

**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
Objections to Testimony and on
Miscellaneous Prehearing Matters

**Hearing Examiner's Order on Objections to Testimony and on
Miscellaneous Prehearing Matters**

This Order covers the following topics:

- Rulings on objections received October 31, 2025
- Conditional admittance of ROIs requested by Energy Bureau consultants
- Schedule changes requested by LUMA
- Panel draft schedule changes
- Miscellaneous logistics

Also: We will have a final prehearing conference on **Friday, November 7 at 2pm Atlantic, 1pm Eastern**. Please email any questions you wish addressed by **November 6 at noon Atlantic**.

Rulings on objections received October 31, 2025

PREPA on Tierney

PREPA argues (at 3) that Dr. Tierney's testimony "ignores or brushes aside PREPA's unique legal and factual circumstances, including its ongoing Title III case and unique practicability requirements."

As to Title III, I have already ruled that (a) debt is relevant to the cost of electric service, and (b) the Title III case does not preclude the Energy Bureau from requiring PREPA to set aside funds to pay something toward what the Title III outcome will require. Setting rates to include debt costs neither enters the Title III Court's exclusive field (which is to determine the debt, not to set rates); nor conflicts with any future Title III Court decision (because the Energy Bureau will have to reconcile whatever figure it chooses now—including a zero, which is a number like any other number—with whatever figure emerges from Title III. The Energy Bureau would not be determining the debt; it would be determining what amount PREPA should set aside to pay toward what the Court

determines. Such an Energy Bureau decision would actually support the Court's actions by making PREPA more ready to comply with the Court's commands.

PREPA cites the Court's stay against forcing PREPA to pay its creditors. No one is suggesting such an action. That the Court has stayed PREPA's debt obligation does not prevent PREPA from collecting funds to pay whatever obligation emerges after the stay ends. Similarly, PREPA's argument that the certified Fiscal Plan prohibits debt payments goes nowhere because the Energy Bureau would not be ordering debt payments.

The Energy Bureau will address my ruling, i.e., on whether it has authority to include debt in rates, taking into account Commonwealth law and federal law, in its final decision. Parties may brief that subject in their post-hearing submissions. Until then, we must develop a record that helps the Energy Bureau make its decision.

PREPA argues (at 5-6) that Dr. Tierney makes no specific debt proposal. As I have stated in a prior order and in one of our conferences, this fact goes to her testimony's evidentiary value, not its relevance. PREPA is free to argue that the Energy Bureau can ignore her testimony based on its value.

PREPA argues (at 6-7) that Dr. Tierney "ignores PREPA's unique practicability and affordability considerations"—citing, among other things, PREPA's oversight by a separate Oversight Board. That no other utility is subject to an Oversight Board does not bear on whether and how the Energy Bureau should consider PREPA's debt for inclusion in the revenue requirement. Her statement of how most regulators treat debt is relevant regardless of Puerto Rico's differences with other jurisdictions, because what is common to them and to Puerto Rico is a statutory just-and-reasonable standard.

PREPA is correct on this point: How well Dr. Tierney rebutted FOMB's affordability arguments before the Title III Court (Objection at 7) has no connection to this rate case. We are not going to debate in this case who bested whom in the Title III case. I therefore strike from Dr. Tierney's testimony from 28:18 through 29:15, including associated footnotes.

Unsecured Creditors on A. Smith, A. Figueroa, Smith-Dady

The Unsecured Creditors seek to strike

the A. Smith Answering Testimony, the Figueroa Answering Testimony, the Tierney Answering Testimony, and the Smith and Dady Expert Report . . . to the extent that they: (i) opine that PREB, as opposed to the Title III Court, can decide issues regarding the amount, priority, and validity of claims asserted against PREPA; or (ii) rely on debt figures that exclude the total amount of general unsecured claims that have been asserted against PREPA.

All of the substance in counsel's helpful document belongs in a post-hearing brief, not in a motion to strike. I don't read any of the three testimonial submissions as

recommending that the Energy Bureau, in setting rates, rely on debt figures that exclude unsecured claims. Consequently, I see no conflict between their submissions and the stated concerns. With three short questions of these witnesses—questions that ought to produce three short answers—Unsecured Creditors can remove this concern. Unsecured Creditors then remain free to argue to the PREB for whatever outcome they wish—recognizing, of course, that there at present is no evidentiary submission that states any amount reflecting their claims.

