

**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  
Exhibits, FTI Report, and Miscellaneous  
Procedural Matters

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**Hearing Examiner's Order on Exhibits, FTI Report, and  
Miscellaneous Procedural Matters**

This Order covers these matters:

Exhibits  
FTI Report  
Panel issues  
Schedule for December 2

**Exhibits**

This section updates our exhibit practices to resolve some outstanding matters, and to reflect lessons learned from our first nine hearing days. I appreciate everyone's efforts to comply with the various requirements.

*Materials submitted or used to date:* As of November 25, 2025, parties marked 925 documents for identification.

- I admit all prefiled testimony, and all ROIs and other materials referenced in or attached to that prefiled testimony, subject to whatever conditions I have already placed on those materials.
- For ROIs that are not referenced in or attached to prefiled testimony, I admit all such materials through Number 873.
- For other ROIs already submitted, the deadline to object to documents 874 to 925 is **December 12**.
- For the first nine days of hearings, I have not required cross-examining counsel to seek admission of the materials used during cross. Those materials are

included through Ex 925. Absent objections made by December 12, I will deem them admitted.

*Future materials:* Beginning with materials numbered Ex 926, not already admitted but introduced during cross-examination, objections must occur at that time.

*Materials neither used nor referenced:* For materials that are not referenced in or attached to prefiled testimony, and not introduced during cross-examination, I will not admit them into evidence. On the Accion platform, those documents will remain, unused and not admitted, in the folder labeled “Marked for ID.” At the end of the proceeding, Accion will rename this folder “Marked for ID but Not Used.”

*ROIs from which I have struck portions:* By previous order, I have sustained the partial objections to **Exhibits 583, 586, 592, and 768**. I require LUMA and PREPA to strike out the objected-to portions from their ROI responses and send redlined revisions to Kate Bailey, [kbailey@acciongroup.com](mailto:kbailey@acciongroup.com). I direct Accion to replace and admit the exhibits (now marked as rejected) with the revised materials.

*Limits on uploading new exhibits:* As of today, **December 6, 2025**, I am prohibiting parties from uploading onto the Accion platform additional materials other than (a) Late-Filed Exhibits described below, and (b) materials a party plans to use for impeachment during cross-examination.

*Prospective supplementing of ROIs previously marked for identification:* Any ROI marked for identification must include the original response, all supplemental responses, and any follow-up questions and answers. My decisions to admit cover the entire ROI, as thus supplemented. If a respondent to an ROI adds information after the ROI material is marked for identification, that party must email all materials associated with that ROI to Kate Bailey, [kbailey@acciongroup.com](mailto:kbailey@acciongroup.com). Accion will then replace the original exhibit with the full set of materials.

*Late-filed exhibits:* During our first nine days of hearings, parties have agreed to provide various materials, often in response to questions by the Commissioners or their consultants. We will refer to these materials as “late-filed exhibits” (LFEs). Here are requirements relating to these items:

- Thus far, I have not reviewed these items at day’s end and assigned deadlines. Counsel who are aware of these items should email any question(s) and the hearing date it was asked to Kate Bailey. She will compile a list, and monitor compliance.
- Upload late-filed exhibits on the Accion platform as an Exhibit, checking the “no document number previously assigned” box on the upload form. Do not upload the motion. Enter **LFE** in the Document Description text box, followed by a brief description of the document and the hearing date when the question was asked.

For example, the Document Description text box for Genera's late-filed exhibit uploaded as Ex 901 would be: "LFE – Genera's clarification of TM 2500 Nov 13 Hrg." Parties that have already uploaded LFEs on the platform should contact Kate Bailey to correct the document description.

- Going forward: As these items arise, I will record on my phone the question and the date. At the end of each I will email that information to Kate Bailey so that she can monitor compliance.

## **The FTI Report**

My Order of November 24, 2025, directed PREPA to provide the FTI report sought by LUMA via LUMA-of-PREPA-SUPPORT-9. I stated that independently of LUMA's interest, I wanted the document for the Energy Bureau and its consultants, in whatever form it currently exists. I requote here LUMA's explanation of its importance (LUMA's Motion to Reiterate (Nov. 22) at 10-11), which I adopt:

The Energy Bureau's framework expects accounting consistent, to the extent feasible, with the FERC USoA, and as explained by LUMA's Chief Financial Officer Andrew Smith USoA presentation depends materially on the remediation of PREPA's legacy accounting records and the reconciliation of PREPA's balance sheet (LUMA Ex. 2.0, Qs. 3840, pp. 3435). The FTI Scoping Report bears directly on the path, scope, sequence, and timing of that remediation. Consistent with this testimony, the Energy Bureau's consultants, Ralph C. Smith and Mark S. Dady, have recommended that the Bureau require LUMA and PREPA to produce a reconciled, USoA-conforming balance sheet by June 30, 2026 (PC Ex. 62, sec. II, pp. 37). The FTI Scoping Report is the foundational scoping document that identifies the tasks, dependencies, and schedule necessary for reconciliation, and is therefore critical for the Energy Bureau to evaluate the feasibility of the recommended milestone and to oversee the steps required to meet it.

