

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

NEPR

Received:

Jul 25, 2025

10:43 AM

**IN RE: Puerto Rico Electric Power
Authority Rate Review**

CASE NO. NEPR-AP-2023-0003

SUBJECT: Discovery

**ICSE'S MOTION ON THE NEED OF AFFORDABILITY EVIDENCE & ANALYSIS
IN APPROVING PROVISIONAL AND PERMANENT RATES**

TO THE HONORABLE ENERGY BUREAU:

Comes now the **Institute of Competitiveness and Economic Sustainability ("ICSE"**
as its Spanish acronym), represented by the undersigned, respectfully states and prays:

I. Introduction

On July 17, 2025, counsel of ICSE sent an off-the-record email to all participants of this proceeding and Mr. Scott Hempling ("Hearing Examiner") and his team about the appropriate time to raise the topic of the affordability of rates (both provisional and permanent) and the need for discovery. Particularly, ICSE highlighted that the submitted evidence by Puerto Rico Electric Power Authority ("PREPA"), LUMA, and Genera (collectively "PREPA's Agents,") was aimed at supporting the revenue requirements, but neglected affordability constraints that have been "amply discussed in PREPA's Bankruptcy Case."

The Hearing Examiner responded in kind (that is, off-the-record) to ICSE's email pointing out that "there is no time for PREB to require supplemental testimony" on the affordability of the *provisional* rate.

Firstly, ICSE wishes to incorporate to the record its preoccupations on the omission of considering and the lack of a ruling on affordability of the provisional rate given the threshold reason that PREPA and PREPA's Agents have not submitted evidence in the Rate Review Petition of July 3, 2025. ICSE reserves its rights to raise this issue in all appropriate proceedings. All rates should be set under the premise that they are affordable to the extent that affordability is an underlying principle of the concept of "just and reasonable" rates, and is a requirement for the utility's economic viability.

II. Essential Perspectives on Affordability

There are two essential perspectives on affordability. First, there is the perspective of the consumer (irrespective of class.) That is, whether the Puerto Rico customer can afford the proposed rates in terms of how their economic interests are adversely affected or constrained. A secondary approach under this perspective considers how potential unaffordability may affect the utility's collections. It focuses on the relationship between rate increases and the level of undercollection—in other words, how consumer unaffordability may ultimately harm the utility's own financial interest and viability.

Second, affordability ties directly to the macroeconomic effects of Puerto Rico which are also tied to how consumers are affected by changes in prices of other goods and

services that are in turn directly tied to electric prices¹. On this approach, it is necessary to consider the impact a rate increase will have on economic activity, including but not limited to GNP, employment, investment, and inflation. If economic activity declines, energy demand also declines. Consequently, revenues for the utility are also diminished. This phenomenon has been labeled in the Title III PROMESA Court as a “Death Spiral Model.” It was so argued by Dr. Glenn George, expert witness of the Fiscal Oversight and Management Board (“Oversight Board” or “FOMB”):

Dr. Tierney² argues that my concerns about the possibility of a utility death spiral are overblown. She believes that PREPA, PREB, or the Board would step in to prevent such a death spiral from actually occurring. However, the simple fact that PREPA is currently undergoing bankruptcy proceedings is indicative that neither the government of Puerto Rico, PREB, nor any other authority stepped in to prevent PREPA’s bankruptcy, and thus it is improbable to expect that they would do so should PREPA enter a “death spiral.” **Moreover, it is apparent that PREPA is and has already been exhibiting some of the symptoms of a utility death spiral, including for example population decline and increased adoption of DG solutions.**³

A proper analysis of the latter requires to at least have an estimate for elasticity of demand. One needs to measure the responsiveness or sensitivity of the quantity demanded of electricity to changes in its price, but also income levels, prices of related goods, or other economic variables such as the ones highlighted by Dr. George. It in turns demands a behavioral econometric analysis.

¹ What is commonly referred to as a “cascade effect.”

² Dr. Susan Tierney appeared as an expert witness for the PREPA Ad Hoc Group, GoldenTree Asset Management LP, Syncora Guarantee, Inc., Assured Guaranty Corp., and Assured Guaranty Municipal Corp.

³ Dr. Glenn George’s Declaration, Docket No. 4633, in Case No. 17-4780-LTS, at p. 35 (emphasis added.)

The foregoing must also be evaluated considering the ever-growing rate of market penetration of distributed energy resources (DERs). These represent direct competitors to PREPA and PREPA's Agents whose interests are aligned with their principal's. When a corporation is establishing its prices as a minimum it should consider its market and gauge the risks presented by its competitors. DERs provide resiliency to consumers in the events of climatological catastrophes unlike PREPA's centralized grid. Before hurricanes Irma and Maria's passage in 2017, consumers found that DER costs were too high to convince them to invest. However, after the hurricanes, the conversation shifted to a matter of individual resiliency. DERs' resiliency outweighs the benefit of affordable grid costs. Therefore, the risk of grid abandonment is exacerbated by the fact that increased rates may be unaffordable, eliminating the economic incentive to remain part of the grid (low utility costs.)

