

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

NEPR

Received:

Jul 29, 2025

11:08 AM

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

CASE NO. NEPR-AP-2023-0003

**SUBJECT: Response to PREPA's Objections to
LUMA's Provisional Rate Rider Amount**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

**LUMA'S RESPONSE TO PREPA'S OBJECTIONS TO LUMA'S REQUESTED
PROVISIONAL RATE RIDER AMOUNT**

LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly, "LUMA") respectfully file this Response to the Puerto Rico Electric Power Authority's ("PREPA") Objections to LUMA's Requested Provisional Rate Rider Amount filed on July 11, 2025, and July 28, 2025.

I. Argument

After PREPA filed its initial Objection¹, the Hearing Examiner expressly declined to hear it during this stage of proceedings. *See* Order of July 14, 2025. The Hearing Examiner has likewise clarified that PREPA's complaints concerning the T&D OMA² are improper here and need to be addressed in a different forum. *See* Order of July 21, 2025. Nonetheless, PREPA ignored those Orders and filed an "Additional Objection" at 4:35 pm on July 28, 2025, which contains still more baseless accusations. LUMA is compelled to respond to both Objections for the sake of the record.

¹ Filed on July 11, 2025 ("Initial Objection").

² Transmission and Distribution Operation and Maintenance Agreement ("T&D OMA"), as amended and supplemented by the Puerto Rico Transmission and Distribution System Supplemental Terms Agreement ("Supplemental Agreement").

First, let's be clear—PREPA has dropped the pretext. Its Objections aren't really about this ratemaking proceeding. They are just another salvo in its political campaign to manufacture an excuse to cancel the T&D OMA and to garner more publicity for that fight—the best defense being a good offense. PREPA let the grid decay, caused its own bankruptcy, and then persistently and deliberately underfunded LUMA—while blaming LUMA for all of it. So PREPA creates sickness, withholds the cure, and is it *LUMA*'s fault? Nonsense.

Anyway, there will be plenty of time to deal with PREPA's baseless accusations in the proper forum. This is not that forum. LUMA *and* PREPA are charged with delivering safe, reliable, affordable power for the citizens of the Commonwealth. The need to restore the power grid is urgent, and the work to be done here and in the field is already challenging. PREPA's Objections are an impermissible and ill-advised distraction from the focus of these proceedings. They should be overruled for the reasons already explained in the Hearing Examiner's prior Orders.

A. The same reasoning underpinning the Order of July 21, 2025, governs the Objection and Additional Objection.

LUMA has a number of bases to oppose PREPA's Objections.³ LUMA will fully brief the merits in the next phase of proceedings if the Hearing Examiner entertains PREPA's Objections. But, respectfully, LUMA does not believe that it is necessary to do so in light of the Hearing Examiner's July 21, 2025, Order Clarifying PREPA's Role in the Rate Case Evidentiary Hearing.

That Order explained, among other things, that "LUMA's and PREPA's interests are *legally* aligned" before the Energy Bureau because of the effect of Act 120-2018 and the T&D OMA between the parties. *See id.* at 2 (emphasis in original). The Order also states: "Act 120-2018 and the T&D OMA make the PREPA-LUMA relationship not only nonadversarial, but—to

³ Among others: (1) LUMA's is PREPA's agent for all rate proceedings; (2) PREPA must support LUMA and cannot object; (3) the Energy Bureau is not the proper forum for PREPA's contractual disputes and lacks jurisdiction to hear them; and (4) PREPA's objection lacks any evidentiary support.

use clichés—hand-in-glove, bow-and-fiddle, trumpet-and-trumpeter.” *Id.* The Order further explains that “PREPA must exercise [its] rights consistent with the T&D OMA.” *Id.* at 3. Finally, the Order notes that “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.” *Id.*

For the same reasons, PREPA’s Objections are incompatible with its contractual and statutory hand-in-glove relationship with LUMA. It therefore cannot object to LUMA’s requested rates. Any dispute between the parties belongs in a different forum.

The contractual dispute-resolution process has now begun. On Tuesday, July 22, 2025, the Puerto Rico Public-Private Partnerships Authority (“P3 Authority”) initiated the dispute-resolution procedures in the T&D OMA by sending LUMA a Notice of Disputes under Article 15 of the contract, alleging six areas of complaint.⁴ That process will proceed in parallel. As the July 21, 2025 Order explained, *that* is where PREPA’s Objections belong.

Nevertheless, despite this being the wrong forum for PREPA’s Objections, PREPA made them publicly. Therefore, for the sake of the record, LUMA will briefly respond to the substance of PREPA’s Objections, all of which are groundless.

