

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

NEPR

Received:

Jul 28, 2025

4:35 PM

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

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

**PREPA'S ADDITIONAL OBJECTIONS TO LUMA'S REQUESTED PROVISIONAL RATE  
RIDER AMOUNT<sup>1</sup>**

**TO THE HONORABLE ENERGY BUREAU,**

**COMES NOW**, the Puerto Rico Electric Power Authority, through its undersigned legal counsel and, very respectfully, states and prays as follows:

1. On July 3, 2025, LUMA Energy LLC and LUMA Energy ServCo (jointly, "LUMA") filed its *Motion Submitting Rate Review Petition* ("Rate Application") before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau").

2. In the Rate Application, LUMA is requesting an adjustment that encompasses, among other things, the recovery of \$90 million in the provisional rate during Fiscal Year 2026, for expenditures already incurred between December 2023 and February 2025. As explained in its responses to discovery

---

<sup>1</sup> This is a preliminary evaluation in nature due to the limited time available to review the extensive documentation submitted by LUMA.

Pursuant to the Hearing Examiner's Order of July 7, 2025, PREPA uses the term "provisional-rate rider amount" in this motion to refer to the incremental charge LUMA seeks under its request for provisional rates. Notwithstanding, PREPA informs its agreement with the definition of "provisional rates" provided in the direct testimony of LUMA's expert, Mr. Shannon, and notes that all of PREPA's direct testimony and related filings were prepared on the understanding that "provisional rate" refers exclusively to that incremental increase.

requests, LUMA “is seeking to recover unfunded storm costs through prospective rate increases.” See LUMA Response to PREPA-of-LUMA-PROV-34. LUMA asserts that this request is proper and does not violate the rule against retroactive rate making pursuant to the so-called “extraordinary expense” exception. Id. Under this doctrinal exception, an “extraordinary expense” is typically defined as one that is both unanticipated and non-recurring. Porter v. South Carolina Public Service Com'n, 328 S.C. 222, 493 S.E.2d 92 (1997).

3. LUMA is purporting to blaze new trails with this theory, inasmuch as the extraordinary expense doctrine has never been adopted, neither directly nor indirectly, by the Energy Bureau.

4. Section 6.27(d) of Act No. 57 of May 27, 2024, as amended, known as the “Puerto Rico Energy Transformation and RELIEF Act” establishes the *Temporary Rate Adjustment*, as the proper vehicle for LUMA to secure the necessary funding to cover unanticipated, non-recurring expenses needed due to emergency or temporary events. This mechanism is a formal proceeding which allows the Energy Bureau and all stakeholders to evaluate the propriety and reasonableness of potential expenses required in the above-mentioned circumstances.

5. Notwithstanding, in this case, LUMA never sought a Temporary Rate Adjustment at any point between December 2023 and February 2025. Instead, it decided to wait over 14 months to now rely on an exceptional-cost recovery doctrine that has not been recognized or adopted in this jurisdiction to justify its

decision to use funds from its operational account to cover what it, in its sole discretion, characterized as “extraordinary” storm-related expenses.

6. Based on PREPA’s review of the Energy Bureau dockets to which it has access, it appears that LUMA neither informed nor sought approval from the Energy Bureau prior to incurring the \$90 million in expenditures.

7. LUMA unilaterally incurred significant expenditures in excess of the funding available in the Outage Event Reserve Account, without first securing an alternative funding source or obtaining regulatory oversight as to the prudence of those expenses. This occurred despite repeated and explicit communications from PREPA indicating that it lacked both a dedicated funding source and sufficient liquidity to continue replenishing the account. As of the inception of the OMA, LUMA has never requested a budget line item for the Outage Reserve Account before the Energy Bureau. Moreover, LUMA never took any affirmative steps to seek guidance or prior authorization from the Energy Bureau before incurring in these additional obligations.

8. This conduct reflects a disregard for financial prudence, well established regulatory processes and improperly shifts the financial risk of LUMA’s discretionary spending decisions onto PREPA and, ultimately, the ratepayers—without proper vetting, oversight, or accountability. Permitting recovery of these expenses under such circumstances would undermine the integrity of the regulatory framework and set a concerning precedent that invites similar unilateral conduct in the future.

