

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

NEPR

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**IN RE: Puerto Rico Electric Power
Authority Rate Review**

CASE NO. NEPR-AP-2023-0003

SUBJECT: Witness Panels

ICSE'S MOTION REGARDING PANEL DISPUTE

TO THE HONORABLE ENERGY BUREAU:

Comes now the **Institute of Competitiveness and Economic Sustainability ("ICSE" as its Spanish acronym)**, represented by the undersigned, respectfully states and prays:

1. On October 12, 2025, counsel for PREPA sent an email to all parties of record summarizing a meeting held on October 7, 2025 by the utilities and various intervenors regarding PREPA's request to allow witnesses who have not submitted pre-filed testimonies to participate in the panels.

2. For the purpose of this motion, the only relevant issue is LUMA's submitted counterproposal which in pertinent part established:

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 CEO as previously submitted, and that they adopt that testimony as their own.

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.

PREPA will withdraw Suzette Diaz, and will not place any of the proposed nonwitnesses on the federal funds panel or rate design panels.

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.

Atty. Valle's email of October 12, 2025, transcribing a "direct quote from email sent by LUMA's counsel" (unspecified date) (emphasis added).

3. That is, LUMA demands as a condition that PREPA waive in advance any reservation it may have regarding the correction of the testimony submitted by LUMA. This new controversy is not a minute procedural impasse but a radical misconstruction of the agency relationship between the utilities—a misconception that, if left unaddressed, threatens to invert the very hierarchy the statute and contract establish, *i.e.*, that LUMA is but an agent of PREPA and not the other way around. ICSE has consistently stressed before this Bureau the need for coordination between LUMA and PREPA, as that is **the only means of advancing the public interest**. But as has been noted by the Hearing Examiner of this proceeding "a solid working relationship evades them." *Order on LUMA's Objections to ROI #PREPA-of-LUMA-8 of July 18, 2025* (July 18 HE Order).

4. However, this misconstruction is not exclusive to LUMA. As an example, in 2023 under Case No. NEPR-MI-2023-0001, In re: Wheeling Implementation, PREPA maintained "the proprietary OSI-PI data from disclosure and not sharing the OSI-PI software with LUMA" even though the Energy Bureau had ordered PREPA to disclose

that information given estimates of marginal energy costs “would improve significantly if LUMA had access to OSI-PI data” held by PREPA. *See Motion to Inform PREPA’s Position in Regard to the OSI PI Fuel Data and Request for Reconsideration of the March 24 Order*, at p. 3 (March 31, 2023) and *Resolution and Order*, at p. 2 (March 24, 2023).

5. On April 12, 2023, ICSE filed a motion responding to PREPA’s March 31 filing, in which in its pertinent part argued:

First, one must not lose sight of the relationship between PREPA and LUMA: principal and agent, respectively. **LUMA’s contractual obligations bind PREPA primarily, as a matter of statute.** In the case before us, as a practical matter, any distinction in legal personality between the two entities vanishes entirely. For purposes of the proceeding at hand, and under its broad regulatory authority, this Bureau has correctly treated them as one and the same, and they must be understood as such.

In substance, in the present case, what this forum orders is for a principal to grant one of its agents access in order to fulfill the very obligations for which it was hired. Thus, as a practical and legal matter, there is no reason to conclude that LUMA is not entitled to access the OSI-PI program.

Moción del ICSE en respuesta al Motion to inform PREPA’s Position in regard to the OSI-PI Fuel Data and Request for Reconsideration of the March 24 Order, at pp. 2-3 (April 12, 2023) (original in Spanish) (emphasis added).

6. As a matter of statute, PREPA bears the responsibility of advancing Puerto Rico’s energy public policy. That is a public function whose implementation may be partially delegated under the legal framework of public-private partnership agreements, but PREPA cannot abdicate its responsibilities to formulate policy as later validated or modified by the PREB. Denying any of its agents access to information necessary to

execute their respective contracts and advancing the implementation of wheeling—as was the case in 2023—is an act contrary to the policy PREPA is charged to advance. However, the same logic applies if the roles are reversed.

