiner, Scott Hempling, has so established on July 18, 2025. I also certify that on July 18, 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; gcastrodad@sbgblaw.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; rafael.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; 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 July 18, 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 18, 2025.



Sonia Seda Gaztambide  
Clerk