9. LUMA attempts to justify its actions by asserting that “funding of the Outage Event Reserve Account is a responsibility of PREPA.” This position disregards not only PREPA’s consistent warnings about its fiscal constraints but also the fundamental principle that utility expenditures must be subject to prior regulatory review for prudence. See Act No. 17 of April 11, 2019, as amended, known as the “Puerto Rico Energy Public Policy Act.”<sup>2</sup> Furthermore, LUMA’s repeated efforts to shift the blame onto PREPA for the lack of funding negate its own role within the public-private partnership framework.

10. Under the applicable contractual and statutory structure, it is LUMA—not PREPA—that bears the responsibility for generating sufficient revenues to fund its operations. PREPA, as owner of the assets, is not the entity charged with day-to-day revenue generation or financial management of the system. LUMA’s position not only misstates the allocation of responsibilities, but also seeks to externalize the consequences of its own financial and operational decisions.

11. LUMA now seeks to recover these previously unreported \$90 million in alleged storm-related costs through the expedited provisional rate process. Granting this request would risk establishing a dangerous and premature precedent on critical regulatory issues, including the boundaries of the filed-rate

---

<sup>2</sup> Recognizing the Energy Bureau’s inherent authority to scrutinize how rates are used to cover costs and expenses, the applicable legal framework affirms that “[t]he Bureau shall be ultimately responsible for ensuring that the fees, rents, rates, and any other type of charge collected by the electric power company are just and reasonable, as well as consistent with sound fiscal and operational practices which result in a reliable service at the lowest reasonable cost.”

doctrine and its prohibition against retroactive ratemaking.<sup>3</sup> It would also effectively endorse LUMA's decision to fund these alleged storm costs through the mechanism subject to the least oversight by the Energy Bureau, without prior disclosure or approval.

12. Approving the recovery of this amount at the provisional stage - absent full briefing and a complete evidentiary record - would be both procedurally inappropriate and substantively problematic. The provisional rate process is, by design, limited in scope and speed, and therefore ill-suited to resolving complex, high-impact matters. This issue should instead be addressed during the permanent rate phase, where the parties and the Energy Bureau will have the opportunity to assess whether the claimed expenses were anticipated, recurring, and/or prudently incurred. Deferring the matter ensures a more deliberate, transparent, and well-informed decision on the merits.

13. The fact that the provisional rate may later be reconciled during the permanent rate phase does not cure the problem. As explained, premature approval would still establish a potentially far-reaching precedent - on insufficient

---

<sup>3</sup> The filed rate doctrine's rule against retroactive ratemaking has an underlying policy of predictability, meaning that if a utility is bound by the rates which it properly filed with the appropriate regulatory agency, then its customers will know prior to purchase what rates are being charged and can therefore make economic or business plans or adjustments in response. 73B C.J.S. Public Utilities § 141.

The rule against retroactive ratemaking protects the public by ensuring that present consumers will not be required to pay for past deficits of the company in their future payments and prevents the company from employing future rates as a means of ensuring the investments of its stockholders. Retroactive ratemaking with respect to utilities is prohibited based on the general principle that customers who use the service provided by a utility should pay for its production rather than requiring future ratepayers to pay for past use; a utility ordinarily cannot, in a future rate case, recover for past deficiencies in meeting expenses. 73B C.J.S. Public Utilities § 141

briefing and without consideration of alternative mechanisms. Moreover, many ratepayers in Puerto Rico are currently experiencing financial hardship and must be protected from unjust or unsupported rate increases now, not merely through future adjustments.