Unsecured Creditors (at 3-5) say that the A. Smith Direct Testimony and LUMA's related Schedule B-3 and Schedule B-4 each "grossly understates all of PREPA's unsecured debts and liabilities." Unsecured Creditors include in their objection, for the same reason, Figueroa Direct Testimony 39:715-723. The alleged insufficiency or inaccuracy of an exhibit is a basis for challenging its credibility, not its relevance. I also point out that Mr. A. Smith described his numbers as merely "illustrative"; though I admit that this term did not inform me about what was being illustrated.

Unsecured Creditors (at 6) object to the expert report of PREB consultants Smith and Dady on grounds that they discuss legacy debt without including the unsecured debt. The omission—which Unsecured Creditors can ask them to acknowledge with, again, one short question that will produce one short answer—doesn't affect their conclusion because their conclusion is that the rates should include zero debt until the Title III Court determines the debt.

To the extent that Unsecured Creditors view Dr. Tierney's testimony as having the same gap (Objection at 7), again the matter goes to credibility and weight, not relevance.

Unsecured Creditors (at 7) object to Dr. Tierney's discussion statement that the "2025 Fiscal Plan is effectively obsolete" due to the "recent terminations of six out of seven" members of the Oversight Board. Dr. Tierney expressly attributed this view (Direct Testimony at 17) to her counsel. The statement is irrelevant to the Energy Bureau's decision on rates, so I will strike this passage.

In their submission, Unsecured Creditors have performed an important service of reminding the parties, and the tribunal, that "debt" and "legacy debt" comes in many forms. They should be satisfied that on the need to consider unsecured debt, they have gotten the Energy Bureau's attention.

LUMA on Hopkins

LUMA objects to the report of Energy Bureau consultant Dr. Asa Hopkins, Ex. 58, titled "Energy Efficiency Impact on Load Forecast and Billing Determinants." The report addresses the effect of energy efficiency on load forecasts and billing determinants.

LUMA objects that among the bases for Dr. Hopkins's conclusions was the document titled "Puerto Rico Energy Efficiency Market Baseline and Potential Study" (Sept. 24 2025), prepared by another Energy Bureau contractor for another proceeding,

NEPR-MI-2022-0001. LUMA says that because the studies constitute “a draft document that may undergo substantial revisions or clarifications,” reliance on them in the rate case proceeding “would be misleading and may result in decisions based on incomplete or inaccurate information that may later be invalidated or challenged.” Objection at 7. LUMA adds that “a draft study that may undergo substantial revisions or clarifications is not a sound foundation by which to base an opinion.” Objection at 9.

I deny LUMA’s objection because it goes to credibility and weight, not relevance.

LUMA says that “reliance on draft positions or findings is improper and a basis for excluding an expert or an expert’s specific opinions.” Objection at 8. The document is not a “draft”; it is the consultant’s completed work. That it is subject to discussion in another proceeding does not make it a draft. Like all professional work, as with all scientific work, conclusions can change on vetting by peers. That fact does not make this completed study a draft. I have warned counsel against exaggeration. Here we have not exaggeration but intentional inaccuracy—sufficient grounds alone to reject LUMA’s objection. I remind all counsel: Trust lost is hard to regain.

LUMA also says that “gatekeepers of expert testimony “may evaluate data offered to support an expert’s bottom-line opinions to determine if that data provides adequate support to mark the expert’s testimony as reliable.” *Id.*, quoting case law. That is what the Energy Bureau will do here. That the Energy Bureau has neither considered nor approved the study does not make it a “draft.”

The Energy Bureau must estimate the effect of energy efficiency on load forecasts. Dr. Hopkins offered one way, using a professional study that he has reviewed and presented. LUMA is free to critique the study and to test Dr. Hopkins’s ability to defend it. It is one data point, for the Energy Bureau to consider along with the many data points in LUMA witness Estrada’s submissions.