7. In the present case, advancing the public policy objective—embodied in the requirement of just and reasonable rates—can only be achieved if PREPA weighs the appropriateness of LUMA’s witnesses and submissions. LUMA’s representations do not acquire the seal of approval of its principal merely because the T&D OMA was executed in 2020. To hold otherwise would reduce the titleholder of the T&D assets to a mere shell of itself, gagged by a contract even if LUMA’s submissions fail to meet a minimum standard of reasonability. After all, it is PREPA’s rate, not LUMA’s.

8. This is ICSE’s understanding of the institutional interdependency between PREPA and its agents. Any effort that denies so has been cause for ICSE’s continuous interventions before the Energy Bureau.

9. If PREPA understands one of LUMA’s witnesses’ testimony would enable this Bureau to approve a rate that is not just and reasonable, PREPA has not only the right but the duty to challenge that testimony. That public interest is a superior one to any contractual claim LUMA may assert under the T&D OMA.

10. As previously stated, the issue at hand is not a mere procedural dispute over how to constitute the panels. In reality, it becomes an inherently substantive matter, as it seeks to restrict PREPA’s statutory rights. Yet even this view fails to account for the full scope of the analysis required. It concerns, rather, a situation in which a principal would be stripped of the authority to exercise its own judgment in overseeing the execution of its

agent's duties. Under Puerto Rico law, the principal-agent relationship is defined by the contract of agency: "By means of a contract of agency (*mandato*), the agent (*mandatario*) undertakes to perform one or more juridical acts in the interest of the principal (*mandante*).” Puerto Rico Civil Code 2020, Article 1401, 31 LPRA § 10361. Who better to determine the ‘interest of the principal’ than the principal itself? To deprive PREPA of that prerogative would nullify the very essence of the agency relationship the Civil Code recognizes.

11. Disputes as the one before us cannot be taken lightly by the Energy Bureau. There is an important question underlying this proceeding since July 11, 2025, when PREPA filed *PREPA's Motion to Amend Rate Application and Objection to LUMA's Requested Provisional Rate Rider Amount*: what is the legal effect when a principal unauthorizes its agent to file on its behalf?

12. ICSE is in no way implying that PREPA's July 11 Motion was correct on the merits. ICSE also highlights that PREPA's opposition in that precise filing was with respect to the provisional rate, which is already in force. Accordingly, the particular matter of that motion was rendered moot. But the question still burns the record.

13. The Bureau's avoidance of it is not sufficient to address the procedural without confronting the substantive. Continued evasion will only foster new disputes further complicating this rate review proceeding. All issues stem from the same root: the Bureau's inaction to define the limits of delegation necessary to prevent structural dysfunction. As ICSE argued in 2023, “any distinction in legal personality between the [three] entities vanishes entirely. For purposes of the proceeding at hand, and under its

broad regulatory authority, this Bureau has correctly treated them as one and the same, and they must be understood as such.” Until the Bureau delineates those boundaries, procedural disputes will continue to mask substantive dysfunction, undermining the coherence of this rate review process.

WHEREFORE, it is respectfully requested that the PREB take notice of the issues described herein regarding the relationship between PREPA and LUMA as they pertain to the constitution of witness panels and:

(i) Approve PREPA’s proposal for the constitution of witness panels;

(ii) Clarify, as a matter of policy and procedure, that the Puerto Rico Electric Power Authority, as principal, retains the statutory and contractual authority to review, approve, or object to the testimonies and filings made by its agent, LUMA, in rate proceedings before this Bureau; and

(iii) Reject or set aside any procedural condition that requires PREPA to waive in advance its right to examine or correct LUMA’s testimonies, as such a requirement would contravene Puerto Rico’s public policy and the principal’s statutory responsibilities.

RESPECTFULLY SUBMITTED.

I **CERTIFY** the present document was submitted electronically in the PREB’s filing system and copy sent to the Hearing Examiner and the attorneys of record: 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; katiuska.bolanos-

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[Signatures in next page]

In San Juan, Puerto Rico, October 15, 2025.

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