**WHEREFORE**, PREPA respectfully requests the Energy Bureau and Hearing Examiner to take notice of the foregoing and **DENY** LUMA's request to include the expenses identified herein in its proposed provisional rate rider amount.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico this 28<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@lumaenergy.com](mailto:margarita.mercado@lumaenergy.com); Juan González, [jgonzalez@gmlex.net](mailto:jgonzalez@gmlex.net); Alexis G. Rivera Medina, [arivera@gmlex.net](mailto:arivera@gmlex.net); and Juan Martínez, [jmartinez@gmlex.net](mailto:jmartinez@gmlex.net); and to Genera PR, LLC, through: Jorge Fernández-Reboredo, [jfr@sbgblaw.com](mailto:jfr@sbgblaw.com); Gabriela Castrodad, [gcastrodad@sbgblaw.com](mailto:gcastrodad@sbgblaw.com); Jennise Alvarez, [jennalvarez@sbgblaw.com](mailto:jennalvarez@sbgblaw.com); [regulatory@genera-pr.com](mailto:regulatory@genera-pr.com); José J. Díaz Alonso, [jdiaz@sbgblaw.com](mailto:jdiaz@sbgblaw.com); and [legal@genera-pr.com](mailto:legal@genera-pr.com); Co-counsel for Oficina Independiente de Protección al Consumidor, [hrivera@jrsp.pr.gov](mailto:hrivera@jrsp.pr.gov); [contratistas@jrsp.pr.gov](mailto:contratistas@jrsp.pr.gov); [p vazquez.oipc@avlawpr.com](mailto:p vazquez.oipc@avlawpr.com); Co-counsel for Instituto de Competitividad y Sustentabilidad Económica, [jpouroman@outlook.com](mailto:jpouroman@outlook.com); [agraitfe@agraitlawpr.com](mailto:agraitfe@agraitlawpr.com); Co-counsel for National Public Finance Guarantee Corporation, [epo@amgprlaw.com](mailto:epo@amgprlaw.com); [loliver@amgprlaw.com](mailto:loliver@amgprlaw.com); [acasellas@amgprlaw.com](mailto:acasellas@amgprlaw.com); [matt.barr@weil.com](mailto:matt.barr@weil.com); [robert.berezin@weil.com](mailto:robert.berezin@weil.com); [Gabriel.morgan@weil.com](mailto:Gabriel.morgan@weil.com); [Corey.Brady@weil.com](mailto:Corey.Brady@weil.com); Co-counsel for GoldenTree Asset Management LP, [lramos@ramoscruzlegal.com](mailto:lramos@ramoscruzlegal.com); [tlauria@whitecase.com](mailto:tlauria@whitecase.com); [gkurtz@whitecase.com](mailto:gkurtz@whitecase.com); [ccolumbres@whitecase.com](mailto:ccolumbres@whitecase.com); [iglassman@whitecase.com](mailto:iglassman@whitecase.com); [tmacwright@whitecase.com](mailto:tmacwright@whitecase.com); [jcunningham@whitecase.com](mailto:jcunningham@whitecase.com); [mshepherd@whitecase.com](mailto:mshepherd@whitecase.com); [jgreen@whitecase.com](mailto:jgreen@whitecase.com); Co-counsel for Assured Guaranty, Inc., [hburgos@cabprlaw.com](mailto:hburgos@cabprlaw.com); [dperez@cabprlaw.com](mailto:dperez@cabprlaw.com); [mmcgill@gibsondunn.com](mailto:mmcgill@gibsondunn.com); [lshelfer@gibsondunn.com](mailto:lshelfer@gibsondunn.com); [howard.hawkins@cwt.com](mailto:howard.hawkins@cwt.com); [mark.ellenberg@cwt.com](mailto:mark.ellenberg@cwt.com); [casey.servais@cwt.com](mailto:casey.servais@cwt.com); [bill.natbony@cwt.com](mailto:bill.natbony@cwt.com); [thomas.curtin@cwt.com](mailto:thomas.curtin@cwt.com); Co-counsel for Syncora Guarantee, Inc.,