LUMA analogizes to *In re Rezulin Products Liab. Litig.*, 309 F. Supp. 2d 531, 562 (S.D.N.Y. 2004). There the district court excluded an expert’s opinion because it relied on what the Court called an “unpublished” FDA report that the FDA had not made its official position. I have warned counsel against losing trust by citing cases that do not apply. This one is a good example, for at least four reasons:

- The report in *Rezulin* was “unpublished.” *Id.* at 561. But the report cited by Dr. Hopkins is published, because the author submitted it in an official proceeding as a final document. The study is “published” just as Dr. Hopkins’s report is published, and just as Ms. Estrada’s two testimonies are published. That the Energy Bureau has not decided whether and how to use any of these documents does not make any of them “unpublished.”
- The Court found that the witness who relied on the report had himself published previously a study that conflicted with the report—a fact that led the

Court to hold that the witness had chosen the report “not based on scientific method but on the expediencies of this particular litigation.” *Id.* at 562. LUMA can inquire, but as far as I can tell Dr. Hopkins has attempted no similar chicanery.

- The Court’s concern was that the expert was treating the study “as a definitive opinion of the FDA,” and as a “product of the FDA.” *Id.* at 561. Dr. Hopkins is doing no such thing.
- In *Rezulin*, the Court and the FDA were—obviously—two different fora. Here the Energy Bureau is both the potential acceptor of the study at issue, and the tribunal making decisions in the rate case in which the study is a data point.

LUMA’s counsel argue, repetitively, that because Dr. Hopkins cited the study, there will be “confus[ion],” “inaccura[cy],” and “incomplete[ness]”. But LUMA gives no useful content to those terms. Empty advocacy wastes everyone’s time. So does offering cases that don’t apply.

In sum: LUMA can question Dr. Hopkins about the study. LUMA can argue on brief about flaws in the study. The Energy Bureau will decide what to do about the study. Dr. Hopkins’s report, and the study he cites, will go into the evidentiary record.

LUMA on Bailey-Judd

LUMA objects to the expert report of PREB consultants Bailey and Judd. Their report, as LUMA accurately summarized it (Objections at 2, quoting report),

recommend[s] incorporating renewable energy integration into transmission rebuilds and propose[s] that transmission system planning: be tied to the 25-year transition to renewables; be based on credible projections of where renewable projects are more likely to be built; be integrated with generation and storage planning; provide for the design of substations to accommodate future growth; identify where storage can provide the greatest system value; provide for regular updating; and include stakeholder engagement.

As LUMA states, the report seeks to ““ensure that transmission investments are sized for long-term needs, sequenced to enable staged renewable buildout, and routed along corridors that can support future expansions without repeated reconstruction.”” *Id.*

The report also recommends funding renewables-related transmission upgrades with customer funds rather than project-by-project independent power producer funds, but acknowledges that customer funding will not be practical until PREPA gains access to external financing. The report then recommends that LUMA complete the projects required by the two-year Electric System Priority Stabilization Plan (PSP) approved by the Energy Bureau in Case No. NEPR-MI-2024-0005. The report also recommends that LUMA prepare a supplemental

Renewable Integrated Transmission Plan (RITP), to complement the Transmission Plan that LUMA will submit to the Energy Bureau in April 2026 in the PSP Docket.

LUMA says that the report's "only currently actionable recommendation" is to require LUMA to prepare the RITP. Because the report contains no rate proposals for action in this rate case proceeding, the Report "is more appropriate for consideration in the PSP Docket and/or the docket considering the [Integrated Resource Plan]."

I deny this motion. LUMA's well-stated points do not change the following overlapping realities, all arising from the fact that after no rate change for eight years, the Energy Bureau must think beyond a single year:

- LUMA is proposing capital expenditures that will serve customers, and for which customers will pay, through and beyond the 2050 date by which the bulk power system must convert to 100% renewables. To approve those expenditures without considering their compatibility with the 100% renewables goal is illogical.
- This proceeding is formally about setting rates for the near term. But the expenditures approved will affect customers, and service for the long term. And by the time the Energy Bureau issues its final order in this proceeding, we will be only two months away from FY27. At that point, we will soon need to create a procedure for considering the rates for FY28. Inevitably, the Commissioners in setting rates must think beyond the near term.
- Fiscal year dates are only dates. They do not create visual walls that blind a regulator to what needs to happen beyond the current year. Nor do they prevent a utility from spending funds in one year to create results in a later year. Planning across fiscal-year boundaries is especially important when eight years have passed with no change in base rates.
- Given the multiyear effects of LUMA's proposed expenditures, the Energy Bureau might decide to defer to a future year transmission expenditures that LUMA has proposed for this year. Conversely, the Energy Bureau might decide to fund this year activities that LUMA has planned for future years. For example, the Energy Bureau might decide to include in the FY27 and FY28 revenue requirement costs necessary to support LUMA's development of an RITP. These considerations warrant a discussion of the Bailey-Judd report now.
- LUMA correctly states that other dockets are available for long-term planning. But in this proceeding, LUMA is asking the Commissioners to approve long-term spending. The Commissioners might choose to defer some of LUMA's proposed transmission projects until it knows more about future plans for integrating renewables. Having a productive, limited discussion now about the need for and process for developing those plans will help the Commissioners make careful decisions about what projects to approve and what projects to defer.

