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 Establishing (a) Agenda for the September 29 Conference, and (b) Certain Procedures for the Evidentiary Hearing

Hearing Examiner's Order Establishing (a) Agenda for the September 29 Conference, and (b) Certain Procedures for the Evidentiary Hearing

This Order has the agenda for our conference of **September 29, 2025 at 2.00pm Atlantic**. It also has my decisions about certain hearing-related matters. These decisions are subject to change after I hear from counsel that day. I include them in this order as decisions so that if they don't change on Monday, I don't have to issue a new order.

This Order has five parts:

I. Panels and Panelists: Purposes, Organization, and Roles
II. Evidentiary procedure
III. Substantive issues
IV. Physical logistics
V. Schedule

Accompanying this Order are four Appendices:

Appendix A—Exhibits: Process for Numbering and Admitting
Appendix B—Performance Metrics: To be Addressed in a Separate Proceeding
Appendix C—Outline for Rate-Setting in FY26, FY27, and FY28
Appendix D—Solar's Role in Rate Case

This order contains a few questions. We will discuss those questions at the conference. I am not asking for more pleadings.

I. Panels and Panelists: Purposes, Organization, and Roles

Having received like 10 panel-related pleadings and like 30 proposed panelists, now I know how Pandora felt.

A. Planning decisions

1. Advance information: I agree with those who see benefit from (a) having more specific panel definitions, (b) separating some panels into subpanels, and (c) listing in advance possible questions or subject areas that we all want covered. Here is Genera's example:

> [I]n the matter of the Generation Costs panel, one (1) or two (2) days could be dedicated to Operations, Engineering, Construction and IT and another one (1) or two (2) days to Human Resources, Finance, Legal and Regulatory, depending on what the panelists deem necessary.

I will try to address these thoughts after the Energy Bureau consultants have submitted their reports.

2. What specific information will a panel cover? A specific answer is unlikely until shortly before the hearing. The questions to a panel could be about any cost, project, or activity that affects the proposed revenue requirement. The priority areas are likely to be items that are large, or whose value for FY26-FY27 are unclear or controverted. We know what costs are large. As for unclear, that is a matter that PREB's consultants are studying. So it is reasonable to assume that costs questioned by the consultants' reports are likely candidates for questioning. As for controverted, the disappointing fact is that few intervenors actually questioned specific costs. Even those who addressed the customer-vs.-FEMA funding question had little to say about the reasonableness of particular projects or costs.

3. "Talking points" in advance: UCC suggested (Sept. 26 at 2 n.4) that I require panel witnesses "to provide talking points or proposed direct testimony covering the areas of inquiry that the panel witness will be prepared to address at the evidentiary hearing." To the extent I issue panel subtopics or questions in advance, this idea could add value because written preparation always sharpens oral dialogue. The problem is that our days our running out, so I cannot promise to take this step.

4. "Surprises": Bondholders don't want surprises. Then why have hearings? The Commissioners want new insights. Some insights might cause "surprise." That's not a due process problem; that's progress toward informed decisionmaking. On certain panels, like interutility cooperation and conflicts of interest, plenty will be new. That's not unfairness; that's education. What is unfair about a surprise is not the surprise but how it occurs and what I do with it. I will protect all parties' rights. But when you assert rights, kindly specify them rather than cite "due process" boilerplate.

5. Substitute witnesses: A substitute adopts the departing witness's entire prefiled testimony and all associated ROIs. LUMA has identified Ms. Hanley and Mr. Sosa Alvarado. Are these individuals substitutes? For whom, and why?

6. Panelists questioning panelists: If I think this step will produce insights efficiently, I will use it. I have done it other cases, including at FERC. There is no "due process" problem.

7. Transmission and distribution: Separate panels or combined? Good question from Bondholders. To be discussed at the conference. If these panels remain separate, they will be adjacent in time. And it still makes sense to organize at least the PREB's questioning separately by these topics, recognizing that there are some common issues like vegetation management.

B. Proposed panelists who did not submit prefiled testimony

1. In general: I will allow panelists who did not submit prefiled testimony only if I think it will help the Commissioners. I had in mind only subject matter experts from the three utilities; specifically, nonfiling persons who authored an ROI response, or whose knowledge of a specific area exceeds that of the utility's prefiling panelist. I will not allow new information unless I see a gap important to the PREB's decisionmaking. If I allow that new information, I will find a way to accommodate responses. Sometimes I might have to hear the information before ruling on its admissibility.