B. PREPA’s Initial Objection is devoid of any evidentiary support. The evidence on the record in this proceeding amply shows LUMA’s achievements in delivering safe, reliable, and efficient electric power service in Puerto Rico.

Even if PREPA had authority to lodge its Initial Objection and the Energy Bureau had authority to entertain it, which LUMA refutes, PREPA’s Objection should still be denied because PREPA failed to support any portion of it with evidence, as the Hearing Examiner acknowledged in his Order of July 14, 2025. Further, that same lack of evidence, PREPA’s failure to tether its

⁴ The P3 Authority, acting as Administrator under the T&D OMA, initiated the dispute on behalf of PREPA.

complaints to governing law, and the general and conclusory nature of PREPA's allegations, make it impossible for LUMA to meaningfully respond to the substance, to the extent there was any.

PREPA's conclusory statements regarding LUMA's performance are refuted by the pre-filed testimonies of LUMA's witnesses on key milestones and achievements by LUMA. Mr. Alejandro Figueroa, LUMA's Chief Regulatory Officer, describes in his pre-filed testimony, LUMA Exhibit 1.0, the state of the T&D System when LUMA took over as operator on June 1, 2021, and explains that despite Herculean challenges, LUMA has been able to operate the T&D System under the 2017 Base Rates. *See* LUMA Exhibit 1.0, lines 485-486. LUMA inherited a T&D System that was significantly deteriorated, in bankruptcy, and being operated by PREPA in a manner inconsistent with Prudent Utility Practices. *Id.*, 1.0, lines 350-352. PREPA was ranked by its customers as the worst-performing utility when compared to the other utilities participating in the J.D. Power Electric Utility Customer Satisfaction surveys for many electric utilities in North America. *Id.*, lines 352-355. The T&D System was fragile, having suffered decades of neglect at the hands of PREPA. *Id.*, lines 357-358.

LUMA has made significant progress since commencing operations. Over \$4.4 billion has been allocated for T&D System expenditures, including \$1.9 billion in federally funded projects, \$433 million in non-federally funded capital projects, and \$2.2 billion in operating and maintenance expenditures. *See Id.*, lines 308-312. As of May 2025, LUMA had replaced 28,600 poles, repaired or replaced 177,000 streetlights, completed vegetation management on 6,199 miles of lines, and installed 10,348 distribution automation and protection devices, helping to avoid over 271 million minutes of customer service interruptions. *Id.*, lines 312-316. As Mr. Figueroa explains, LUMA has achieved progress all across the organization, including completion of 288,200 hours of worker health and safety training and certifications, updated materials and

inventory tracking, improved workplace safety protocols, and strengthened information systems and cybersecurity practices. *Id.*, lines 317-321. Additionally, LUMA transformed customer service with a modern cloud-based contact center, ensuring 24/7 call response and support during emergencies from any location. *Id.*, lines 322-324.

LUMA's rate review petition also includes the pre-filed testimonies of LUMA's subject-matter experts on all key operational areas of the utility. *See* LUMA's Exhibits 2.0, and 5.0 through 18.0. These testimonies show LUMA's ongoing commitment to recover and transform the T&D System to deliver customer-centric, reliable, resilient, safe, and sustainable electricity at reasonable prices. Mr. Pedro Meléndez, Chief Capital Programs & Grid Transformation Officer at LUMA, establishes that LUMA has made considerable progress toward stabilizing the grid. *See* LUMA Exhibit 5.0, line 379. LUMA prioritized high-priority urgent repairs (including substation equipment, poles, and other work aimed at improving public safety), deployed advanced technologies (including distribution automation to rapidly improve the reliability and resilience of the grid), collected critical data to fill in information gaps and prioritize expenditures, procured key equipment obtaining equipment for necessary repairs, and formulated more than \$10 billion of FEMA-funded projects. *Id.*, lines 380-386. For example, since commencement, LUMA replaced or installed nine new transformers (two transmission and seven distribution), replaced or installed over 110 breakers (78 transmission and 35 distribution), and installed over 280 three-phase reclosers, 600 trip savers, 900 fuse cutouts, 4,800 fuses, and 3,500 fault condition indicators. *Id.*, lines 387-392. Moreover, within the last year, LUMA replaced critical components on six substations and conducted high-level assessments on another six substations, four of which will now be rebuilt. *Id.*, lines 398-400. This progress is happening simultaneously with the installation or replacement of several dozen supervisory control and data acquisition, remote terminal unit,

and distribution automation devices; and hundreds of site visits and permitting processes with the local, state, and federal authorities, including the coordination of federal environmental and historical preservation reviews, to reach the execution stage of projects. *Id.*, lines 400-405.

