

**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 on Panel
Structure

Hearing Examiner's Order on Panel Structure

This Order presents my decisions on the panel dialogue recently held by the parties. Attached to this order is the October 13 email from Ms. Valle summarizing that dialogue's results. I thank Ms. Valle and all counsel for their efforts. This Order is subject to change based on what I hear from the parties during our conference this Thursday.

Accompanying this Order is my current version (Oct. 13) of the panel roster. Anything redlined or highlighted, I have questions.

No additional written direct testimony: There is no new specific information that I am currently seeking (other than, of course, what other Energy Bureau consultants are seeking through ROIs). There is, therefore, no current evidentiary need for new prefiled testimony. The main reason to have nonfiling witnesses available is to provide details that a same-company filing witness doesn't have at his or her fingertips. That need does not warrant any new filed testimony.

Misunderstanding of the panels' purpose: I understand that some of you view the panels' purpose as solely to "permit participants to cross examine witnesses on their affirmative, written evidence." That view misunderstands the panels' purpose—and possibly the purpose of administrative adjudication. Adjudication is a technique used by administrative agencies to help them make the best possible decisions. Though some parties might have adversarial interests, the purpose of administrative adjudication is not to resolve private disputes over those interests. That narrow purpose is the constitutionally limited purpose of civil litigation. Administrative adjudication has a broader purpose: to create the most comprehensive, informative record, so that the tribunal can fulfill its statutory duty to make the best public-interest decision..

The purpose of the panels, therefore, is not merely to enable parties to confront their adversaries. The purpose is also to help the Commissioners understand the facts and the options. The panel conversations might produce facts and insights not stated before. That is a good thing, not a bad thing. Even in civil litigation, questioning can produce new information and new insights. For our panels, whether those new items come from the mouth of a filing witness or a nonfiling witness is, to me, legally irrelevant. As I have said

before, what matters is not that surprises will happen, but rather how the tribunal deals with surprises when they occur. If a surprise warrants a response, I will elicit that response.

Federal funding: I did not grasp from Ms. Valle's email of 13 October what Ms. Díaz would contribute to the federal funding panel. One purpose of that panel is to help the Commissioners understand which projects are eligible for FEMA or DOE funding, and the probability and timing for that funding, the arrival of which would obviate a base-rate solution. Another purpose of that panel is to explore the formula and procedure presented in the report of PREB Consultant Guímel Cortés. Because that formula is new to all of us, we will benefit from creative good thinking on its pros and cons. On Thursday, Ms. Valle explain what Ms. Díaz's could contribute.

Pension: The main question for that panel is what if any amount the Energy Bureau should include in base rates to cover PREPA's pension responsibility. If Ms. Rivera has information on that topic, it will benefit the Energy Bureau. For that one topic, if she wants to offer written testimony, limited to five pages, by **October 23**, preferably sooner, I will allow it, with any rebuttal due on a date that I will set on October 24.

Emergency Reserve Account: This new idea first appeared in the Energy Bureau's order on provisional rates. Being new, this idea will benefit from a full airing in terms of structure, operation, and amount. Whether that airing comes from a filing witness or a nonfiling panelist does not matter to me. Moreover, the topic does not strike me as inherently adversarial.

Conflicts of interest: For this panel I intend to have only the three CEOs. On this issue, what matters the most is culture, as created and guided by leadership. I would also like participation by ICSE, because I see that organization as having a unique public-interest perspective.

Interutility cooperation: Again, I see this subject as a question of leadership. But I will allow also the individuals, one each, identified by each of the three utilities. I do not see a need for Mr. San Miguel.

Conclusion

Compared to having only prefiling witnesses, some of whose submissions are only very general, the presence of nonfiling panelists can help the Commissioners learn what they need to learn. Compared to having individual prefiling witness appear, one at a time, with weeks passing between witnesses addressing the same subject, the panel approach is emphatically better for all. I have used this approach in over a dozen separate proceedings (though only two were adjudicatory), never with any concern and controversy.

I ask all to focus on educating rather than point-scoring, and to trust that if you raise a fairness concern I will hear you out. Remember that we are here not only for our individual clients but also for the Commonwealth's residents.

Be notified and published.



Scott Hempling
Hearing Examiner

CERTIFICATION

I certify that the Hearing Examiner, Scott Hempling, has so established on October 14, 2025. I also certify that on October 14, 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; msyassin@omm.com; katuska.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; hriviera@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; alexis.ramsey@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;

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I sign this in San Juan, Puerto Rico, on October 14, 2025.