2. Decision: I will restrict the panels to prefiling witnesses, but ask the three utilities to have in the room during a panel those experts who are relevant to that panel. Those people could be employees or consultants. If a question arises that a utility's prefiling witness cannot answer, I would add the nonfiling utility expert to the panel.

On this topic, PREPA says (Sept. 26): "Applicants' fact witnesses who have not submitted pre-filed testimony should be permitted to testify at the evidentiary hearing, so long as their testimony elaborates on financial data, general descriptions, or other information already reflected in the record. . . ." Again, the only role for a nonfiling panelist will be to assist in situations where that person knows more than does the prefiling panelist. Counsel who try to fill their panelists' heads with lists of things to "get into the record" are making a mistake.

3. Unsecured Creditors' Committee, SREAEE: Consistent with the immediately preceding item (B.2), filing rebuttal testimony is the sole valid basis for joining a panel. Remember that rebuttal is rebuttal. Please do not make me spend time issuing orders to strike. And do not file rebuttal merely to gain a panel position that you then use to say at the hearing what you were supposed to submit on September 8. I am not saying that you would ever do such a thing; I mean only to calm down those who worry that you would.

C. Prefiling witnesses who are not presently on any panel

Three prefiling witnesses are absent from any panel: Oscar X. Ocasio González (PREPA's CFO), José Del Río-Vélez (Genera's VP of Fuels), and Juan Iván Báez Santiago (Genera's VP of Public and Government Affairs). These witnesses must be available for cross-examination. On Monday I will ask on which panel we can best place them.

D. "Rights"

PREPA says it "reserves the right" to identify panelists later. I never created that right. And I am unaware of any underlying constitutional or statutory right to a panel placement. At this point, the only witness-related rights are the rights to submit intervenor rebuttal and utility surrebuttal, and the cross-examiners' right to question prefiling witnesses and nonfiling panelists members.. If I am missing something, tell me now.

ICSE is still "identifying" panelists. Please update us all Monday.

E. "Fairness"

Let's aim for a workable definition that relaxes expectations. We don't want an interruption and objection every time the needle moves a notch against someone. I ask a question of A; she answers. Then B raises his hand asking to comment about A. I say no. B's counsel rises to object. I cave, allowing B to speak. Then C, D, E, and F all raise their hands, because their counsel told them to take every opportunity to help the client. Now what?

My Energy Bureau colleagues and I will ask the questions that we want to ask, of those people we choose. There will not be equal time for every person. No case law says otherwise. That a tribunal questions some witnesses more than others, and some witnesses not at all, is not surprising. Nor is it a Due Process Clause violation, because there is no right to be questioned. The place to state your piece is the prefiling testimony.

Parties who try to use every panel opportunity to restate or overstate their positions risk hurting us all. Certainly you know this passage from Garret Hardin's famous essay, *The Tragedy of the Commons*:

> Picture a pasture open to all. . . . As a rational being, each herdsman seeks to maximize his gain. Explicitly or implicitly, more or less consciously, he asks, "What is the utility to me of adding one more animal to my herd?" . . . [T]he rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another; and another. . . . But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit—in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own

best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.

The evidentiary hearing is our commons. Each person who overconsumes time reduces the value to all.

F. Miscellaneous

1. Bondholders: What is Dr. Tierney bringing to the panels?

2. PREPA (Sept 26): "To avoid claims of prejudice or undue surprise, a deadline should be established for the Applicants to identify the witnesses and provide a summary of their expected testimony." PREPA misunderstands. There is no "expected testimony." There are only questions from the questioners, for the panelist to answer.

3. PREPA (Sept. 26): "Expert witnesses should not be allowed to present new opinions at the evidentiary hearing through live testimony, only to elaborate on their previous opinions." I disagree. The job of a regulator is to improve performance. We cannot improve performance if we never challenge experts and officials to adjust their opinions.

4. Bondholders' concern (Sept. 25): All prefiled testimony that I admit is admitted. Removing a witness from a panel does not change that fact. Bondholders need have no concern.

5. No-cross witnesses: At some point, I will ask counsel to determine among themselves if there are any prefiling witnesses whom no one wants to cross. I ask Mr. Brady to handle this task, gradually, with a full answer by **November 3.** These individuals, if any, are not off the hook, because the tribunal might have questions.