I also held, contrary to PREPA's argument, that the document did not enjoy any deliberative privilege:

This document is not protected by the deliberative privilege. What might be so protected would be internal PREPA correspondence about what to do with the Report's recommendations. But that correspondence is not within LUMA's request.

On November 25, 2025, counsel for PREPA emailed the document to me and the two Energy Bureau consultant designated by me. Having read the document, I uphold my November 24 conclusion. The FTI report bears no resemblance to the types of material to which the deliberative privilege applies. Specifically:

- The purpose of the privilege is to encourage frank communications among government decisionmakers. It protects deliberations within a government agency so that agency officials can communicate freely and spontaneously without fear of having every half-thought exposed and criticized. Documents subject to the privilege are “predecisional” documents, meaning that they reflect deliberations that are part of a process leading to a decision by a government agency.
- The FTI report was not created by a government agency or any official within a government agency. In any event, PREPA is not a government agency. PREPA is a corporation created by the government; it not part of any branch of the government.
- Moreover, the FTI report contains no decisional back-and-forth among government officials. It is a technical report from a publicly funded, private consulting organization to the officials of a utility corporation—and to several government agencies. It is a consultant’s report that summarizes facts, evaluates a status quo, and makes recommendations to government officials about how to address that status quo.

Suppose a group of citizens wrote a letter to PREPA describing their experiences with a PREPA customer-service office. Assume that the letter (a) described their experience with the office, including who at the office carried out what actions; (b) offered critiques of the office’s performance, coupled with some thoughts on the causal contributors to that performance; and (c) recommended changes to the office’s operations. That letter might prompt officials to discuss their responses. That discussion—if held among government officials as distinct from utility officials—might be subject to the deliberative privilege. But the letter itself would not be subject to the privilege. The FTI report has no relevant difference.

By email on November 25, 2025, I required PREPA’s counsel to file that same day any motion to reconsider. I required same-day filing because LUMA has waited a long time for the document, the Recordkeeping Panel relevant to the document is coming soon, and PREPA should have had ready the reasoning underlying its privilege claim. In response to counsel’s emailed concern about the short amount of time to respond, I chose to delay sending the document to LUMA and others. Instead by email I directed parties to send me no more than two contacts per party to receive the document, subject of course to their maintaining its confidential status. I did not commit to any ultimate restriction on the document’s circulation. I received emails requesting a copy with from Victor González and from counsel for the following parties: several separate bondholders, SREAE, LUMA, and Unsecured Creditors.

In fact, my hearing rules provide no opportunity for motions to reconsider my rulings. They do provide for appeals to the Energy Bureau, which must occur within five days of my ruling. *See* Order of April 25, 2025, at 6 (“the ROI recipient must file an

appropriate appeal Motion with the Energy Bureau within 5 days of the Hearing Examiner's ruling."). The same Order states that "[a]ll days counted are calendar days." *Id.* at 5 (emphasis in original). The fifth day was a Saturday, November 29, a day when filing an appeal with the Energy Bureau was not possible. Having received no notice of an appeal by end of today, Monday, December 1, I now **direct** Accion to place the document in the appropriate **confidential** location and inform all parties of that location. I am therefore revoking my prior plan to limit access to only two individuals per party. I see no reason to single out this document for such a restriction.

Per normal procedures, PREPA must explain by motion its request for confidential treatment.

### **Panel issues**

*LUMA witness Estrada:* Ms. Estrada will join the panel on Practicability because she filed surrebuttal on that subject..

*Recordkeeping panel:* The current Panel Agendas document has this subtopic: "Activities relating to pursuing federal funds: Budgeted amounts, actual amounts, Outcomes." This topic merges with others in the Federal Funds panel.

*Recordkeeping panel:* Any discussion of the FTI report will occur on the Recordkeeping panel.

### **Schedule for December 2**

Here is the sequence, differing slightly from what I said end-of-day Monday:

*First:* Counsel will offer their thoughts on these two questions, relating to the Puerto Rico Supreme Court's decision on utility liability:

- Does the Supreme Court's decision require, or warrant, additional evidentiary presentations on the revenue requirements at issue in our rate proceeding?
- Assume yes: What are alternative ways for the Energy Bureau to receive, consider, and act on those evidentiary presentations?

The Commissioners will consider these thoughts during their deliberations.

*Second:* We will have examination of the following items, currently located within the agenda for the Multi-Utility Panel:

- Subtopic L: Information technology (nonconfidential subparts 1-5)
- Subtopic H: Cybersecurity other than IT OT cybersecurity (CONFIDENTIAL)
- Subtopic L: IT OT cybersecurity program (CONFIDENTIAL)
- Subtopic M: T&D physical security (CONFIDENTIAL)

*Administrative notice and housekeeping:* I had said Monday late that we would have this discussion before beginning the just-listed examination. But I don't want to cause the panelists to wait longer than necessary. If we have time after the confidential session, we will discuss administrative notice and housekeeping. If not, we will address those matters Wednesday afternoon.

Be notified and published.



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Scott Hempling  
Hearing Examiner

## **CERTIFICATION**

I certify that the Hearing Examiner, Scott Hempling, has so established on December 2, 2025. I also certify that on December 2, 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@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;

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I sign this in San Juan, Puerto Rico, on December 2, 2025.



  
 Sonia Seda Gaztambide  
 Clerk