

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

NEPR

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

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

**MOTION TO RECONSIDER THE "HEARING EXAMINER'S ORDER CLARIFYING PREPA'S  
ROLE IN THE RATE CASE EVIDENTIARY HEARING"**

**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") in the above-captioned case ("Rate Case").

2. On July 10, 2025, PREPA notified LUMA its first Request of Information, ROI No. PREPA-of-LUMA-8.

3. On July 15, 2025, LUMA notified PREPA "LUMA's Objections and Partial Responses to PREPA's July 10<sup>th</sup> Requests on LUMA's Provisional Rate Request." As a threshold objection, LUMA argued that PREPA had no right to seek discovery from LUMA as part of the Rate Case, based on LUMA's interpretation of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement of June 22, 2020 ("T&D OMA"). According to LUMA's misreading of the T&D OMA, (a) its relationship with PREPA is solely governed by the T&D OMA

and, by entering into the T&D OMA, PREPA waived its statutory rights and obligations as they relate to LUMA and the delegated matters, including its right to seek discovery in the Rate Case; (b) the principal-agent relationship between PREPA and LUMA bars PREPA from questioning LUMA in the Rate Case; and (c) PREPA's discovery requests are adversarial and breach what LUMA claims is PREPA's duty to provide unconditional support and cooperation in the proceeding (hereinafter, the "Threshold Objection").

4. On July 18, 2025, the Hearing Examiner, Scott Hempling, issued an "Order on LUMA's Objections to RPI#PREPA-of-LUMA-8" ("First Order") whereby it denied LUMA's Threshold Objection and ordered LUMA to answer most of PREPA's discovery requests after concluding that both LUMA's and Genera's (who had also raised a similar objection) position "have no legal support."<sup>1</sup> In rejecting the Threshold Objection, the First Order reached the following legal conclusions:

- (i) **PREPA's and LUMA's relationship, generally:** the First Order squarely rejected LUMA's contention that "the relationship between LUMA and PREPA is governed by" the T&D OMA alone, noting "there is more than one relationship." In addition to the OMA, there exists "a relationship... governed by administrative law," under which "each entity... has a right... to question the other and to comment on the positions of the other." This relationship "preexisted the OMA and was not removed by the OMA," and "nowhere in the OMA did PREPA give up its rights under Puerto Rico administrative law."
- (ii) **Principal-agent relationship:** the First Order rejected LUMA's suggestion that a principal cannot question its agent, noting that principal-agent disputes are common, principals often challenge

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<sup>1</sup> It is important to note that the First Order also denied Genera's similar objection. It further ruled that its decision on this applied equally to the provisional-rate phase, as well as the permanent-rate phase.

their agents' performance, and they have a statutory right to do so.<sup>2</sup>

- (iii) **Section 3.5. of the T&D OMA and PREPA's right to accessing information from LUMA:** the First Order rejected LUMA's claim that the T&D OMA provides PREPA's "exclusive" remedies to access information, noting the word "exclusive" does not appear in section 3.5. The First Order described this as a mischaracterization that "must stop" and emphasized that granting certain rights in the T&D OMA does not eliminate all others. The order further noted that this reasoning also applied to section 5.15(c)(i) of T&D OMA on information access.
- (iv) **Section 15 of the T&D OMA as PREPA's exclusive remedy for "dispute resolution":** The ruling rejects LUMA's claim that the OMA's dispute resolution procedures are the "sole and exclusive" means for resolving issues between LUMA and PREPA, clarifying that this applies only to disputes under the T&D OMA and not to PREPA's ROIs in the Rate Case. Asking questions is not a "dispute," and opposing LUMA's rate proposal is likewise outside the T&D OMA's dispute resolution scope.
- (v) **LUMA's contention that the discovery efforts by PREPA are "adversarial":** The First Order rejected LUMA's claim that PREPA's questions are "adversarial" and violate the OMA, noting that questioning does **not** make a principal an adversary of its agent. An agent focused on performance should welcome such questions. The First Order further concluded that "What is adversarial here is not PREPA's legitimate questions; but rather LUMA's boilerplate, insufficiently explained dismissals of those questions."
- (vi) **Section 5.6(g) of the T&D OMA "support" requirement:** The First Order rejected LUMA's reading of §5.6(g) as requiring unconditional backing of its rate proposals, noting that, 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

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<sup>2</sup> The First Order also rejects LUMA's argument that the discovery efforts carried out in the Rate Case violate Sections 5.1 (LUMA's duty to provide T&D O&M services and operate and maintain the T&D system); 5.6(a) (PREPA's irrevocable authorization of LUMA to represent it before the Energy Bureau in matters related to T&D O&M and to prepare necessary filings); 6.1 (PREPA's rights and responsibilities regarding operation, management, and maintenance of the T&D system) of the T&D OMA.

expertise,” or “shall refrain from asking questions that help the Hearing Examiner build the necessary evidentiary record.”