6. Interparty and intercounsel relations: I have dealt with the main parties, their counsel, and their high officials, continuously for almost a year. Despite all the pressures and stakes, I have never seen any conduct that I viewed as untrustworthy or unprofessional. Have I viewed every effort to persuade me sufficiently distant from an attempt to fool me? No. But I remain impressed by and appreciative of all participants' professionalism. What I find unuseful are the occasional intercounsel accusations of bad-faith actions, of attempts to gain unfair advantage. These accusations produce unnecessary back-and-forths that chew up time and gain nothing. When I see a basis for distrust, I will act. Until then, let's focus on our joint mission: getting our fellow citizens reliable electric service at a reasonable price.

II. Evidentiary procedure

A. Tentative procedures for getting existing submitted materials formally into evidence: See Appendix A.

B. Procedure for getting ROI responses (i.e., ones not attached to someone's prefiled testimony) formally into evidence: My tentative plan is to require, before the hearing, that a committee of counsel create a consolidated list of these items (which will include those identified by me on behalf of PREB consultants and Commissioners). I will then ask for objections. All items attracting no objection, I will deem admitted. All items attracting an objection, I will rule. These steps will occur before the hearing, possibly in stages. For ROI responses made by a person who is not a panelist, the response must be adopted by someone who is a panelist, so that the response can be subjected to cross-examination.

C. Mid-hearing materials: These items are for cross-examination only. If you want them marked for identification during the hearing, upload them to the platform no later than the night before. Fail to do so? Risk rejection, but at least bring enough paper copies to the hearing. Oh—you want to surprise the witness? Tell me what feature of "due process" creates that right. I am open.

D. The "Direct Testimony" ritual: I propose to eliminate it. A week or so before the hearing, I will admit all prefiled testimony not subject to objection, "as if the witness presented every word orally." I will also then rule on any objections. Then at the hearing I would simply swear all witnesses in. PREB questioning or party cross-examination then begins. There is no need for counsel to introduce the witness formally. Any concerns?

E. Materials proposed for "administrative notice": Under consideration. Ideas?

III. Substantive issues

A. Relationship of rate case to metrics case: See Appendix B.

B. Relationship of FY26 to FY27 and FY28 (in terms of what this case might decide): See Appendix C.

C. Possible boundaries on the role of "solar" issues in this rate case: See Appendix D.

D. Consideration of PREPA's legacy debt

This subsection addresses the portions of PREPA's September 26 submission relating to PREPA's legacy debt. I interpret that submission as an objection to the Energy

Bureau's considering, at all, whether to reflect in the revenue requirement any amount of legacy debt.

1. The Energy Bureau has already stated, via the filing requirements, that it will consider whether to include in the revenue requirement an estimated proxy for legacy debt. *See also* the Provisional-Rate Order (July 31, 2025) at 31-32.

2. PREPA's legal arguments are incorrect.

- Nothing in PROMESA preempts the Energy Bureau from carrying out its obligation to make rates just and reasonable. Including in rates an estimate of what will emerge from the Title III process has no effect on that process. Of course, any estimated debt amount included in the rates would be subject to reconciliation with what becomes the actual debt amount.

- The legacy debt funded assets that benefit today's customers. Just-and-reasonable rates always reflect the costs of assets that benefit the customers paying those rates. Not to even consider whether customers in FY26 should pay something toward this debt is arbitrary and capricious.

- PREPA is correct that we don't know what the final number will be. Any number could be right or wrong. Any number, that is, except zero. PREPA wants the Energy Bureau to adopt for debt the one number that everyone knows is wrong. Where's the logic for that? Yes, the Commonwealth Government might provide the funds. And for the next three years there might be no hurricanes and no storm costs. Still, we must consider the possibilities and set rates accordingly.

- According to PREPA, the FOMB said that "PREPA will not be able to impose any additional rate increases for debt service above the rates necessary to pay for the [fuel and purchased power] costs and maintenance costs." PREPA Fiscal Plan at 118. The FOMB doesn't set rates; the Energy Bureau does. The FOMB doesn't decide what nondebt costs go into rates; the Energy Bureau does. Rate dollars are fungible. There is an infinite number of ways to build a practicable revenue requirement—one that customers will actually pay—from debt dollars, operational dollars, fuel dollars, and capital expenditure dollars. The FOMB does not build that revenue requirement; the Energy Bureau does.

3. PREPA can use its post-hearing brief to argue against including a legacy debt estimate in rates. But I am not removing the question from this case. What I ask from the witnesses are (a) useful thoughts about credible numbers to use, and (b) methods for reconciling estimated debt amounts with later-determined actual debt amounts.