In the area of customer service, as Ms. Jessica Laird, Senior Vice President, Customer Experience for LUMA, explains, LUMA achieved material and measurable progress. LUMA redesigned the customer bill to provide clear and transparent information for customers; and implemented a cloud-based contact center, enabling the full volume of customer calls to come through. *See* LUMA Exhibit 7.0, lines 367-369. LUMA removed the cap on call volume, as PREPA had previously capped volume to 500 simultaneous calls, and enabled all calls to be recorded so that LUMA can review and improve as part of its quality assurance processes; enhanced customer experience by implementing call-back features when wait times are high, Short Message Service for payment confirmation, bill objection confirmation, and outage Estimated Time of Restoration updates when a customer has reported the outage; and established a quality assurance program for all areas of Customer Experience. *Id.*, lines 370-377. Moreover, the Customer Experience Department decreased the average speed of answer for calls placed to the contact center to two (2) minutes and an abandon rate of less than 10%, while taking nearly double the number of calls as the previous operator and reducing the average walk-in wait times in regional customer service centers to less than eight (8) minutes on average. *Id.*, lines 378-382. LUMA also enabled direct social media messaging with same-day response, launched a self-service application, and redesigned the Interactive Voice Response to improve customer response during emergencies, and inform customers of planned outages. *Id.*, lines 382-385. Finally, LUMA implemented a fulsome dunning process, including enrolling customers in payment plans and prioritizing past-due accounts receivable collection. *Id.*, lines 385-387.

LUMA's quarterly reports on financial activities, filed with this Energy Bureau in Case No. NEPR-MI-2021-0004, is further uncontested evidence of LUMA's achievement and refutes PREPA's assertions of alleged mismanagement by LUMA.⁵

As Mr. Figueroa establishes in his pre-filed testimony in this proceeding, with support from the Energy Bureau's findings in the 2017 Rate Order, under PREPA's tenure, the utility and its customers suffered from underinvestment. *See* LUMA Exhibit 1.0, lines 367-368. The 2020 Fiscal Plan for the Puerto Rico Electric Power Authority, certified by the FOMB on June 29, 2020, stated that, "in recent years, capital investments in the T&D System were limited to the most urgent projects to avoid imminent system failure rather than to proactively improve the grid for the future."⁶ *Id.*, lines 369-372. Similarly, the Energy Bureau's 2017 Rate Order states that "[l]ack of effective long-term planning led PREPA to defer investments in maintenance of and upgrades to its aging infrastructure and to spend customer and investor funds on projects, some of which would later be canceled but not before expensive beginnings due to inadequate economic or feasibility analysis."⁷ *Id.*, lines 372-376. It is therefore untenable for PREPA to object to a considered provisional rate proposal that seeks to raise necessary revenues to fund high-priority and needed investments to reverse years of PREPA's neglect.

It is important to underscore that in paragraph 10 of its Initial Objection, PREPA misconstrues the Energy Bureau's order of June 26, 2024, issued in Case No. NEPR-MI-2021-0004. That Resolution and Order does not concern federal funding reimbursement, but rather,

⁵ The most recent report with data for the third quarter of Fiscal Year 2025 is available at <https://energia.pr.gov/wp-content/uploads/sites/7/2025/05/20250515-MI20210004-Public-Motion-to-Subm-Quarterly-Report.pdf>.

⁶ See 2020 Fiscal Plan, at p. 14, *available at* <https://drive.google.com/file/d/1paRgy0dJBkUH4-5eev7z2SuR0dii18g9/view>.

⁷ 2017 Rate Order, ¶39, at 22.

LUMA's request that the Energy Bureau reconsider a ruling that budget amendment requests filed after May 15th of each year will be considered untimely. In that context, LUMA used the urgent need for replacing a transformer in the Monacillos substation as an example of why LUMA must retain flexibility to amend its budgets, within spending limits, to address evolving conditions. The Energy Bureau's reference to federal funding did not constitute an inquiry nor a determination on LUMA's practices regarding federal funding reimbursement, but a statement on budgeting determinations.

Finally, PREPA's reference to a determination by the Federal Emergency Management Agency ("FEMA") on reimbursements for costs related to seconded labor, in bad faith, omits that LUMA filed a timely appeal to contest FEMA's determination of disallowance. The appeal clearly and strongly outlines why FEMA's determination is factually and legally incorrect.