- (vii) **Section 6.1(vii) of the T&D OMA requirement for PREPA to “cooperate with [LUMA] ... in obtaining and maintaining all Governmental Approvals”:** The First Order found that LUMA “severs ‘cooperation’ from its context.” In Section 6.1(vii), cooperation means providing LUMA the information necessary to obtain government approvals. It does not mean “going on mute when PREPA has a question or disagrees with a LUMA proposal,” “shelving PREPA’s expertise,” or “putting a cap on its curiosity.” PREPA’s questions neither impede LUMA’s operational responsibilities nor obstruct its performance under the OMA. To the contrary, “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.”

5. The First Order concluded by ordering LUMA answer almost all of the ROIs submitted by PREPA, noting that the requests were legitimate and “[t]he Energy Bureau’s consultants, and [Hearing Examiner], have [their] own interests in the information sought by PREPA.”<sup>3</sup>

6. On July 21, 2025, the Hearing Examiner issued a second order titled “Hearing Examiner’s Order Clarifying PREPA’s Role in the Rate Case Evidentiary Hearing” (the “Second Order”). In this ruling, the Hearing Examiner sought to clarify that the prior July 18 order should not be construed as authorizing PREPA to cross-examine LUMA’s witnesses at the evidentiary hearing. The Second Order drew a sharp distinction between discovery — which the Hearing Examiner described as non-adversarial —and cross-examination, which the Hearing Examiner characterized as “inherently adversarial.” Relying on Act 120 of June

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<sup>3</sup> PREPA does not seek to alter or disturb the First Order and refers to it herein solely for background purposes.

21,2018, as amended, known as the “Puerto Rico Electric Power System Transformation Act” (“Act 120-2018”) and on the T&D OMA, which provides that LUMA is responsible for preparing, presenting, and defending rate cases as PREPA’s representative before the PREB, the Hearing Examiner concluded that PREPA’s and LUMA’s legal interests are aligned, making it “not logical” for PREPA to be treated as LUMA’s adversary. The Second Order stated that “in properly run administrative adjudication, cross-examination is available only to adversaries,” and described the PREPA–LUMA relationship as “not only non-adversarial, but... hand-in-glove.”

7. PREPA respectfully disagrees with the Second Order, as it unduly restricts PREPA’s ability to test the evidence presented by LUMA through cross-examination—a well-established procedural safeguard that strengthens, rather than undermines, the objective of Act 120-2018. Far from fostering an adversarial relationship, cross-examination by PREPA will assist the Energy Bureau in developing a complete and reliable record to determine whether the proposed rates satisfy the applicable statutory standard.

8. Procedurally, the Rate Case is an adjudicatory proceeding subject to a formal adjudicatory hearing under Act No. 38 of June 30, 2017, as amended, known as the “*Government of Puerto Rico Uniform Administrative Procedure Act*” (“PR-APA”).<sup>4</sup>

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<sup>4</sup> See Section 6.25 (c) of Act 57 of May 27, 2014, known as the “Puerto Rico Energy Transformation and RELIEF”, as amended (“Act 57-2014”) (“Any modification to a rate proposed, whether to increase or decrease the same, shall undergo a discovery and a public hearing process to be held by the Energy Bureau ...”) and Section 6.25(d) of Act 57-2014 (“Upon concluding the public hearing process, the Energy Bureau shall issue its final determination with regards to the rate review request and establish the electricity rate it deems just and

9. The PR-APA guarantees **all parties** in a formal adjudicatory proceeding the **right to cross-examination**. To that end, Section 3.13(b) of the PR-APA, provides that “[t]he presiding officer **shall afford to all parties** to the extent necessary for full disclosure of all relevant facts and issues, timely opportunity to respond, present evidence and argument, **conduct cross-examination**, and submit rebuttal evidence, except as restricted or limited by the stipulations in the prehearing conference.”<sup>5</sup>

10. PREPA, as Owner of the T&D System and Legacy Generation Assets,<sup>6</sup> is the named party in this proceeding. LUMA and Genera, as PREPA's private operators, have likewise been recognized by the Energy Bureau as stakeholders and accorded party status, without the need to file a request to intervene.<sup>7</sup>

11. As a party, PREPA's right to cross-examine LUMA at the public hearing in the Rate Case is not optional, but mandatory. The unambiguous text of the statute clearly confirms this conclusion. It is respectfully submitted that the applicable legal framework does not grant the Hearing Examiner the discretion

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reasonable. Such a determination shall be duly grounded and comply with all the safeguards of the due process of law applicable to the final determinations of administrative agencies.”). See also *Resolution and Order* of February 12, 2025 entered in the above-captioned case (determining that “Once the Energy Bureau declares the rate filing complete, the 180-day statutory period will begin. At that point, the Energy Bureau will have 180 days to hold the evidentiary and public hearings, receive briefs, deliberate, and issue the final Order on permanent rates.”). See also “Regulation on Adjudicative, Notice of NonCompliance, Rate Review and Investigation Proceedings”, Chapter III, Art. XIII, Section 13.01 (“Regulation on Adjudicative Proceedings”). It is worth noting that the Regulation on Adjudicative Proceedings was approved on December 18, 2024, that is, prior to LUMA and Genera becoming private operators of PREPA.

