

**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 Motions,
Schedules, and Miscellaneous Matters (Nov.
20)

**Hearing Examiner's Order on Motions, Schedules, and
Miscellaneous Matters (Nov. 20)**

This order covers these topics:

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Ms. Estrada's revised surrebuttal
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LUMA's motion on fixed charge for pension cost

Schedule changes

As I forecasted last week, I am changing our panel schedule as follows, all indicated in the attached November 19 version.

- The Conflicts panel and the Utility Cooperation panel will move from November 25 to December 8.
- The Federal Funds panel will move from December 8 to December 18 and 19. We might start Federal Funds on December 17 if the Rate Design panel consumes only December 15 and 16.

- We will use November 25 for several possible things:
 - policy and legal questions for counsel, which I will circulate no later than Sunday morning, November 23;
 - any leftover questions on generation;
 - the questions on retail wheeling (from T&D) and/or customer battery energy sharing program (from T&D)—with the relevant witnesses remote if necessary; and
 - answers to questions that Mr. Camacho and LUMA have developed on specifics relating to transmission or distribution line items.

Anyone with any other ideas for the productive use of November 25 please let me know by email. Re retail wheeling and CBES, LUMA's counsel should inform me of the possibilities.

For December 9-12 I have adjusted the hours slightly—raising the Revenue Requirement hours from 6 to 8, then allowing some possible issue-overflow among the remaining days of that week.

Required late-filed exhibits

During the hearing, the Commissioners, consultants, or I have required certain late-filed exhibits, attached to this order. For exhibit numbering instructions, contact Kate Bailey.

Saving time at hearing

In my experience, six hours of hearing time per day is about the maximum that active participants can manage, especially when they need to prepare for the next day. Right now, starting at 9 AM and ending at 5:30 PM with 90 minutes of breaks, we are doing seven hours a day. I would like us to stop by 5:30 each day. The following thoughts aim to help us achieve that result. I require counsel to review these thoughts and to share them with their panelists.

Cross-examination: In an adjudicatory proceeding, there is no jury. The purpose of cross-examination is solely to supplement, clarify, or undermine the existing documentary materials—to collect what one needs for one's post-hearing briefs. There is no right to unlimited cross-examination, to unnecessary or inefficient cross-examination, or to the use of the cross-examination techniques that one prefers. The right is solely to ask questions that build or undermine the existing materials.

With those principles in place, the following requirements are appropriate. I am informed by local advisory counsel that they are consistent with Puerto Rico case law.

- *Restrict cross-examination to necessities.* It is not necessary to have a panelist accept orally what the panelist already has said in the prefiled testimony or discovery response. Use those materials during cross solely to show contradictions with what a witness has said orally. If there are contradictions or weaknesses already embedded in the prefiled materials, discuss them in the brief. There is no reason to have them stated in the hearing—unless the cross-examiner wants an explanation.
- *For impeachment, state the purpose at the beginning of the line.* It is usually not necessary to ask multiple preliminary questions, except to signal to the witness the subject and any prior statements. If a witness has uncertainty about a particular area, simple prompts can help the witness get there. Tell the witness what he or she said previously—or ask the witness to assume that he or she said something previously; then ask the relevant questions.

Panelist preparation: I expect panelists to come to the hearing prepared to answer questions on everything that they have submitted—prefiled testimony and ROIs. All panelists should come to the hearing with a copy—paper or electronic—of their prefiled testimony, and the major Excel schedules relating to that prefiled testimony. They should not need to have displayed via Teams each document underlying a question. Therefore, questioners should not pause to display items on Teams unless the witness—not the witness’s counsel—requests. Exceptions are appropriate for detailed schedules and detailed ROI responses. But we must avoid the time-consuming loading and searching for materials that represent a witness’s basic positions. “Tell me where I said that” consumes time. The questioner is not going to misrepresent what a witness said. So the questioner should say, simply (and of course truthfully), “Assume you said XYZ.” Then ask the question. If the assumption is wrong, the panelist’s counsel can straighten things out on redirect.

Adding up numbers and asking the witness to agree with the math is a waste of time. Yes, the Energy Bureau will have to make detailed decisions about numbers. But most questions have been about a cost generally, its magnitude, its context, and its rise or fall over three years. The specifics of the numbers are rarely necessary for the questioner to make his or her point. And that is where much of the time is going.

Witness answers: We are blessed with highly-skilled questioners. Most cross questions are yes/no questions. Counsel must stress to their own panelists: Answer only the question asked; then elaborate only if the questioner, a Commissioner, or I ask for elaboration. If the panelist believes the question is impossible to answer with a yes or a no, the panelist should say so and offer a concise alternative. Leave elaboration for redirect, which all counsel have conducted precisely and efficiently.

Objections: it is not necessary to make an objection to every deviation from perfectly proper cross-examination technique. It is not necessarily “argumentative” for a questioner to state a proposition contrary to the witness’s likely position, so as to test the witness’s ability to distinguish the erroneous from the accurate. Asking for a plausible prediction is not asking for speculation. Not every question has to have a perfectly stated “foundation.” Parties can trust me to (a) filter out questions that will lead to nonproductive answers; and (b) extract from witnesses any necessary clarifications. Parties can argue in their briefs that the Energy Bureau should disregard certain answers because of infirmities in the questions. At the same time, questioners should take care to frame questions in ways that elicit useful answers.

Exhibits: The night before hearing, be sure to email Idalie, Omar, opposing counsel, and me, cites to the exhibits (and preferably the exhibits themselves) that you intend to use during cross. I will not, however, forbid a questioner from using during cross an exhibit that that questioner forgot to include the night before.