4. PREPA worries that "parties in the Title III process could seek to rely on a determination by the Energy Bureau on these matters—even if based on incomplete or speculative information, or rendered without proper legal authority—as persuasive

evidence against PREPA in the Title III proceedings." An unavoidable feature of U.S. legal practice is that lawyers can say plenty that is wrong. That ever-present possibility doesn't gag the Energy Bureau. More to the point: No party and no Title III Judge will misinterpret an Energy Bureau decision that labels a debt line item as an "ESTIMATE TO BE REPLACED BY THE DEBT AMOUNT EMERGIGN FROM TITLE III."

IV. Physical logistics

A. Remote witness participation

B. Remote attorney appearances

C. Number of attorneys likely to be present at any one time

D. Hearing location and capacity

E. Hearing attire (Hawai`i PUC had aloha-shirt Fridays)

V. Schedule

A. Calendar for the entire process

B. Possible change in schedule for PREB consultants' submissions

Be notified and published.

_____
Scott Hempling
Hearing Examiner

CERTIFICATION

I certify that the Hearing Examiner, Scott Hempling, has so established on September 29, 2025. I also certify that on September 29, 2025, I have proceeded with the filing of the Order, and a copy was notified by electronic mail to: mvalle@gmlex.net; arivera@gmlex.net; jmartinez@gmlex.net; jgonzalez@gmlex.net; nzayas@gmlex.net; Gerard.Gil@ankura.com; Jorge.SanMiguel@ankura.com; Lucas.Porter@ankura.com; mdiconza@omm.com; golivera@omm.com; pfriedman@omm.com; msyassin@omm.com; 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; regulatory@genera-pr.com; legal@genera-pr.com; mvazquez@vvlawpr.com; gvilanova@vvlawpr.com; ratecase@genera-pr.com; jfr@sbgblaw.com; hrivera@jrsp.pr.gov; gerardo_cosme@solartekpr.net; 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; monica@emmanuelli.law; cristian@emmanuelli.law; lgnq2021@gmail.com; jan.albinolopez@us.dlapiper.com; Rachel.Albanese@us.dlapiper.com; varoon.sachdev@whitecase.com; javrua@sesapr.org; Brett.ingerman@us.dlapiper.com; brett.solberg@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; zack.schrieber@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; Isaac.Stevens@dechert.com; James.Moser@dechert.com; Kayla.Yoon@dechert.com; Julia@londoneconomics.com; Brian@londoneconomics.com; luke@londoneconomics.com; juan@londoneconomics.com; mmcgill@gibsondunn.com; LShelfer@gibsondunn.com; jcasillas@cstlawpr.com; jnieves@cstlawpr.com; pedrojimenez@paulhastings.com; ericstolze@paulhastings.com; arrivera@nuenergypr.com; apc@mcvpr.com; ramonluisnieves@rlnlegal.com.

I sign this in San Juan, Puerto Rico, on September 29, 2025.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

Sonia Seda Gaztambide
Clerk

Appendix A

Exhibits: Process for Numbering and Admitting

The simple approach described here avoids renumbering the 47 pieces of testimony already submitted, avoids time-consuming "marking for identification" before or during the hearing, and creates a clear platform organization for the parties and the Commissioners. It creates a file system that the Energy Bureau's appellate team can convert into the format required by the appellate courts. This document has four parts:

- Initiating the process
- Numbering all documentary evidence for identification
- Admitting or rejecting documentary evidence
- Using the Accion platform

I. Initiating the process

I will issue a Hearing Examiner order stating that prefiled testimony and accompanying materials are deemed presented for identification ("documentary evidence") and proposed for admission. I will assign identification numbers to each item per Part II below.

II. Numbering all documentary evidence for identification

A. On a deadline that I establish, each party will upload all testimony and accompanying documents, in pdf, into an Accion platform folder labeled "Marked for Identification."

B. *File names--use existing numbers:* Each document's filename will state the presenting entity, followed by a number. To save time, work, and confusion, parties will use the numbering system initiated by the three utilities in their July 3 application. As was done in the application, each party's first number will be the number that follows the last number of the preceding party. Therefore, here is what we have so far, as a result of the July 3 application:

LUMA 1.0 to LUMA 20.0

Genera 21 to Genera 30

PREPA 31 to PREPA 47

C. In addition to the documentary evidence labeled as testimony and "exhibits" in the July 3 application, the three utilities included many schedules, worksheets, and other documents. Here is the process for dealing with those documents:

> For each document that a utility wants marked for identification and admission (including Schedules A-1 and A-2 (July 16, 2025), the Long-Term Investment Plan (Aug. 19, 2025), and other schedules filed with the testimony on July 3): The utility must assign that document to a sponsoring witness, and label the document using a number that starts with the number associated with the witness's testimony.
>
> Example: Shannon's testimony was LUMA 20.0. LUMA would label schedules and other documents not previously numbered, for which Shannon is the sponsoring witness, beginning with LUMA 20.04 (because LUMA has already labeled a document LUMA 20.03).

