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 Miscellaneous Substantive and Procedural Matters

Hearing Examiner's Order on Miscellaneous Substantive and Procedural Matters

This Order addresses the following topics:

- FTI report—confidentiality status
- Possible new OMA-account replenishment measure
- Upcoming panels
- Late-filed exhibits relating to outside legal services
- Legal issues

FTI report—confidentiality status

The FTI report currently resides on the Accion platform, confidentially, at LUMA-of-PREPA-SUPPORT-9 (Ex. 944). I instruct PREPA to determine which portions of the FTI report must remain confidential. If a redacted version is possible, and if that version has anything of substance, I would like that version to be available to all parties before the Recordkeeping panel begins. I acknowledge the shortness of time. Please make a good-faith effort.

Possible new OMA-account replenishment measure

On Friday, December 5, 2025, the afternoon discussion addressed the Emergency Reserve Account (ERA) created by the Energy Bureau in its provisional-rate order of July 31, 2025. In that discussion, the panelists from each of the three utilities seemed to coalesce around the general concept described in the Appendix to today's Order.

By today's Order, I invite the three CFOs to create jointly, and submit jointly, a proposal along the lines described in the Appendix—or some better idea. The proposal would take the form of a late-filed exhibit. If the proposal appears in the next few days. I

will try to find time during the remaining hearing days to discuss it. If more time is necessary, the utilities could submit the joint document during the January-February period, so that the Energy Bureau can address it in its final order. All others would have an opportunity to comment on the document. By making this request, I do not and cannot preclude the Energy Bureau from acting on these ideas even if no proposal appears.

In the Cooperation panel Monday, December 8, I hope to have the three CEOs agree that they will require their CFOs to make this effort.

Upcoming panels

Revenue requirement panel: On Friday afternoon, December 5, 2025, I explained that Item A on the panel agenda, pages 23-24, does not signal an intent to debate each element in that long list of elements. My purpose in providing that list was to identify all the traditional elements in a revenue requirement, and to see if anyone thought that something was missing or alternatively did not belong. The stimulus for this list was the discussion in the Smith-Dady Report describing different ways to define a revenue requirement for different types of utilities. Agreeing on the list does not mean that one agrees that any dollars should go into any the items on the list. The point is to make sure that we have in one place an understanding of the total elements that could go into a revenue requirement.

In this panel, I will of course allow, and expect, questioning on margin, on a legacy-debt rider, on uncollectibles, and on the irrigation district.

Revenue requirements panel—reconciliation clauses: As discussed on Friday, December 5, 2025, we will not be discussing the fuel and purchase power adjusters, or the subsidy clauses, because they are not part of base rates. The scope of this proceeding is base rates.

"Revenue requirement"—terminology: During the upcoming panels and generally, it is necessary for panelists and counsel to clarify whether, in using that phrase, they are referring to a revenue requirement that collects the base rate only, or instead a revenue requirement that collects the sum of the revenues from the base rate and the revenues from the riders. People have talked about a $5 billion revenue requirement, but that figure includes more than the revenues from the base rates. I have always viewed the term "revenue requirement" as including only the revenues from the base rate.

Recordkeeping panel: In the agenda for this panel there is item C, "activities relating to pursuing federal funds: budgeted amounts, actual amounts, outcomes." That item is there by mistake. It belongs with the federal funds panel.

Federal funds panel: I aim to circulate a purpose statement and agenda for the federal funds panel before the end of this week. Previously I asked for suggestions but received only one.

Panel schedule this week: After the Tuesday start of the revenue requirement panel, all panels' start and stop times will be fluid. The hour caps on each panel will remain, but it is possible that some panels will take less time. I expect to start the next panel as soon as the preceding panel ends. That is why each of the panels is listed as being part of a two-day pair, where various pairs overlap. If at all possible, those personnel who are local should be available within one hour of notice. We will assess periodically where we stand.

