

**GOVERNMENT OF PUERTO RICO
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: SESA's Motion to Strike and
Vacate

**MOTION TO STRIKE AND VACATE INFORMATION REQUESTS AND INSTRUCTIONS TO
LUMA IN CONNECTION WITH PROPOSED HOUSE JOINT RESOLUTION AND LIMIT THE
RECORD TO CURRENT LAW**

TO THE HONORABLE ENERGY BUREAU:

COMES NOW, the Solar and Energy Storage Association of Puerto Rico ("SESA") through its undersigned counsel of record and respectfully submits the following:

I. INTRODUCTION

During the November 14, 2025 evidentiary hearing in the Transmission and Distribution panel (the "November 14 Hearing"), one of the Puerto Rico Energy Bureau's (the "Bureau") Commissioners engaged in an extended line of questioning premised entirely on House Joint Resolution 193, a legislative proposal. The questioning sought to explore how that Joint Resolution might reassign responsibility for distributed energy resources-related ("DERs") grid upgrades, modify interconnection study fees, alter LUMA Energy ServCo, LLC and Luma Energy, LLC's (jointly, "LUMA") capital plan, and potentially shift costs to general ratepayers. The Commissioner further instructed LUMA to compare the effect of the unenacted House Joint Resolution versus current law.

SESA respectfully submits that this exchange, and the resulting testimony and information requests, should not form part of the evidentiary record because: (1) ratemaking adjudications must apply existing law, not hypothetical or pending legislation and/or resolutions; (2) the

questions called for speculation beyond the permissible scope of a rate case; and (3) the inclusion of such material would create undue prejudice, introduce irrelevant subject matter, and jeopardize the integrity and defensibility of the final rate order.

Accordingly, SESA moves to strike the related portions of the record and to vacate the associated information requests. In the alternative, SESA requests a limiting instruction clarifying that this hypothetical material may not form any basis for the Bureau's findings.

II. DISCUSSION

A. House Joint Resolution 193 is a Pending Bill that Has No Legal Effect

Filed on September 4, 2025, House Joint Resolution 193 would order the Puerto Rico Electric Power Authority ("PREPA") and/or the electric grid operator LUMA to cease collecting all charges for supplemental study and grid improvements that would have been required for systems up to 25 kilowatts by Regulation 8915, *Regulation for Interconnecting Generators with the Electric Distribution System of the Puerto Rico Electric Power Authority and Participating in Net Metering Programs* of February 6, 2017, including but not limited to the charges set forth in Section V, Article B of said Regulation 8915; and require the Bureau to resume administrative proceedings to adopt new interconnection regulations consistent with Act 17 of 2019, the Puerto Rico Energy Public Policy Act, within a specified time period (the "House Joint Resolution bill"). Said new regulations would adopt modern interconnection and technology concepts, including proactive hosting capacity planning and budgeting, meter socket adapters, daytime minimum load, and others. Further, pursuant to the House Joint Resolution bill, the new interconnection regulations would clarify that the responsibility of solar applicants for feeder improvements would be limited to the service transformer.

As of the November 14 Hearing, House Joint Resolution 193 is a bill pending in the Legislature and had not been submitted to, nor approved by, the Governor. It therefore carries no legal effect and cannot be treated as operative law.¹

B. Adjudicative Ratemaking Proceedings Must Apply Existing Law

An adjudicatory rate proceeding must be grounded in the statutes and regulations currently in effect; not as they may one day exist. As the Honorable Hearing Examiner stated during November 14 Hearing: “what’s relevant in the rate case is what’s relevant under a statute.” While the Bureau may consider forward-looking forecasts in determining just and reasonable rates, those forecasts must occur within the governing legal framework. Constructing a record on the assumption that statutory obligations will be modified by future legislative action introduces uncertainty and exceeds the bounds of the governing legal framework. The Commissioner’s questions did precisely that, directing witnesses to model a legal regime that does not exist.

This distinction is critical: forecasting future costs or demand under existing law is permissible; forecasting future law is not.

C. Testimony Based on Hypothetical Legislation Is Irrelevant and Inadmissible

Section 2.01 of the Bureau’s Regulation 8543, the *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*, authorizes supplemental application of the Rules of Evidence of Puerto Rico (32 L.P.R.A. Ap VI, R. 101 *et seq.*), under which irrelevant evidence is inadmissible.² Testimony regarding the effects of a hypothetical statutory scheme does not make any fact of consequence in this rate case more or less probable.

¹ Under the Puerto Rico Constitution, no bill or joint resolution becomes law unless it passes both chambers and is approved to become law by the Governor. P.R. Const. art. III, §§ 18–20. Joint Resolution 193 neither meets this requirement nor imposes any legal obligations on PREPA, LUMA, or the Bureau.