[escalera@reichardescalera.com](mailto:escalera@reichardescalera.com); [arizmendis@reichardescalera.com](mailto:arizmendis@reichardescalera.com);  
[riverac@reichardescalera.com](mailto:riverac@reichardescalera.com); [susheelkirpalani@quinnemanuel.com](mailto:susheelkirpalani@quinnemanuel.com);  
[erickay@quinnemanuel.com](mailto:erickay@quinnemanuel.com); Co-Counsel for the PREPA Ad Hoc Group,  
[dmonserrate@msglawpr.com](mailto:dmonserrate@msglawpr.com); [fgierbolini@msglawpr.com](mailto:fgierbolini@msglawpr.com);  
[rschell@msglawpr.com](mailto:rschell@msglawpr.com); [eric.brunstad@dechert.com](mailto:eric.brunstad@dechert.com);  
[Stephen.zide@dechert.com](mailto:Stephen.zide@dechert.com); [david.herman@dechert.com](mailto:david.herman@dechert.com);  
[michael.doluisio@dechert.com](mailto:michael.doluisio@dechert.com); [stuart.steinberg@dechert.com](mailto:stuart.steinberg@dechert.com); Sistema de Retiro  
de los Empleados de la Autoridad de Energía Eléctrica, [nancy@emmanuelli.law](mailto:nancy@emmanuelli.law);  
[rafael.ortiz.mendoza@gmail.com](mailto:rafael.ortiz.mendoza@gmail.com); [rolando@emmanuelli.law](mailto:rolando@emmanuelli.law); Official Committee  
of Unsecured Creditors of PREPA, [jcasillas@cstlawpr.com](mailto:jcasillas@cstlawpr.com); [jnieves@cstlawpr.com](mailto:jnieves@cstlawpr.com);  
Solar and Energy Storage Association of Puerto Rico, [Cfl@mcvpr.com](mailto:Cfl@mcvpr.com);  
[apc@mcvpr.com](mailto:apc@mcvpr.com); [javrua@sesapr.org](mailto:javrua@sesapr.org); [mrios@arroyorioslaw.com](mailto:mrios@arroyorioslaw.com);  
[ccordero@arroyorioslaw.com](mailto:ccordero@arroyorioslaw.com); Wal-Mart Puerto Rico, Inc., [Cfl@mcvpr.com](mailto:Cfl@mcvpr.com);  
[apc@mcvpr.com](mailto:apc@mcvpr.com); Mr. Victor González, [victorluisgonzalez@yahoo.com](mailto:victorluisgonzalez@yahoo.com); and the  
Energy Bureau's Consultants, [jrinconlopez@guidehouse.com](mailto:jrinconlopez@guidehouse.com);  
[Josh.Llamas@fticonsulting.com](mailto:Josh.Llamas@fticonsulting.com); [Anu.Sen@fticonsulting.com](mailto:Anu.Sen@fticonsulting.com);  
[Ellen.Smith@fticonsulting.com](mailto:Ellen.Smith@fticonsulting.com); [Intisarul.Islam@weil.com](mailto:Intisarul.Islam@weil.com);  
[jorge@maxetaenergy.com](mailto:jorge@maxetaenergy.com); [rafael@maxetaenergy.com](mailto:rafael@maxetaenergy.com); [RSmithLA@aol.com](mailto:RSmithLA@aol.com);  
[msdady@gmail.com](mailto:msdady@gmail.com); [mcranston29@gmail.com](mailto:mcranston29@gmail.com); [dawn.bisdorf@gmail.com](mailto:dawn.bisdorf@gmail.com);  
[ahopkins@synapse-energy.com](mailto:ahopkins@synapse-energy.com); [clane@synapse-energy.com](mailto:clane@synapse-energy.com);  
[guy@maxetaenergy.com](mailto:guy@maxetaenergy.com); [Julia@londoneconomics.com](mailto:Julia@londoneconomics.com);  
[Brian@londoneconomics.com](mailto:Brian@londoneconomics.com); [luke@londoneconomics.com](mailto:luke@londoneconomics.com);  
[kbailey@acciongroup.com](mailto:kbailey@acciongroup.com); [hjudd@acciongroup.com](mailto:hjudd@acciongroup.com);  
[zachary.ming@ethree.com](mailto:zachary.ming@ethree.com); [PREBconsultants@acciongroup.com](mailto:PREBconsultants@acciongroup.com).

**GONZÁLEZ & MARTÍNEZ**

1509 López Landrón, Bldg.  
Seventh Floor  
San Juan, PR 00911-1933  
Tel.: (787) 274-7404

**s/ Mirelis Valle Cancel**

RUA No.: 21115  
Email: [mvalle@gmlex.net](mailto:mvalle@gmlex.net)