C. PREPA's "prudence" argument is also baseless.

PREPA's Additional Objection attempts to frame LUMA's provisional rate rider request as "imprudent" or the result of a lack of prudence. At best, PREPA misunderstands or misstates the concept of prudence. PREPA says that LUMA should have asked for money sooner or in a different way. That is not what prudence means in this context.

Under the doctrine of prudence, a regulator "will not disallow costs as imprudent if they are costs 'which a reasonable utility management . . . would have made, in good faith under the same circumstances, and at the relevant point in time.'" *Potomac Electric Power Co.*, 169 FERC ¶ 61,172, P 43 (2019) (quoting *Columbia Gas Transmission, LLC*, 158 FERC ¶ 61,092, P 8 (2017)). In other words, the issue of prudence concerns whether the expenses incurred by a utility are costs that a reasonable utility would have made at the time the expenditures were made, not the timing of seeking reimbursement. PREPA's Additional Objection doesn't challenge the need

to spend money to repair the grid after a hurricane. Nor could it. Therefore, it is not a proper challenge on the grounds of lack of prudence.

And it wouldn't matter anyway, because PREPA presents no evidence of imprudence. A utility's costs are presumed prudent. *West Ohio Gas Co. v. Public Utilities Commission*, 294 U.S. 63, 72 (1935). A party challenging an expenditure must raise a "serious doubt" as to its prudence to overcome that presumption. *See, e.g., Potomac Electric Power Co.*, 169 FERC ¶ 61,172, at ¶ 43 (2019); *Anaheim v. FERC*, 669 F.2d 799, 809 (D.C. Cir. 1981). To do so, "affirmative evidence [must be] offered challenging the reasonableness of the operating expenses incurred, on the ground that they are exorbitant, unnecessary, wasteful, extravagant, or incurred in the abuse of discretion or in bad faith." *Ala. Pub. Serv. Comm'n. v. S. Bell Tel. & Tel. Co.*, 253 Ala. 1, 23-24 (Ala. 1949). No such showing has been made here, nor could it, even if PREPA had standing to present it, which it does not.

One other related reply: LUMA's request is not a "retroactive ratemaking." The Hearing Examiner has already rejected that allegation. *See* Order of July 18, 2025, at 7 ("That is not precisely what we have here."). PREPA's accusations to the contrary warrant no further response.

D. LUMA does not generate funds; all revenue is system revenue.

Lastly, it is important to clarify a blatant and self-serving misstatement of fact in paragraph 10 of PREPA's Additional Objection. Under the terms of the T&D OMA, LUMA does not raise its own revenue. *See* T&D OMA § 5.3(b). Rather, as PREPA is well aware, LUMA bills and collects payment from the utility's customers on behalf of PREPA, the owner of the system, *see* T&D OMA § 5.3(a), (b); *see also* T&D OMA §3.2 and Supplemental Agreement, Section 4.3, and receives money from PREPA for the operation and maintenance costs of operating the T&D system under the T&D OMA, *see* T&D OMA §§7.5 and 7.7. And, as everyone here knows, LUMA

does not set rates. PR Laws Ann. Tit. 22 § 1054x, 22 LPRA § 1054(x)(2025) (rate-setting procedure). That’s the whole point of this exercise. PREPA’s suggestion that it is some passive entity with no responsibility for “generating revenue” shows that it fundamentally misunderstands its role in these proceedings. The law and the T&D OMA require PREPA to work hand-in-glove with LUMA to ensure sufficient liquidity. Most regrettably for the Commonwealth, PREPA’s actions here show it has no intention of doing so.

III. Request for Relief

WHEREFORE, LUMA respectfully requests that the Energy Bureau overrule PREPA’s Objections to LUMA’s Requested Provisional Rate Rider Amount and grant LUMA all other relief to which it is entitled.⁸

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 29th day of July 2025.

WE HEREBY CERTIFY that this Motion was filed using the electronic filing system of this Energy Bureau and that electronic copies of this Motion will be notified to Hearing Examiner, Scott Hempling, shempling@scotthemplinglaw.com; and to the attorneys of the parties of record. To wit, to the *Puerto Rico Electric Power Authority*, through: Mirelis Valle-Cancel, mvalle@gmlex.net; Juan González, jgonzalez@gmlex.net; Alexis G. Rivera Medina, arivera@gmlex.net; and Juan Martínez, jmartinez@gmlex.net; and to *Genera PR, LLC*, through: Jorge Fernández-Reboredo, jfr@sbgblaw.com; Gabriela Castrodad, gcastrodad@sbgblaw.com; Jennise Alvarez, jennalvarez@sbgblaw.com; regulatory@genera-pr.com; José J. Díaz Alonso, jdiaz@sbgblaw.com; and legal@genera-pr.com; *Co-counsel for Oficina Independiente de Protección al Consumidor*, hrivera@jrsp.pr.gov; contratistas@jrsp.pr.gov;