Revenue decoupling: I would like to create a specific time slot during the Rate Design panel to discuss revenue decoupling. That way, PREB consultant Melissa Whited need not attend for the entire three days.

Late-filed exhibits relating to outside legal services

Last week we had a discussion, specifically with LUMA witness Rotger, about legal costs associated with Energy Bureau proceedings. The Energy Bureau must decide how much customers should pay for the outside legal support provided to the utilities for Energy Bureau proceedings. To help the Commissioners make that decision, I require each of PREPA, Genera, and LUMA to provide this information:

- For each of the Constrained and Optimal budgets, for FY26, show the total legal costs from outside law firms associated with all Energy Bureau matters.

- For each outside law firm, show the inputs to the total legal costs, in terms of number of hours at each hourly rate level. The total costs shall reflect actual experience to date and estimated experience for the remainder of the fiscal year. The numbers for each hourly-rate level need not be exact, as long as the total reflects the actual budget request.

To provide this information, use the format displayed in the attached worksheet (where the hourly-rate rows are illustrative only).

For FY27, describe any reasons why the allocation of costs among the law firms, and among the hourly rate levels within the law firms, would vary substantially from the figures stated for FY26.

This information is necessary for the Energy Bureau to determine the amount that Puerto Rico customers should pay for the legal services that the three utilities assert are necessary to ensure that electricity service satisfies the statutory standards.

The three utilities should inform me by Tuesday of when they can produce this information.

Legal issues

The $209 million: This past week, we had another back-and-forth on the legitimacy and logic of LUMA's request for the $209 million. That figure, as I have understood it, represents the cumulative amount of OMA-required replenishments that did not occur. The July 31, 2025, provisional rate order (at 23) rejected the request, reasoning as follows:

> [O]n restoration specifically, LUMA makes a fundamental error of logic. The underfunding occurred in the past. This proceeding is about setting rates for the future. Whatever future costs LUMA has, we assume that it has provided for those costs in its proposed Constrained Budget and Optimal Budget. If LUMA has done so, then adding more money based on past underfunding would just add more money.
>
> There is a bigger problem. LUMA wants reimbursement for costs it incurred for outages when its outage account was unfilled. That argument would have logic (retroactive ratemaking aside) if LUMA had been using its own money, like an investor-owned utility would have done. But LUMA was not using its own money, because under the OMA the two operators don't use their own money. The operators use the ratepayers' money. LUMA did what it had to do: it took ratepayer-contributed funds that it otherwise would have used for system improvements and instead used them for outages. To make the ratepayer pay to restore those spent funds would not be "reimbursing" LUMA; it would be making the ratepayers pay twice: once by forgoing the benefits of the system improvements, and twice by having to make this new payment. LUMA's position is incorrect.

I see nothing in LUMA's presentations thus far, or in its witnesses' comments last week, that addresses the above reasoning. PREPA's Comptroller said last Friday, if I recall correctly, that PREPA did not replenish the accounts because, it said, it didn't have sufficient funds. If PREPA didn't have sufficient funds, the likely reason—in my view, not necessarily in PREPA's view—is that rates that haven't changed since 2017 did not produce the funds necessary for PREPA to carry out all its operational duties and replenish the accounts. If those were the facts—that PREPA didn't have the necessary funds to replenish the accounts because the rates did not produce sufficient revenues, then LUMA is asking the Energy Bureau to raise rates in the future to make up for an insufficiency of rates in the past. That is the definition of retroactive ratemaking. Even if the Energy Bureau wanted to give LUMA those funds now, it thus lacks the statutory authority to do so.

LUMA might have a contractual claim against PREPA for its failure to replenish those accounts. But the Energy Bureau has no power to decide that claim.

I understood LUMA CFO Smith to say last week that because of the prior nonreplenishment, LUMA has a large current obligation to certain vendors. If that obligation exists, it is LUMA's responsibility to include the necessary funds in its present rate application. If LUMA has done so, then seeking the $209 million separately is double-

counting. If LUMA has not done so, that is LUMA's discretionary decision. I heard nothing last week that undermines that simple logic.