² See Rule 402 of the Rules of Evidence (32 L.P.R.A. Ap VI, R. 402).

It does not inform PREPA's current costs, LUMA's present obligations, or the appropriate revenue requirement under existing law.

Moreover, even if such testimony were marginally relevant, its probative value is substantially outweighed by the danger of unfair prejudice and confusion of issues. The speculative testimony risks: distorting the record by implying that DER upgrade costs will imminently shift to general ratepayers and presenting cost-allocation scenarios that might appear "baked into" the record despite having no legal foundation. This prejudice is concrete, not abstract: the evidentiary record directly informs revenue requirement and cost-of-service determinations. Speculative narratives grounded in pending legislation could improperly influence those determinations.

D. The Information Requests Are Explicitly Based on Assumed Changes in Law – they Exceed the Proper Scope of a Ratemaking Proceeding

LUMA was directed to prepare multiple analyses explicitly predicated on House Joint Resolution 193 becoming law, including: (a) comparative breakdowns of DER-related upgrade costs under current law versus the proposed House Joint Resolution; (b) assessments of impacts to LUMA's capital plan and revenue requirement under the hypothetical law; (c) cost-shift projections from DER applicants to general ratepayers; (d) modeling of interconnection study fees under a speculative fee structure; and (e) treatment of reimbursements under an unrealized statutory regime.

Because these requests rely entirely on an assumed legal change, they exceed the scope of the rate review. Ratemaking must be grounded in actual statutory authority. Requiring parties to model what their obligations would be under hypothetical future legislation is outside the Bureau's adjudicatory authority and risks contaminating the evidentiary basis of the case.³ A measure still

³ Furthermore, the Commissioner's line of questioning poses another issue: if one pending joint resolution is relevant, logic would demand considering related pending resolutions, such as Joint Resolution 243

progressing through the legislative process cannot form the basis of competent evidence in a rate docket.

E. Judicial Review Requires the Record to Contain Only Competent, Non-Speculative Evidence

A final rate order must be supported by substantial evidence and must apply current law. Any reliance on testimony grounded in hypothetical legislation would rest not on facts but on conjecture, threatening the defensibility of the order. Even if the Bureau ultimately chooses not to rely on the testimony, leaving it in the record creates avoidable ambiguity and invites challenges alleging improper consideration of speculative material. Striking the testimony, or issuing a limiting instruction, is necessary to preserve the integrity and defensibility of the final order. a limiting instruction, is necessary to protect the integrity and defensibility of the final order.

WHEREFORE, SESA respectfully requests that the Energy Bureau:

1. Strike from the record all testimony, questions, answers, colloquy, and discussion expressly premised on pending House Joint Resolution 193 or any assumption that it has legal effect, including, but not limited to, the exchange beginning with the Commissioner's questioning regarding DER-related upgrade costs and continuing through each directive requiring LUMA to model cost allocations, revenue requirement impacts, fee structures, or reimbursement treatment under the proposed resolution.
2. Vacate all information requests that require LUMA to produce analyses or projections based on the assumption that House Joint Resolution 193 bill is, or will become, law.

approved by the House of Representative on November 13, 2025 to declare a moratorium of twenty-four (24) months during which the Energy Bureau is prohibited from considering or approving requests for tariff increases submitted by LUMA Energy or any entity related to the operation and maintenance of the Puerto Rico electric system. This creates an unmanageable situation where PREB would need to speculate not only about whether these resolutions shall pass, but also about which of these competing proposals, and any other related proposal, might prevail.

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3. In the alternative, if the Bureau declines to strike the testimony, SESA requests that the Bureau issue a limiting instruction clarifying that: (a) House Joint Resolution 193 bill has no legal effect; (b) all questions and testimony based on that resolution are speculative; and (c) none of this material may form any basis for the Bureau's findings of fact or conclusions of law in the final order.

Respectfully submitted on November 16, 2025, in San Juan, Puerto Rico.

WE HEREBY CERTIFY that this motion was filed using the Energy Bureau's electronic filing system and that electronic copies of this motion will be notified to the Hearing Examiner. Scott Hempling, via shempling@scotthemplinglaw.com; and to the attorneys of the parties of record. To wit, to LUMA through Margarita Mercado - margarita.mercado@us.dlapiper.com; Carolyn Clarkin - carolyn.clarkin@us.dlapiper.com; and Andrea Chambers - andrea.chambers@us.dlapiper.com; the Puerto Rico Electric Power Authority through Mirelis Valle-Cancel - mvalle@gmlex.net; Juan González- jgonzalez@gmlex.net; and Alexis G. Rivera Medina - arivera@gmlex.net; and to Genera PR, LLC, through Jorge Fernández-Reboredo - jfr@sbqblaw.com; regulatory@genera-pr.com; and legal@genera-pr.com.

A courtesy copy of this motion will also be notified to the following:

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