⁸ On May 9, 2025, this Energy Bureau issued a Resolution and Order, requiring that all substantive English-language filings be accompanied by concise Spanish summaries to enhance public accessibility and participation. *See also* Energy Bureau Resolution and Order June 4, 2025 (*clarifying* that full translations are optional but summaries are mandatory). In compliance with the Energy Bureau’s standing directives regarding accessibility and ensuring citizen participation, LUMA will submit later today, a Spanish-language summary of this Motion.

pvazquez.oipc@avlawpr.com; *Co-counsel for Instituto de Competitividad y Sustentabilidad Económica*, jpouroman@outlook.com; agraitfe@agraitlawpr.com; *Co-counsel for National Public Finance Guarantee Corporation*, 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; *Co-counsel for GoldenTree Asset Management LP*, lramos@ramoscruzlegal.com; tlauria@whitecase.com; gkurtz@whitecase.com; ccolumbres@whitecase.com; iglassman@whitecase.com; tmacwright@whitecase.com; jcunningham@whitecase.com; mshepherd@whitecase.com; jgreen@whitecase.com; *Co-counsel for Assured Guaranty, Inc.*, hburos@cabprlaw.com; dperez@cabprlaw.com; mmcgill@gibsondunn.com; lshelfer@gibsondunn.com; howard.hawkins@cwt.com; mark.ellenberg@cwt.com; casey.servais@cwt.com; bill.natbony@cwt.com; thomas.curtin@cwt.com; *Co-counsel for Syncora Guarantee, Inc.*, escalera@reichardescalera.com; arizmendis@reichardescalera.com; riverac@reichardescalera.com; susheelkirpalani@quinnemanuel.com; erickay@quinnemanuel.com; *Co-Counsel for the PREPA Ad Hoc Group*, dmonserrate@msglawpr.com; fgierbolini@msglawpr.com; rschell@msglawpr.com; eric.brunstad@dechert.com; Stephen.zide@dechert.com; david.herman@dechert.com; michael.doluisio@dechert.com; stuart.steinberg@dechert.com; *Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica*, nancy@emmanuelli.law; rafael.ortiz.mendoza@gmail.com; rolando@emmanuelli.law; *Official Committee of Unsecured Creditors of PREPA*, jcasillas@cstlawpr.com; jnieves@cstlawpr.com; *Solar and Energy Storage Association of Puerto Rico*, Cfl@mcvpr.com; apc@mcvpr.com; javrua@sesapr.org; mrrios@arroyorioslaw.com; ccordero@arroyorioslaw.com; *Wal-Mart Puerto Rico, Inc.*, Cfl@mcvpr.com; apc@mcvpr.com; *Mr. Victor González*, victorluisgonzalez@yahoo.com; and *the Energy Bureau's Consultants*, jrinconlopez@guidehouse.com; Josh.Llamas@fticonsulting.com; Anu.Sen@fticonsulting.com; Ellen.Smith@fticonsulting.com; Intisarul.Islam@weil.com; jorge@maxetaenergy.com; rafael@maxetaenergy.com; RSmithLA@aol.com; msdady@gmail.com; mcranston29@gmail.com; dawn.bisdorf@gmail.com; ahopkins@synapse-energy.com; clane@synapse-energy.com; guy@maxetaenergy.com; Julia@londoneconomics.com; Brian@londoneconomics.com;

luke@londoneconomics.com; kbailey@acciongroup.com; hjudd@acciongroup.com;
zachary.ming@ethree.com; PREBconsultants@acciongroup.com.



DLA Piper (Puerto Rico) LLC
Calle de la Tanca #500, Suite 401
San Juan, PR 00901-1969
Tel. 787-945-9122
Fax 939-697-6092

/s/ Margarita Mercado Echegaray
Margarita Mercado Echegaray
RUA 16,266
margarita.mercado@us.dlapiper.com

Pro Hac Vice

/s/ Andrea J. Chambers
Andrea J. Chambers
DC-405613
Andrea.Chambers@us.dlapiper.com

DLA Piper LLP (US)
500 Eighth Street, NW
Washington, DC 20004
United States of America
Tel. +1 202.799.4440