All parties are free to present positions on this matter in their post-hearing briefs. If Mr. Smith has any additional reasoning on the matter, his counsel can inform me. I will invite that reasoning during one of his appearances, then allow cross-examination on his statements. (No repetition; strictly response to my statements above.) I am taking this action because I want the Commissioners to have a full understanding of the issue as they deliberate whether to repeat their provisional-rate decision in their permanent-rate order.

Administrative notice: I remind all that my Order of December 5, 2025, designating certain materials as administrative notice documents, is strictly to recognize the existence of the documents. It is impermissible to cite anything from any of these documents that is not obvious and not 100% beyond dispute. I will not allow into the record, for example, any share-of-wallet information from any administrative notice document. Hypotheticals, yes; actual information, no. This limitation is consistent with the limits I placed on the use of the EPRI and Sargent and Lundy reports cited by Justo Gonzáles in his expert report.

Pension rider: Pending before the Energy Bureau is LUMA's proposal to change the per/kWh charge to a fixed charge. Is there any legal vulnerability to this change, in light of the statutory provision relating to per-kWh treatment of solar-panel customers? If the pension costs were rolled into base rates, rather than recovered through a rider, would that then mean that the pension costs would have to be recovered, per the statute, via a kWh charge? This matter is pending before the Energy Bureau, not me. But if parties have a legal view on this question that they have not presented before, they need to present that view by motion to the Energy Bureau quickly, no later than Friday, December 12, 2025.

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 9, 2025. I also certify that on December 9, 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-

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I sign this in San Juan, Puerto Rico, on December 9, 2025.

NEGOCIADO DE ENERGÍA DE PUERTO RICO
NEPR
JUNTA REGLAMENTADORA DE SERVICIO PÚBLICO

Sonia Seda Gaztambide
Clerk

Appendix
Possible Means of Periodically Replenishing the OMA Accounts

1. There could be a new account, replacing the ERA. The account would receive via this rate proceeding, some base amount, such as the current $15 million.

2. The new account would act as a funnel, used to replenish certain PREB-designated OMA accounts. (Separately, the approved revenue requirement would include amounts to fund fully each of the OMA accounts; the rate order also would require PREPA to supply those accounts at the OMA-required level.) The funnel's sole purpose, therefore would be to replenish the OMA accounts when necessary.

3. If the funnel's original base amount (in this example, $15 million) dropped below some level (that level to be specified in the rate order), the funnel itself would be replenished through an adjustable replenishment rider. (Take care not to confuse the funnel, which is the new account, with the rider, which is the conduit by which funds travel from customers to the funnel.)

4. Replenishment of the funnel, via the rider, would occur based on some formula. That formula, as roughly described by LUMA CFO Smith, would operate in some way proportionally to keep relatively equal, among the OMA accounts, the ratio of funds in the account to funds required by the OMA. (It seems that concerns with proportionality go away if the rider simply achieves full replenishment whenever replenishment is necessary. But to avoid sudden, erratic changes in the rider amounts, replenishment would need to occur gradually and evenly, thus requiring some means of allocating the replenishment amounts among accounts proportionally, over time.)

5. Accompanying the concept would be serious accountability measures, overseen by an independent entity. A possible outline of those accountability measures appears at page 19 of the 33-page panel agendas document. The measures would address the following questions:

    First, the accountability measure would need to define the types of costs and circumstances that entitled a utility to recovery from the new account. Those costs and circumstances would need to be consistent with, but need not be confined by, the language associated with the various OMA accounts.

Second, the accountability measure would need to define the process by which

- a utility would seek funds,
- the Energy Bureau would replenish the amounts in the account and the amounts in the funnel,
- the Energy Bureau would grant permission to spend money from the account, and
- an independent audit of the utility spending from the account would occur.