D. Confidential exhibits: Label them clearly and include a Redacted version. Label as follows: LUMA 11.02 CONFIDENTIAL and LUMA 11.02 Redacted.

E. CEO testimony: The last July 3 "exhibit" was PREPA 47. So I am designating the CEO testimony due September 22 as LUMA 48, Genera 49, and PREPA 50.

F. I am designating intervenor documents as follows:

> Bondholders: Hogan BH 51; Hurley BH 52; Tierney BH 53
>
> ICPO Sanabria: ICPO 54
>
> ICSE Cao: ICSE 55
>
> SESA Datta: SESA 56.00 - to 56.02
>
> SUN Faruqui: SUN 57
>
> Walmart Chriss 58.0 - to 58.02

G. I am designating that PREB Consultant expert reports will begin with: PREB 59.0

H. The Applicants' surrebuttal materials will begin with the number that follows the last PREB consultant number. I will require the three utilities to coordinate their surrebuttal numbering, as they did with the July 3 application. So if the last PREB consultant item was PREB 62.0, for example, the applicants' surrebuttal materials would begin with LUMA 63.0.

I. *If a witness's testimony quotes from an ROI:* Present the ROI (the entire question and answer, including supplemental responses and any follow-up questions and responses) for identification as evidence. To do so, the party has two options: (1) if there are only a few ROIs, append them to the testimony (that combined document then having a single number); or (2) if there are more than a few ROIs, or if they are lengthy, create a separate numbered document that contains all the ROIs that the witness cites.

Example: If Bondholder witness Tierney (BH 53.00, per above) cites multiple ROIs in her testimony, Bondholders will create a document that contains all ROIs used to support Tierney's testimony, and label it as BH 53.01.

Note: The only documents that anyone should mark for identification are materials that a party (or a PREB consultant) wants in evidence. So if in the past few months a party replaced Document X with Document Y (e.g., because Document X had an error), only Document Y needs to be marked because the party is presenting only Document Y for admission. An example is Revised Schedule O-1. (If an opposing party wants erroneous Document X in evidence, they can ask the Hearing Examiner to admit it.)

III. Admitting or rejecting exhibits

A. Before the evidentiary hearing

1. The Accion platform will have produced a master list of all uploaded documentary evidence marked for identification. By a prescheduled deadline, I will require parties to use the Accion platform to identify any document to which there is an objection.

2. Once I see the number of objections, I will create a deadline for written objections and responses. If necessary I will hold a conference to hear arguments. Then I will issue an order admitting or rejecting those disputed items. A party wishing to make an offer of proof of a rejected item must do so within three 3 days of my order.

B. During the hearing

If cross-examiners wish to introduce documentary evidence during the hearing I will require the party to upload that material into the Marked for Identification folder on the Accion platform no later than 8.00pmAtlantic the night before the date on which the cross-examiner will introduce the document. If I have not already addressed this material, I will rule on the request at the hearing. At that time, I will designate each such document by the cross-examining party and by the next consecutive number.

Example: If the last surrebuttal exhibit was PREPA 71.0, and if LUMA is the first party to cross-examine, LUMA's first cross-ex exhibit would be LUMA 72.0.

IV. Using the Accion platform

A. The Accion platform will have four folders:

Marked for Identification

Admitted

Rejected but not subject to offer of proof

Rejected and subject to offer of proof

B. Accion platform functions

1. On a deadline that I establish, all parties will upload their labeled documents in pdf into the folder on the Accion Platform labeled "Marked for Identification" and provide the information required in 2. (a-d) below to populate the master list.

   The Accion platform will produce and continually update a master list of documents. The master list of documentary evidence will include:

   a. Documentary Evidence Number, e.g. LUMA 1.0

   b. Description, e.g. Direct Testimony, Schedule A-1, or ROIs

   c. Sponsoring Witness, e.g. Alejandro Figueroa

   d. Date document was filed in NEPR-AP-2023-0003, e.g., July 3, 2025

e. Date document was deemed Marked for Identification, e.g., upload date

f. Status: Admitted, Rejected but not subject to offer of proof, Rejected subject to offer of proof

g. [Pointer to Ruling Document (e.g., "See Order of," "See Transcript p. 123, ll. 5-15")] [This item is still under discussion.]

