

**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 With
Thoughts on Briefing Schedule and Legal
Issues**

**Hearing Examiner's Order With Thoughts on
Briefing Schedule and Legal Issues**

As discussed Monday afternoon, December 12, here are tentative thoughts on briefing schedule and legal issues. I invite parties' thoughts, this week, on alternative approaches to briefing (though I see very little flexibility), and on any legal issues omitted or needing clarification.

Tentative briefing schedule

My Order of Sept. 8 established these dates:

- Friday, January 16, 2026: Initial briefs on revenue requirement and rate design
- Monday, February 2, 2026: Reply briefs on revenue requirement and rate design

Here is my tentative replacement:

- Monday, January 19, 2026: Initial briefs on revenue requirement
- Monday, February 2, 2026: Reply briefs on revenue requirement
- Monday, February 16, 2026: Initial briefs on rate design
- Monday, March 2, 2026: Reply briefs on rate design
- Friday, February 20: Initial briefs on legal issues
- Friday, March 6, 2026: Reply briefs on legal issues



Legal and Policy Issues: Partial List as of December 15, 2025

1. Energy Bureau fines applied to Genera or LUMA

a. What is the extent of the Energy Bureau's statutory authority to fine the operators? What areas of performance are within the Energy Bureau's jurisdiction to fine? What advance notice is necessary—about triggers of fines, amounts of fines, and procedures for determining fines? If an operator refuses to pay a fine, what action may the Energy Bureau take?

b. If an operator pays the fine, from what source would the fine come—the operator's owners; or instead an OMA account? Does the operator then have some right under the OMA to have customers cover the cost of the fine? If that right exists, by what procedures would the operator seek that result? If the P3A, applying the OMA, declares a fine to be a "passthrough cost" (therefore recoverable from customers), does that declaration bind the Energy Bureau?

2. Annual updates of billing determinants

Energy Bureau consultant Zachary Ming has proposed that the Energy Bureau approve revenue requirements and rate design methodologies, but not specific rates. To calculate rates, LUMA would submit for Energy Bureau approval each year its latest billing determinant forecast. Once approved, LUMA would calculate new rates each year by applying each year's new billing determinants to the already-approved revenue requirement. Do the statutes permit this approach? (The desirability of this approach is an issue for the rate design brief.)

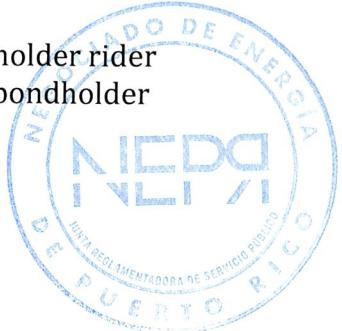
3. Affordability and practicability

Under the statutes, what is the extent of the Energy Bureau's duty, and the extent of its discretion, to use affordability as a criterion in determining (a) the revenue requirement, (b) revenue allocation, and (c) rate design? What if anything do the statutes tell us about the distinction between, and the relationship between, affordability (the amount that customers are able to pay) and practicability (whether they will pay what is necessary to produce the revenues required by the approved revenue requirement)?

4. Legacy debt and unsecured debt

a. Does the just-and-reasonable standard authorize, or require, the Energy Bureau to include any bondholder debt or unsecured debt in the revenue requirement?

b. Does PROMESA preempt the Energy Bureau from creating a placeholder rider with no amount? Does the answer differ depending on whether the debt is bondholder debt or unsecured debt?



c. Does PROMESA preempt the Energy Bureau from including in the revenue requirement any bondholder debt or unsecured debt, whether through a rider or in base rates?

5. Pension cost

a. Does the just-and-reasonable standard authorize, or require, the Energy Bureau to include any pension costs in rates (either in base rates or in a rider)?

b. Does PROMESA preempt the Energy Bureau from including any pension costs in rates (either in base rates or in a rider)?

6. Pension rider design

The provisional-rate order established the pension rider amount as a per-kWh charge, but required LUMA to convert that charge to a fixed per-customer charge as soon as possible. Is a fixed per-customer charge lawful, given Section 4 of Act 114-2007? If the pension costs were included in base rates, rather than recovered through a rider, would that same statutory provision then require the pension to be recovered via a kWh charge? If the answer to that question is yes, why would the answer be different for a rider?

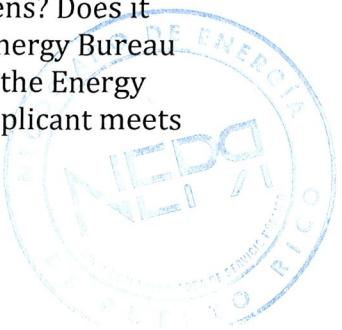
7. Negligence liability

Taking into account the just-and-reasonable standard and the OMAs: What legal obligation, and what legal discretion, does the Energy Bureau have in determining how to treat, in the revenue requirement, the following cost items related to negligence liability:

- actual or possible compensation owed to victims of utility negligence, whether ordinary negligence or gross negligence?
- costs incurred to assess and process, or defend against, alleged victims' claims?
- insurance associated with negligence liability
- other costs

8. "Burden of proof"

In the administrative-agency context, and specifically in Puerto Rico utility regulation, what does "burden of proof" mean? If, for example, the applicants fail to show that their proposed revenue requirement is just and reasonable, what happens? Does it mean that the status quo—the existing rate—doesn't change? Or does the Energy Bureau set a just-and-reasonable rate? Put another way, does the statute impose on the Energy Bureau a duty to set a just-and-reasonable rate regardless of whether the applicant meets



its statutory burden? If so, why is it logical, and consistent with the just-and-reasonable standard, to argue that "If for a particular project LUMA fails to prove the unavailability of federal funds, the Energy Bureau must assign to that project an NFC value of zero?" Does that argument ignore the Energy Bureau's duty to set a just and reasonable rate, and to ensure that service is "adequate" and "reliable"?

Be notified and published.



Scott Hempling
Hearing Examiner

CERTIFICATION

I certify that the Hearing Examiner, Scott Hempling, has so established on December 16, 2025. I also certify that on December 16, 2025, I have proceeded with the filing of the Order, and a copy was notified by electronic mail to: mvalle@gmlex.net; arivera@gmlex.net; 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; katuska.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; ratecase@genera-pr.com; jfr@sbgblaw.com; hrivera@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; kara.smith@weil.com; rafael.ortiz.mendoza@gmail.com; rolando@emmanuelli.law; monica@emmanuelli.law; cristian@emmanuelli.law; lgnq2021@gmail.com; jan.albinolopez@us.dlapiper.com; Rachel.Albanese@us.dlapiper.com; varoon.sachdev@whitecase.com; javrua@sesapr.org; Brett.ingerman@us.dlapiper.com; brett.solberg@us.dlapiper.com; agraitfe@agraitlawpr.com; jpouroman@outlook.com; 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; gkurtz@whitecase.com; ccolumbres@whitecase.com; isaac.glassman@whitecase.com; tmacwright@whitecase.com; jcunningham@whitecase.com; mshepherd@whitecase.com; jgreen@whitecase.com; hbburgos@cabprlaw.com; dperez@cabprlaw.com; howard.hawkins@cwt.com; mark.ellenberg@cwt.com; casey.servais@cwt.com



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I sign this in San Juan, Puerto Rico, on December 16, 2025.


Wanda I. Cordero Morales
Interim Clerk
