

**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

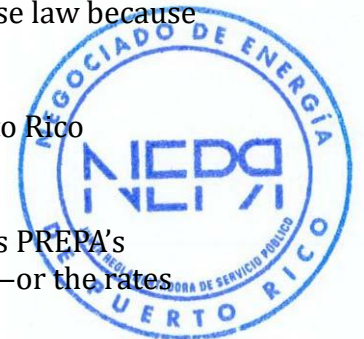
**SUBJECT:** Hearing Examiner's Order  
Clarifying PREPA's Role in the Rate Case  
Evidentiary Hearing

**Hearing Examiner's Order Clarifying PREPA's Role  
in the Rate Case Evidentiary Hearing**

My Order on LUMA's Objections to ROI #PREPA-of-LUMA-8 (July 18, 2025) had two main features. It found the majority of PREPA's questions appropriate. It also rejected LUMA's "threshold objection" because, primarily, PREPA has an administrative-law right to ask questions; and given the questions' legitimacy I could have asked them myself. It has occurred to me that the Order didn't address the question "What next?"—specifically, how its reasoning would apply to the evidentiary hearing. I address that matter here.

On LUMA's threshold objection, the July 18 Order had these holdings:

- Asking questions is not inherently adversarial. "A principal that asks questions of the agent is not interfering with the agent."
- In an adjudicative proceeding, each party has the same rights, including the rights to question witnesses and to take positions. "There is . . . a relationship between LUMA and PREPA that is governed by administrative law. In [an administrative-law] 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."
- A disagreement between a principal and its agent is not inherently inconsistent with a principal-agent relationship. "We have principal-agent case law because we have principal-agent disputes."
- "[N]owhere in the OMA did PREPA give up its rights under Puerto Rico administrative law. "
- "[N]othing 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."



PREPA should not interpret these holdings as an invitation to cross-examine LUMA's witnesses at the evidentiary hearing. Because that interpretation is possible, I wish to clarify—or depending on how one reads it, modify—the July 18 Order.

Unlike discovery, which can occur between allied parties, cross-examination is inherently adversarial. As a matter of statute and contract, PREPA and LUMA are not adversaries:

- Act 120-2018 established a “legal framework” for a Public-Private Partnership to operate the Commonwealth’s electricity system.<sup>1</sup> As a matter of law, in a partnership the partners are allies, not adversaries. Indeed, Act 120-2018 declares that the results of the negotiations leading to the partnership “shall align the corporate and business interests of the [partnership’s] proponents with the Fundamental Interests of the People of Puerto Rico. . . .”<sup>2</sup>
- The OMA says that LUMA shall be “responsible for preparing, presenting, defending current or future rate cases or other regulatory or legal matters as they relate to the Agreement, as [PREPA’s] representative before the PREB. . . .”<sup>3</sup> When LUMA is PREPA’s “representative before the PREB,” it is not logical for PREPA to be LUMA’s adversary.

These sources make clear that in Energy Bureau proceedings, LUMA’s and PREPA’s interests are *legally* aligned. PREPA might have other interests—strategic interests, financial interests, commercial interests, political interests. What matters to the Energy Bureau are the two companies’ legal interests. Under the statute and the contract, those legal interests are aligned.

In properly run administrative adjudication, cross-examination is available only to adversaries. To the extent they have different visions for the electric system’s operations, PREPA and LUMA may be antagonists. But under statutory and contract law, they are not adversaries. Act 120-2018 and the T&D OMA make the PREPA-LUMA relationship not only nonadversarial, but—to use clichés—hand-in-glove, bow-and-fiddle, trumpet-and-trumpeter. All three companies—PREPA, LUMA, and Genera—must fit together, work together, and produce together the cost-effective, reliable, reasonably priced electricity service that Puerto Rico’s citizens so desperately need.

Distinct support for this Order’s reasoning lies in my two Orders granting interventions (July 7 and 8, 2025). Those Orders require coordination among parties whose interests are aligned. Given the above-cited statutory and contract provisions,

---

<sup>1</sup> Act 120-2018, Preamble.

<sup>2</sup> Act 120-2018, section 3.

<sup>3</sup> T&D OMA, Annex I, Section I.G.



PREPA's and LUMA's interests—again, their legal interests—are aligned. Before the Energy Bureau, the two companies can neither duplicate nor contradict each other.

At risk of repetition: In Energy Bureau proceedings, PREPA has the same rights as any other party. But PREPA must exercise those rights consistent with the T&D OMA. As stated in today's other order, granting LUMA an extension, "[i]t is not my job to enforce the T&D OMA. It is PREPA's job to heed it." If PREPA has a different view of the T&D OMA than mine, it needs to address that matter with LUMA and P3A via the T&D OMA's procedures.

Be notified and published.



Scott Hempling  
Hearing Examiner



## CERTIFICATION

I certify that the Hearing Examiner, Scott Hempling, has so established on July 21, 2025. I also certify that on July 21, 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@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; 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 21,  
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 21, 2025.

  
\_\_\_\_\_  
Sonia Seda Gaztambide  
Clerk