2. At the time parties upload documents into the “Marked for Identification” folder they must provide the information in 1. (a-d) above to populate the master list.

3. Someone authorized by the Hearing Examiner, will use the platform to mark the status of each document in the Marked for Identification folder (e.g. admitted or rejected). The platform will sort the documents into the appropriate folders. If documents are not admitted or rejected, the platform will reflect the status as “proffered.” Those documents will simply remain in the Marked for Identification folder. The clerk will use the platform to mark documents admitted or rejected during the hearing on the day the Hearing Examiner rules on the document’s admission.

4. At the end of hearing, the Hearing Examiner will set a deadline by which all counsel must confirm accuracy of all the folders.

Appendix B

Performance Metrics: To be Addressed in a Separate Proceeding

In addressing the relationship between the revenue requirement and incentive compensation, the Energy Bureau's Resolution and Order of February 12 Order stated:

> In setting the revenue requirement, the Energy Bureau must act consistently with its other orders, including its orders establishing performance metrics. The revenue requirement established in the instant proceeding therefore must include the costs that a prudent operator needs to incur to achieve those metrics.

That Order also directed LUMA, Genera, and PREPA to develop optimal and constrained budgets, describing those budgets as follows:

> In the Optimal Budget there are no tradeoffs among activities; every activity receives the necessary costs. That is why it is called the Optimal Budget.
>
> For the Constrained Budget, tradeoffs are unavoidable; the Energy Bureau will have to elevate some needs over others. But the revenue requirement still must give LUMA and Genera a reasonable opportunity to achieve the metrics that trigger for each operator its respective incentive fee. In addressing the revenue requirement for the Constrained Budget, therefore, the Energy Bureau will need to adjust the metrics, or the allocation of compensation, or both, to reflect the lower budget amount that some areas of the Constrained Budget will receive as compared to the Optimal Budget. The Energy Bureau has the authority to make these adjustments in this rate proceeding. Section 1.5 (3)(d) of Act 17-2019 states: "When deemed appropriate, during ratemaking processes, the Bureau shall establish performance-based incentives and penalty mechanisms for electric power service companies as well as mechanisms that ensure strict compliance with the orders of the Bureau. . . ." . Any adjustment shall consider the metrics approved by the Energy Bureau in the performance metric proceeding and shall be consistent with just-and-reasonable ratemaking.

The Energy Bureau established performance metrics in its Resolution and Order of January 26, 2024. In the current rate proceeding, the testimony submitted thus far (which covers LUMA's witnesses and those of six intervenors) contains no proposed adjustments to the existing performance metrics that would align those metrics with LUMA's proposed Constrained Budget. As LUMA witnesses Granata and Laird pointed out, any proposal to adjust performance metrics must be based on the Energy Bureau's final revenue requirement, along with the allocation of the underlying costs across LUMA's departments and projects.

Given these facts, the logical forum for adjusting the existing metrics is a separate performance metrics case, not this rate case. No party need submit evidence or briefs on that topic.

Appendix C

Outline for Rate-Setting in FY26, FY27, and FY28: Three-Year Transition to Systematic Combination of Recordkeeping, Budgeting, and Ratemaking in FY28

April 10, 2026: Issue Order that sets the budgets and permanent rates (based on revenue requirement and rate design) for FY26. The Order will also set permanent rates for FY27. The permanent rates for FY27 would reflect—

- a continuation of the FY26 priorities that remain priorities,
- minus FY26 activities that will have been completed,
- plus inflation for specific cost items identified by the Energy Bureau,
- plus any projects that the FY26 RO deferred to FY27, to the extent information is available and sufficient,
- plus any items that, between now and April 10, 2026, PREB determines are worth paying for in FY27.

This order also would specify processes for establishing—

- new requirements for data collection and project budgeting, for use in the next formal rate proceeding; and
- a process for creating an explicit long-term capital expenditure plan that takes into account the condition of the electricity system, and the planning, taking into account the state of the system.

April 20-June 25, 2026: Per the usual budget process, create budget for FY27, confined by the permanent rates for FY27 established on April 10, 2026. This task should not require much work because the thinking necessary to create this confined FY27 budget would have occurred as inputs to the April 10, 2026, decision on FY26 and FY27 permanent rates.

July 1, 2026: FY27 rates, established by the RO of April 10, 2026, go into effect.

Anytime after issuance of the FY27 budget, but probably no later than September 1, 2026: Energy Bureau initiates a budget proceeding to create a revised budget for FY27. This proceeding would produce a revised budget that would address (a) the need for any new expenditures not addressed in the April 10 RO, plus (b) any need to increase or decrease expenditures that were addressed in the April 10 RO.