<sup>5</sup> The Spanish version of this provision reads as follows: “El funcionario que presida la vista dentro de un marco de relativa informalidad **ofrecerá** a todas las partes la extensión necesaria para una divulgación completa de todos los hechos y cuestiones en discusión, la oportunidad de responder, presentar evidencia y argumentar, conducir contrainterrogatorio y someter evidencia en refutación, excepto según haya sido restringida o limitada por las estipulaciones en la conferencia con antelación a la vista.” (emphasis ours)

<sup>6</sup> As defined in the T&D OMA and the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement.

<sup>7</sup> See *Resolution and Order* issued on February 12, 2025 in the above-captioned case.

to preclude PREPA from exercising its statutory right to cross-examining LUMA. The word “shall” in Section 3.13(b) of the PR-APA (“[t]he presiding officer **shall afford to all parties** to the extent necessary for full disclosure of all relevant facts and issues, timely opportunity to ... **conduct cross-examination...**”) shows that the right to cross-examination is guaranteed; not discretionary. As such, the Second Order should be revised and set aside.

12. The Energy Bureau and its Hearing Examiner, like any Puerto Rico agency, are bound by the **minimum due process standards** in the PR-APA. Their procedural rules may supplement the PR-APA, but they **cannot diminish statutory rights** unless a statute expressly grants that authority. Neither Act 57-2014 nor Act 120-2018 contains language allowing the Energy Bureau to override the PR-APA's cross-examination provision.

13. PREPA recognizes the Hearing Examiner's concern that cross-examination could be perceived as placing LUMA, Genera, and PREPA in an adversarial posture. However, the scope and purpose of the Rate Case address and dispel that concern.

14. The governing statutory framework binds all stakeholders—PREPA, LUMA, Genera, and the Energy Bureau—to the shared objective of ensuring that rates are “just and reasonable, and consistent with good fiscal and operating practices that provide for reliable services at the lowest cost possible.” See Section 8(f) of Act 120-2018; Section 6.25 (c) of Act 57-2014. The public hearing process, including the opportunity for cross-examination, is a

critical tool to assist the Energy Bureau in fulfilling its statutory duty to determine whether the rates proposed by LUMA, Genera, and PREPA meet this standard. Allowing PREPA to conduct cross-examination, therefore, does not foster an adversarial relationship; rather, it strengthens the Energy Bureau's ability to carry out its mandate by ensuring a full and rigorous examination of the evidence.

15. As the Hearing Examiner has previously recognized, PREPA possesses substantial and unique expertise in the operation, costs, and fiscal management of Puerto Rico's electric system. That expertise can—and should—be placed at the service of the ratepayers to assist the Energy Bureau in exercising effective oversight over LUMA's and Genera's rate petitions, ensuring that they are both proper and compliant with the governing legal standard. Denying PREPA the opportunity to cross-examine LUMA and Genera would deprive the People of Puerto Rico of a valuable safeguard in the rate review process and would ultimately undermine the Energy Bureau's ability to discharge its statutory responsibilities.

16. PREPA's role in the Rate Case is not to oppose LUMA or Genera for the sake of opposition. To the contrary, PREPA will support LUMA's and Genera's petitions to the extent their requests satisfy the statutory requirement that rates be "just and reasonable, and consistent with good fiscal and operating practices that provide for reliable services at the lowest cost possible." Id. PREPA's interest is aligned with that of the Energy Bureau and the People of Puerto Rico in protecting the public from unjust or imprudent rate increases. Where LUMA's or Genera's



proposals are sound, PREPA will have no occasion to exercise its cross-examination rights.

17. It is important to note that the Energy Bureau retains full authority to establish procedural safeguards, such as evidentiary objections, to ensure that cross-examination remains relevant, non-argumentative and focused on the shared objective of verifying that proposed rates meet the statutory standard. Such safeguards can prevent arbitrary or antagonistic questioning without eliminating this essential mechanism for testing the reasonableness of each of the private operator's requests, and the correctness and reliability of their supporting documents and data. In this way, the Energy Bureau can preserve the cooperation among the parties while also ensuring that the hearing process yields a thorough and trustworthy evidentiary foundation for its determinations.

18. Based on the foregoing, even assuming *arguendo* that the Energy Bureau—and by delegation, the Hearing Examiner—possesses the discretion to modify or eliminate PREPA's right to cross-examine LUMA, PREPA respectfully submits that such discretion should be exercised in favor of allowing PREPA to conduct cross-examination. Doing so will not foster an adversarial relationship but will instead enhance the Energy Bureau's ability to ensure that the rates sought by LUMA and Genera are "just and reasonable, and consistent with good fiscal and operating practices that provide for reliable services at the lowest cost possible," as required by law. Allowing PREPA to fulfill this role places its unique

expertise at the service of the People of Puerto Rico and strengthens the integrity of the rate review process.

**WHEREFORE**, PREPA respectfully requests that the Energy Bureau take notice of the foregoing, reconsider and set aside the Second Order, and allow PREPA to exercise its right to cross-examine LUMA.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico this 11<sup>th</sup> day of August 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 counsels or parties of record and Energy Bureau's consultants:

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