III. Title III Court Pending Arguments

This proceeding cannot ignore the economic considerations raised before Judge Taylor Swain's Title III Court. Think of the current situation:

The Court has not approved a Plan of Debt Adjustment ("PAD") because there are serious doubts casted by the expert witnesses of the Oversight Board's, which is the entity that proposes the PDA in the first place. Let's take as an example the proposed Legacy Charge last year, which was a rate increase of 2 cents per kWh for debt service. The declaration of William P. Zarakas, principal of the Brattle Group, in support of the confirmation of the Corrected Fourth Amended Title III PDA, states:

Brattle and the Oversight Board adopted two parameters for determining residential customer affordability: (i) affordability analysis should be conducted on a representative household living in Puerto Rico on a permanent basis (*i.e.*, not a part-time or vacation home) and earning median income as reported by the U.S. Census Bureau (specifically through the most recent Puerto Rico Community Survey (“PRCS”)); and (ii) the affordability threshold is such that household spending on home energy should be no more than 6% of household income. The affordability concept, in general, and the 6% share of wallet and median income parameters, in particular, were being used by the Oversight Board and by Bondholders during mediation, prior to Brattle’s involvement in this case.⁴

Dr. Jürgen Weiss, another FOMB expert witness, also submitted his testimony in which states the following:

The electricity SOW⁵ measures the amount a customer spends on their electricity bill as a percentage of their income. **An energy (expenditures for electricity plus other forms of home energy, such as natural gas) SOW above 6% is commonly used as an indicator of energy burden or energy poverty**, and as a threshold above which affected customers become eligible for financial support to ensure those customers have access to essential energy services. Electricity SOW has also historically been used as an indicator of the point at which low- and moderate-income electricity customers are likely forced to choose between home energy and other necessities, such as food or medicine. To my knowledge, the electricity SOW concept is never used for households other than low- or moderate-income households or as the basis for increasing electricity costs for households spending less than 6% of their income on electricity.⁶

Mr. Zarakas also goes on to explain the 6% figure as follows:

The Oversight Board has adopted a home energy share of wallet of 6% for use in the affordability analysis of median-income households in Puerto Rico, based on home energy spending levels specified by regulators and policymakers in various U.S. jurisdictions (such as New York, Illinois and Colorado) as an indicator of energy burden. In those jurisdictions, 6% of household income spent on home energy represents the point at which

⁴ William Zarakas’s Declaration (Docket No. 4642) Case No. 17-4780-LTS, at p. 7 (February 12, 2024.)

⁵ Dr. Weiss means “share of wallet.”

⁶ Jürgen Weiss’s Declaration (Docket No. 4640), Case No. 17-4780-LTS, at pp. 11-12 (February 12, 2024.) (Emphasis added.)

affected customers (typically, low-income households) become eligible for financial support to ensure adequate access to essential energy services. That is, application of the 6% home energy share of wallet is not an aspirational goal – that all, or even all low- and moderate-income households can afford to spend or should spend 6% of their household incomes on home energy – rather, it is the threshold at which affected customers can avail themselves of social programs (whether implemented by the utility or otherwise) to supplement their home energy spending.

[...]

Furthermore, the 6% home energy share of wallet applied to median-income households in Puerto Rico is much higher than what similarly situated households spend on electricity elsewhere in the United States. For context, U.S. median-income households on average spent approximately 2.5% of household income on electricity in CY2022, while Puerto Rico median-income households spent approximately 5.6% during the same year before any legacy debt service.¹⁷ In addition, households elsewhere in the U.S. enjoy significantly superior energy reliability compared to Puerto Rican households; that is, households in Puerto Rico paid more for electricity service while receiving lower quality service. Finally, given already high electricity rates in Puerto Rico, the 6% of income dedicated to the purchase of electricity buy substantially less electricity than could typically be purchased in other jurisdictions.⁷

Lastly, Mr. Zarakas explains:

[A]s a check on Revenue Envelope and Legacy Charge implementation, an electricity share of wallet analysis was conducted for each year in the 28 year term of the 2023 Fiscal Plan, based on inflation-adjusted annual household incomes, downward-adjusted monthly kWh usage for representative median income households, and the electricity rates projected in the 2023 Fiscal Plan.²⁸ As shown in Section IV (Model Results and Sensitivities) of this declaration, after the imposition of the Revenue Envelope and Legacy Charge, the electricity share of wallet for median-income households in Puerto Rico is projected to remain near 6% throughout the 28-year period, and in some years is projected to exceed 6%.⁸

⁷ Docket No. 4642, at pp. 9-11.