This proceeding would also continue an orderly transition to reliable budgeting and ratemaking that are based on proper recordkeeping procedures, including (a) adherence to the Uniform System of Accounts, and (b) display of budget information on an activity-specific basis such as that described in Scheduled A-1 and A-2 of the Filing Requirements established by the Energy Bureau's Order of February 12, 2025.

When that revised budget is ready, the Energy Bureau would—

- issue RO approving budget amendment reflecting the new budget;

- issue RO initiating rate modification procedure under section 6.25(d) of Act 57, to set new rates consistent with the amended budget, retroactive to the date of this RO, and to establish all necessary changes in the utilities' recordkeeping; and

- if necessary, declare an emergency based on the need to carry out the projects reflected in the budget amendments and press LUMA to seek emergency rates to fund those projects.

The Energy Bureau can also use this midyear process to discuss and set the budget for FY28. That is, if in April 2027 there is no reason to change the amended budget, the PREB's annual budget process would then adopt as the FY28 budget the amended budget as it exists, possibly adjusted by inflation and any new projects identified since the midyear modification proceeding. If there were no new expenditures (because the midyear proceeding addressed all projects), there would be no need for a separate rate case for FY28, since rates established via the midyear rate modification would remain in effect until changed.

Sept. 1, 2026: If nothing has happened since June 25, 2026 (in other words, if there was no need for the midyear modification discussed above), the Energy Bureau would start, on Sept. 1, 2026, a full rate case for FY28. This rate case would establish the budget for FY28 and the rates to support it. It would also require necessary changes in the utilities' recordkeeping.

Explanation: FY26 and FY27 are transition years, for these three reasons:

- Eight years have just passed with only one attempt—the current rate case—to combine budgeting and ratemaking.

- The Energy Bureau's first attempt to combine budgeting and ratemaking, FY26, won't be completed until FY26 is almost over.

- As a result of the preceding two items, the Energy Bureau won't have had any opportunity to use FY27 for major changes in the combined budget-and-rate process.

The above process creates a transition, from now to FY28, to a modern, accountable process that systematically combines budgeting, ratemaking, and recordkeeping. It retains the annual, fiscal-year budget process that FOMB requires of PREPA. At the same time, it frees the PREB to use midyear rate modifications as necessary to align rates with needs, as those needs arise.

Appendix D
Solar's Role in Rate Case

Various parties and their witnesses—LUMA, SESA, SUN, and Victor González—have presented positions that involve the intersection between rate design policy and solar energy policy. The breadth of some of these presentations suggests a need to define carefully what issues are within and outside this proceeding. I offer the following tentative views to get the parties' reactions. I then will make a decision—which, like all my decisions, parties may appeal to the Commissioners.

The relevance of solar to ratemaking generally

In the *revenue requirements* phase, the relevant solar issues are the cost of interconnecting solar facilities, and the costs of any necessary upgrades to the distribution and transmission systems. That much, I assume, is clear to and accepted by all parties.

In the *rate design* phase, there are two questions relevant to solar: The first question is how various rate designs affect solar penetration. The second question is how those changes in solar penetration affect the demand (kW) and consumption (kWh) billing determinants that the Energy Bureau will use to set rates.

None of the above-described subjects include, or require, explorations into a subject commonly referred to as "value of solar"—values such as reducing dependency of fossil fuels, increasing reliability, and deferring investments in generation and transmission. That issue, as I have always understood, involves calculating nonrate benefits and counting them as offsets that compensate for, and therefore justify, including in net-metering customers' bills only net kWh consumption. Since the statute already limits those bills that way, I am not seeing the relevance to our rate case of "value of solar." The logical place for a debate about value of solar is an IRP proceeding, or a special solar proceeding such as NEPR-MI-2024-0006 (Draft Study on Net Metering and Distributed Energy), and NEPR-MI-2025-0003 (Community Solar Regulatory Framework).

The future of solar as a rate case issue

The SESA and SUN witnesses also expressed concern about rate design's effects on solar's future. The question is whether and how that concern fits into this rate case. Rate design affects demand; demand, under some conditions, affects the need for infrastructure. In Puerto Rico, the amount, type, and timing of infrastructure—adding new facilities and retiring old ones—is addressed in IRP proceedings. It is my understanding that the current IRP focuses on what resources are necessary to meet that portion of the load not met by distributed-generation solar. That is, as I understand it, the IRP treats projected DG solar adoption as a given, then focuses on what additional infrastructure is

necessary to meet projected demand. The IRP focuses on the longer term—out to twenty years. This rate case focuses on the next two to three years. Given that difference in time spans, it is not necessary for this rate proceeding to address the effect of rate design on the future of solar. The focus needs to be on getting the correct billing determinants, so that we set rates that produce the necessary revenues.