Sonia Seda Gaztambide
Clerk

this is the email to append to the HE order today

From Scott Hempling <shempling@scotthemplinglaw.com>

Date Mon 2025-10-13 3:31 PM

To Sonia Seda <sseda@jrsp.pr.gov>

Dear Mr. Hempling,

All applicants and various intervenors met on October 7th to discuss alternatives to address PREPA's request to allow witnesses who have not yet filed written testimony to participate in the panels.

PREPA circulated a proposal to the applicants and intervenors who participated in the October 7th conference to address this matter and subsequently exchanged communications with them. Below is PREPA's proposal to allow witnesses who have not yet filed written testimony to participate in the panels, along with the applicants' and intervenors' respective positions on the proposal.

PREPA's proposal to allow witnesses who have not yet filed written testimony to participate in the panels.	Applicants' and Intervenors' Position regarding PREPA's Proposal	LUMA's proposed compromise on this issue	PREPA's position regarding LUMA's proposed compromised
1. Identification of Witness: PREPA will identify the witness without pre-filed testimony for each panel. PREPA's proposed witness	Mr. Cory Brady informed the bondholders had no objections to PREPA's proposal.	The following is a direct quote from the email sent by LUMA's counsel: With respect to PREPA, in light of the Hearing Examiner's indication that	PREPA rejected LUMA's proposed compromised.

without pre-filed testimony are the following:

- a. Suzette Díaz – PREPA’s advisor on federal funding, Ari Group, LLC
- b. Brenda Rivera – New PREPA ERS Administrator
- c. Lucas Porter - PREPA’s financial advisor, Ankura Consulting
- d. Jorge San Miguel - PREPA’s financial advisor, Ankura Consulting
- e. Gerard Gil - PREPA’s financial advisor, Ankura Consulting

2. **Written testimony:** Each identified witness will submit written-direct testimony about the information it anticipates will contribute to the panel it was assigned to. If the Hearing Examiner, within the deadlines specified below, identifies the specific topics or questions it wishes

Mr. Pedro Jimenez, on behalf of the Committee, raised no objection.

Thus far, Counsels for Genera have not notified the undersigned any objection.

Ms. Margarita Mercado, on behalf of LUMA, informed the following: “As a general matter, LUMA remains formally opposed to the presence of any witness on a panel who has not provided affirmative written testimony. The point of the panels is to permit participants to cross examine witnesses on their affirmative written evidence, not to present evidence in the first instance.” Notwithstanding,

he intends to permit limited additional utility witnesses to the extent they are needed to provide additional detail, LUMA suggests the following compromise.

LUMA will not object to the inclusion of Brenda Rivera and PREPA’s witnesses on the Emergency Reserve Account. However, each must provide timely and complete written testimony by October 24. Rebuttal testimony, if any, will be due two weeks later, November 7.

LUMA will not object to the inclusion of the three Ankura nonwitnesses (Porter, San Miguel, and Gil) without any further testimony submitted by them as long as PREPA commits in writing that they are being presented merely to support and clarify the testimony of PREPA’s Comptroller and

<p>to address in the panel, the witness will address those topics and answer those questions in the written-direct testimony. The testimony will not make changes to the figures or budgetary requests proposed on July 3.</p> <p>3. Deadline for written testimony: the witnesses written-direct testimony will be filed on or before October 24th.</p> <p>4. Deadline for rebuttal testimony: applicants and intervenors will have until November 7th to object to the proposed witness's testimony or file any rebuttal testimony.</p>	<p>LUMA proposed a compromise.</p>	<p>CEO as previously submitted, and that they adopt that testimony as their own.</p> <p>Further, to the extent that any of the nonwitnesses appear on the total revenue and/or budget panel(s), they will do so only to comment on PREPA's revenue requirement and PREPA's budget.</p> <p>PREPA will withdraw Suzette Diaz, and will not place any of the proposed nonwitnesses on the federal funds panel or rate design panels.</p> <p>Consistent with the letter and spirit of the T&D OMA, PREPA will confirm that none of PREPA's witnesses will oppose LUMA or any of LUMA's requests.</p>	
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Please advise if you have any questions.

Best regards,

Mirelis Valle Cancel
Of Counsel



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& MARTÍNEZ
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