⁸ *Id.*, at p. 15.

That is, Mr. Zarakas points out that FOMB's own affordability threshold will not be satisfied for the 28-year period and he was only considering the 2 cents per kWh increase for the legacy debt payments. Most importantly, on this exact issue, Dr. Weiss argues that:

[T]he resulting expected electricity SOW remains close to 6% throughout the projection period, exceeding 6% starting FY2038.

Figure 2 demonstrates that the electricity SOW for median-income households in Puerto Rico is projected to remain near or above the 6% electricity SOW target under the Oversight Board's proposed Legacy Charge rate plan, even though (i) the median household income levels for FY2026-FY2052 grow at the rate of inflation and (ii) the median-income household's consumption declines over time.⁹

Consider that all these discussions, as previously stated, were developed in the context of a rise in prices of 2 cents per kWh, substantially less than what is being requested by PREPA and PREPA's Agents.

ICSE is not in the present motion arguing that the share of wallet of 6% adopted by the Oversight Board should be the one used on this Rate Review Proceeding, **but that there is a need to establish one as a threshold**. Also, this Energy Bureau must be wary of the fact of approving a rate that is substantially higher than the 6% proposed by FOMB. The explanation is quite straightforward: it would contradict PREPA's representations and official position before the Title III Court for the last years.

On this last point, please observe that in this proceeding PREPA is represented by LUMA regarding the actual Rate Review Request filed July 3, even though PREPA is

⁹ Docket No. 4640, at pp. 75-76.

currently an independent party. However, the Oversight Board is, using PROMESA's nomenclature, the sole representative of PREPA before the Title III Court. What happens when the PREB approves a rate that is inconsistent with the affordability parameters that have been in place for years in the Swain Court?¹⁰ This is a threshold question that must be answered by the PREB because it may affect the procedures.

IV. Proposed Categories

ICSE recommends the following categories of criteria must be evaluated in order to answer the affordability of the proposed rates:

1. A desired share of wallet metric evidenced by studies that evaluate how the rise in rates may affect it.
 - a. How does the increase in rates proposed square with FOMB's position that a substantially less Legacy Charge to pay debt services cannot be supported by ratepayers?
2. Demand elasticity.
 - a. Are there any studies on elasticity of demand on different classes of customers: residential, industrial, commercial, and government
 - b. Why expect that the increase in rates won't decrease the likelihood of the Death Spiral explained by the Oversight Board's expert witnesses?
3. An analysis on the "cascade effect."
 - a. How will individual consumers be affected by increases in the rates of commercial and industrial customer classes in the goods and services they consume?
 - b. Prices of goods and services that are dependent of electricity prices.

¹⁰ Can LUMA as an agent of PREPA file a rate review request that contradicts what its principal has been saying before its bankruptcy proceeding (as represented by the Oversight Board)?

- c. An analysis of impact of increases in rates on Puerto Rico's economy, inflation, GDP, employment, load reduction
4. Considerations of out-migration. *See* for example Dr. Simon Johnson's Expert Witness Testimony before the Title III Court of February 12 (Docket No. 4644.)

Lastly, what happens if the proposed rates fail to collect the expected revenues due to elasticity, delinquency, and grid defection caused by distributed generation penetration? Would there be additional increases in the form of emergency rates further exacerbating unaffordability?

These are important questions the PREB must always raise given that its fundamental responsibility is ensuring reasonability and fairness of rates—be them provisional or permanent. To what extent they should be answered on this phase is another matter. However, in the permanent rate phase, the issues presented in this motion are essential to this proceeding. Nonetheless, this proceeding cannot be divorced from the reality of the Title III Court and the legal, financial, and economic theories presented by PREPA's sole representative, the Oversight Board. ICSE understands that formal coordination with the FOMB is not just convenient but necessary.

WHEREFORE, it is respectfully requested that the PREB take into consideration the foregoing require rate proponents, PREPA and its agents, to present evidence aimed at proving the affordability of the proposed rates.

ICSE also requests until Tuesday July 29, 2025, to provide a summary in Spanish of the content of this motion.

RESPECTFULLY SUBMITTED.

I **CERTIFY** the present document was submitted electronically in the PREB's filing system and copy sent to the Hearing Examiner and the attorneys of record.

In San Juan, Puerto Rico, July 25, 2025.

FERNANDO E. AGRAIT LAW OFFICE
EDIFICIO CENTRO DE SEGUROS
OFICINA 414
701 AVENIDA PONCE DE LEON
SAN JUAN, PUERTO RICO 00907
Tel:(787) 725-3390-3391
Fax: (787) 724-0353

/s/ LCDO. FERNANDO E. AGRAIT
T.S. Núm. 3772
Email:agraitfe@agraitlawpr.com

/s/ LCDO. JOSÉ POU ROMÁN
T.S. Núm. 23,523
Email: jpouroman@outlook.com