One can argue that solar penetration, or the lack of it, affects the cost and quality of electric service in multiple ways. A common argument is that residential solar's avoidance of fixed costs normally recovered through kWh charges shift those fixed costs to others, accelerating the adoption of solar and thus increasing the shift. SESA's and SUN's witnesses question that view. Some say that though (a) higher customer charges discourage solar adoption, (b) the resulting reduction in the kWh charge increases electric vehicle adoption.

These economic effects, and the associated arguments (with the exception of effects on billing determinants), seem to me to be outside the scope of a proceeding whose statutory purpose is to set rates that are just and reasonable and produce the necessary revenue requirement. The correct forum for discussing net-metering customers' responsibility for systemwide fixed costs normally recovered by kWh charges, is the Legislature, not the Energy Bureau. Do however, note my phrase "normally recovered." I am not preventing debate on whether nontraditional costs, such as pension costs and subsidy costs, can be recovered through a fixed charge. I am saying that if someone advances that idea, they need to distinguish those costs from the costs that traditionally go into the monthly customer charge.

The need for clarity about costs

The SESA and SUN witnesses expressed concern about LUMA's proposal to raise the monthly customer charge in FY26 from $4 to $10. On this topic, the dialogue risks confusing participants and layreaders. Specifically:

- Traditionally, what regulators call a "customer charge" is a charge that recovers costs that vary with the number of customers. Examples are the costs of customer meters and "service drops"—the latter being the lines that connect the utility's pole to the customer's residence or business. Traditionally, all other costs get recovered through kW demand charges (for business customers) and kWh consumption charges (for all customers).

- Because the monthly customer charge is a fixed charge, some regulators include in it, along with the cost of meters and service drops, some of the costs that normally get recovered through the kWh charge. For example, some regulators might want to ensure that stranded costs, subsidy costs, or other so-called "public-policy" costs, get recovered from all customers. Those regulators might add those costs to the monthly customer charge. Other regulators might limit

the monthly customer charge to its normal purpose (mostly meters and service drops)—but then place the stranded costs, subsidy costs, and public-policy costs into a new charge, often called a "nonbypassable charge"—a charge that, like the traditional customer charge, is fixed and monthly.

Because of those multiple possible uses of a monthly fixed charge, it is necessary to be clear about LUMA's proposed charge's purposes and the costs that it contains.

One reason to be clear about costs is that an important purpose of rate design—though not its only purpose—is to induce customer behavior that is economically efficient. In rate design, aiming for economic efficiency is a useful starting point. From that starting point, regulators might deviate for reasons such as gradualism and concern for the less well-off. But starting from economic efficiency at least helps identify the tradeoffs between efficiency and those other goals. That process, of shaving the sharp edges off of economic efficiency to achieve other goals, is one reason to be explicit about what costs are being recovered through what charges, and why.

The above explanation might have the following implications for the role of solar policy issues in this rate case:

- As long as Puerto Rico statutes allow net-metering customers to avoid a kWh charge on the excess of gross consumption over net consumption, my understanding is that the Energy Bureau cannot lawfully approve an increase in the monthly customer charge that is a ruse to recover costs that are currently recovered through kWh charge. LUMA therefore needs to be prepared to show that its proposed monthly customer charge does not have that purpose or effect.

- Relatedly, LUMA needs to justify its rate design based on rate design policy, not solar policy.

- It is my understanding that LUMA has provided the information necessary for the Energy Bureau and the parties to determine what costs are in the customer charge, and whether those costs are reasonable costs. Any party that feels otherwise is free to explore that point through discovery or at the hearing.

SESA and SUN therefore need not spend scarce resources arguing about the appropriateness of using the customer charge to recover fixed costs normally recovered though the kWh consumption charge

Conclusion

The above thoughts are ones I will have in mind in addressing any disputes over the admissibility of testimony and the scope of cross-examination. We are all here to learn.

If the parties keep the emphases on making the revenue requirement sufficient and making rate design cost-aligning and practicable, I can accept some moderate diversions in the name of regulatory education. But while rates undoubtedly do affect solar penetration, a rate case is not a forum for making policy on solar energy.