SESA's motion to strike dialogue about House Resolution 193

On November 14, 2025, some of the Commissioners engaged in what SESA accurately describes as

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 moves to strike the dialogue and withdraw the instruction. SESA asserts that this dialogue and instruction

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.

I deny the motion. Rate cases routinely deal with plausible possibilities: What if there is a storm? What if federal funds are reduced? What if the Title III proceeding reaches its conclusion? What if Covid returns? What if demand drops? The entire discussion of billing determinants, which we will address in the rate design panel, will be a discussion of plausible possibilities. A plausible possibility of legislative change is no

different. Ratemaking always involves uncertainties. Even without the House Resolution, any party could have constructed a comparable hypothetical and asked LUMA about the rate effects.

SESA is correct that the Energy Bureau must apply current law. Current law is Act 57, which requires rates to be just and reasonable. The evidentiary record necessary to support just-and-reasonable rates must include consideration of plausible possibilities.

Asking questions about plausible possibilities is one thing; what the Energy Bureau does with the answers is another. For now, we must gather information on the possibilities.

Finally, I disagree with SESA's view that allowing the questions and placing the answers in evidence would cause "undue prejudice." Neither the questions nor the answer would signal any position on the House Resolution, any more than questions about a demand drop due to solar panels would signal a preference for that result. The Energy Bureau cannot foreclose itself from running hypotheticals merely because some observers might misconstrue, or mischaracterize, a hypothetical as a preference.

LUMA's request for extension on objections to ROIs

I grant LUMA's motion to substitute a new version of the objections to ROIs that they submitted on Saturday, November 15. LUMA should inform me if its date commitment.

Ideas for the Federal Funds panel

I remind all that Ideas for the agenda for the Federal Funds panel are due Thursday afternoon, November 20.

Ms. Estrada's revised surrebuttal

I accept as final this document, submitted November 19, 2025, and revised to reflect changes necessitated by changes in SESA witness Datta's testimony arising from negotiations over the scope of the solar issue.

Possible remote panel appearances

I ask the parties' permission to have two PREB consultants examined remotely, because each person's offering is limited:

- Courtney Lane (electric vehicle charging stations). I suggest that cross of her, if any, be remote and by appointment.
- Dr. Asa Hopkins (energy efficiency's effect on load forecast): I would require Dr. Hopkins to be available for whatever portion of the rate design panel addresses load forecasts.

Please inform by Friday this week.

LUMA's motion on fixed charge for pension cost

On November 14, 2025, LUMA filed a motion to comply with that portion of the Energy Bureau's July 31, 2025, Order on provisional rates that directed LUMA to convert the pension rider (currently a per-kWh charge) to a per-customer charge. LUMA seeks approval of its proposed methodology. That matter is with the Energy Bureau.

Be notified and published.



Scott Hempling
Hearing Examiner

CERTIFICATION

I certify that the Hearing Examiner, Scott Hempling, has so established on November 20, 2025. I also certify that on November 20, 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-pr.com; legal@genera-pr.com; mvazquez@vvlawpr.com; gvilanova@vvlawpr.com; dbilloch@vvlawpr.com; ratecase@genera-pr.com; jfr@sbglaw.com; hrivera@jrsp.pr.gov;

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I sign this in San Juan, Puerto Rico, on November 20, 2025.




 Sonia Seda Gaztambide
 Clerk

Required Late-Filed Exhibits

Here is my current list of items that, during the hearings, the Commissioners or I have required some party to submit. Counsel should annotate this list, redlined, with their comfortable delivery dates and email the document back to me.

- Genera: Exhibit 22.3REV NFC items for FY 26, 27 and 28: For each item, assign a "hopefulness" ranking in terms of potential for federal-funds eligibility: 0=Hopeless, 3 = High.
- Genera: Clarification about the various accounts from which it can access funds to deal with emergencies, spare parts, and other matters.
- Genera: Contracts, entered into or under consideration or in negotiation (including draft versions), relating to Genera line items 245 – O&M Temporary Power, 246 – O&M BESS, and 247 – O&M New Peakers.
- Genera: Breakdown of the \$13.8 million in Professional Services for TM2500s (Palo Seco and San Juan)
 1. If these services are intended to operate and maintain the TM2500s, explain why existing Genera personnel cannot perform these functions.
 2. Clarify whether the \$17,063,597.08 is intended for the ongoing operation and maintenance of 17, 14, or 10 temporary generation units. See Exhibit 179 (ROI OIPC-of-GENERA-PROV-28).
 3. Explain whether any funds are required to ensure dual-fuel capability for the temporary units; that is, to guarantee the availability of both natural gas and diesel. If Genera is seeking funding for dual-fuel capability, identify where in the Rate Revision Petition this allocation can be found.
- LUMA and Genera: Contracts, entered into or under consideration or negotiation (including draft versions) with affiliate companies.
- LUMA: Commissioner Torres asked questions about federal funding allocation relating to third-party attachments. Comment on the following tentative understandings of our consultants:
 1. Third-party attachments have not yet been transferred from the old poles to the new ones, leaving a surplus of double-wood poles in the field, which increases vulnerability during hurricanes.
 2. FEMA cannot reimburse the associated costs because the work cannot be closed out until all attachments are relocated.

- LUMA: Estimates of the revenue requirement effects of House Resolution 193, including effects on the line item (\$51 million) for distribution improvements relating to distributed generation.
- LUMA: Legal submission about its legal obligations, under Commonwealth law of federal law, to provide access to its poles.