Conditional admittance of ROIs requested by Energy Bureau consultants

Attached is a list of all ROIs and responses that I wish to place in the record. To avoid extra orders, I am by this Order admitting into evidence all these items, subject to all parties' opportunity to object. Because the list is lengthy, I will allow objections up to **November 15, 2025**. Doing so will allow participants to use these items during the hearing, subject to my striking all discussion of them should I receive and grant an objection. This procedural solution relieves participants of having to review the entire list in the busy week ahead.

I remind counsel: Avoid objections that are actually arguments about credibility or weight.

Schedule changes requested by LUMA

I grant LUMA's request for various extensions, except for the first one, which I will make **November 8** rather than November 10. All deadlines are 6pm Atlantic, 5pm Eastern.

Task	Current Due Date	Requested Extended Due Date
File rebuttal/sur-rebuttals to Guímel-Cortés Report and Hurley Rebuttal.	November 3, 2025	November 8 , 10 , 2025
Identify the witnesses who will participate in the Emergency Reserve Account and Emergency Response Plan panel.	November 3, 2025	November 5, 2025
Submit comments on proposed panels.	November 3, 2025	November 5, 2025
File objections to Exhibits marked for ID by October 27	October 31, 2025	November 3, 2025

Panel draft schedule changes

Attached is a revised version (Nov. 1) of the panel schedule. There are three changes from the 28 October version:

- I moved the Federal Funds panel to December 8 from November 24. In its six-hour place I put the three-hour panels on Conflicts and on Cooperation. I made this change for internal PREB purposes.

- I added three hours to the Budget panel, then shifted the schedules for the ensuing days slightly to accommodate that change.
- I added one hour to the Emergency Response Plan-Emergency Reserve Account panel.

I will make the final schedule official in the coming week.

Miscellaneous logistics

1. When you submit testimony, remember to post it on the Energy Bureau web site.
2. For all future emails, please omit the PREB consultants—other than me and Kate Bailey. We will recirculate internally as necessary. Use the list that I used in this email.
3. Remember to include a Word version of whatever you circulate.
4. We will have a final prehearing conference on **Friday, November 7 at 2pm Atlantic, 1pm Eastern**. Please email any questions you wish addressed by **November 6 at noon Atlantic**.

Be notified and published.



Scott Hempling
Hearing Examiner

CERTIFICATION

I certify that the Hearing Examiner, Scott Hempling, has so established on November 3, 2025. I also certify that on November 3, 2025, I have proceeded with the filing of the Order, and a copy was notified by electronic mail to: mvalle@gmlex.net; alexis.rivera@prepa.pr.gov; 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-

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 dbilloch@vvlawpr.com; ratecase@genera-pr.com; jfr@sbgblaw.com; hriviera@jrsp.pr.gov;
 gerardo_cosme@solartekpr.net; contratistas@jrsp.pr.gov; victorluisgonzalez@yahoo.com;
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 Ellen.Smith@fticonsulting.com; Intisarul.Islam@weil.com; alexis.ramsey@weil.com;
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 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;
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 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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 Isaac.Stevens@dechert.com; James.Moser@dechert.com; michael.doluisio@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 November 3, 2025.




 Sonia Seda Gaztambide
 Clerk

Hearing Examiner ROIs Marked for Identification and Conditional Admission

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PC-of-LUMA-ACCTPAY-31
PC-of-GENERA-ACCTPAY-32
PC-of-PREPA-ACCTPAY-33
LUMA-of-PREPA-ACCTPAY-72
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NPFGC-of-LUMA-CAPEX-14
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PC-of-LUMA-CAPEX-43

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