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GOVERNMENT OF PUERTO RICO
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:** SESA's Motion in Opposition to LUMA's Motion for Partial Reconsideration Regarding Discovery Exhibits

SESA'S MOTION IN OPPOSITION TO LUMA'S MOTION FOR PARTIAL RECONSIDERATION REGARDING DISCOVERY EXHIBITS

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

On December 22, 2025, the Hearing Examiner for the case of record, Scott Hempling (the "Hearing Examiner") issued the *"Hearing Examiner's Order on Exhibits, Miscellaneous Post Hearing Matters, and Legal Issues* (the "December 22 Order"). In that Order, the Hearing Examiner admitted Exhibits 874 through 925 into evidence and further admitted all Exhibits marked 926 and above if they were used during cross-examination.

On December 26, 2025, LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly "LUMA") filed *LUMA's Motion for Partial Reconsideration of Hearing Examiner Order Dated December 22, 2025* ("LUMA's Motion for Reconsideration"). In that motion, LUMA asks the Hearing Examiner to reconsider the December 22 Order and to strike various documents from the evidentiary record. LUMA contends that certain exhibits were not referenced in or attached to pre-filed testimony and were not introduced during cross-examination. Among the exhibits LUMA seeks to strike are multiple SESA exhibits consisting entirely of LUMA's responses to SESA's requests for

information ("ROIs"), specifically SESA Exhibits 933 through 936 and 994 through 1012, with the sole exception of SESA Exhibit 997.

SESA respectfully opposes LUMA's Motion for Reconsideration. Granting LUMA's request would effectively impose a retroactive evidentiary rule that was never announced, never applied during the hearings, and never contemplated by the parties when they conducted discovery, examined witnesses, or structured their evidentiary presentations in reliance on the Hearing Examiner's repeated procedural guidance.

II. DISCUSSION

From the outset of this proceeding, discovery responses have occupied a distinct evidentiary status. They are not ancillary materials offered solely for impeachment or demonstrative purposes; rather, they are sworn or verified factual admissions and explanations provided by the responding party and are foundational to the administrative fact-finding process. For that reason, discovery responses were admitted into evidence as a category throughout the evidentiary hearings, without any requirement that each individual response be verbally referenced or introduced during live testimony. Consistent with this approach, the Hearing Examiner repeatedly instructed parties not to call witnesses merely to read discovery responses or other record materials into the hearing record and instead emphasized that such materials should be relied upon in post-hearing briefing. That guidance reflected both efficiency concerns and the recognition that the probative value of discovery responses does not depend on their being recited aloud during the hearing.

This was not an isolated instruction but a consistent and deliberate procedural framework enforced across multiple hearing days and directed to named counsel. For example, the Hearing Examiner made this expectation explicit with respect to discovery responses themselves on November 25, 2025. During cross examination by bondholder counsel Corey Brady, counsel

asked to pull up a bondholder exhibit 361, consisting of an ROI response by Mr. Joaquin Quiñoy. The Hearing Examiner immediately intervened, stating: "If you already have the answer to your question, you don't need to put it on the record, you can just put it in your brief, sir."[1] The Hearing Examiner's directive confirms that discovery responses were not expected to be read into the record or used during live testimony in order to preserve their evidentiary value; rather, they were to be relied upon in post-hearing briefing. Excluding ROIs now on the theory that they were not used during cross-examination would directly contradict this explicit instruction and penalize parties for following the Hearing Examiner's guidance.

Likewise on November 12, 2025, the Hearing Examiner intervened during questioning involving prior exhibits to emphasize that if information was already in the record, it should be cited "in your brief," rather than repeated during testimony.[2] Later that day, he reiterated that materials already in the record need not be shown to witnesses or read aloud and should instead be addressed through post-hearing briefing.[3]

The Hearing Examiner's guidance was even more explicit on December 1, 2025. When counsel Yahaira De La Rosa-Algarín attempted to read a document into the record on redirect, the Hearing Examiner interrupted and asked whether the material was already in the record. Upon

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[1] November 20, 2025 Transcript, page 394.

[2] During the redirect examination by LUMA counsel, Ms. Margarita Mercado-Echegaray, when she requested that the witness be shown his pre-filed testimony (LUMA Exhibit 5) to refresh his memory and provide live testimony on reliability benefits, Mr. Hempling stated, "You're just going to ask him to repeat what's in his testimony? ... Well, just explain it. Do you need the testimony to explain it start, and then when your testimony comes up, it'll help you. But don't repeat what's in your testimony. What do you want to add?". *See* November 12, 2025 Transcript, pages 324-325.

[3] Later in the redirect examination, when Ms. Mercado requested that the witness be shown LUMA Exhibit 74.11 to provide testimony on the expected calculations or benefits of the constrained budget, Mr. Hempling stated, "Miss Mercado, if all he's going to do is read it, I don't want to use time that way. Are you guaranteeing me that we're going to get something more than just a reading of what's already in the record? Yes or no?" He further emphasized, "We don't need to use hearing time to repeat what's in the record, you can cite it in your briefs, Miss Mercado." *Id.* on page 328.

confirmation that it was, he stated unequivocally: "If it's in the record, are you going to put it in your brief? So you're going to have to read it out loud[?] [N]o. Next question." and directed counsel to move on.[4] This exchange makes clear that the Hearing Examiner affirmatively discouraged reading record materials into the hearing record precisely because their intended use was in post-hearing briefing.

The same procedural approach was enforced throughout December 8 and December 9, 2025, when the Hearing Examiner again instructed counsel that they could "put together in your brief" the facts, credibility challenges, logical critiques, and consistency arguments based on the evidence already admitted. He expressly acknowledged that parties would use the existing record, including documents and written materials, to contest credibility, relevance, and policy implications in their briefs.

Taken together, these repeated and explicit instructions establish a clear procedural expectation upon which the parties reasonably relied: parties were not required, and were often expressly discouraged, from orally introducing or reading record materials during the hearings in order to preserve their ability to rely on them later. Discovery responses are quintessential record materials of this kind. Excluding ROIs now on the theory that they were not used during cross-examination would directly contradict the Hearing Examiner's own instructions, undermine the reliance interests those instructions created, and retroactively penalize parties for adhering to the procedural framework the Hearing Examiner himself established and enforced.

The Hearing Examiner's prior rulings further confirm this understanding. Earlier in the proceeding, LUMA sought to prevent the admission of certain ROIs that it had answered, arguing that they should not be treated as evidence. The Hearing Examiner rejected that position and ordered that all ROIs submitted at that time be admitted into evidence. The rationale underlying that decision

[4] December 1, 2025 Transcript, page 430.

was straightforward and remains controlling: parties propound discovery because they may wish to rely on the responses in support of their advocacy regarding the outcome of the case. Nothing has changed since that ruling that would justify treating later-produced ROIs differently. To the contrary, consistency and administrative regularity require that all discovery responses be governed by the same evidentiary rule.

LUMA's reliance on the Hearing Examiner's December 2, 2025 Order, titled *Hearing Examiner's Order on Exhibits, FTI Report, and Miscellaneous Procedural Matters* (the "December 2 Order"), is misplaced. When read as a whole, the December 2 Order confirms, rather than undermines, the longstanding practice of admitting discovery responses as evidence. The Order expressly admits all ROIs referenced in or attached to pre-filed testimony and further admits other ROIs through specified exhibit numbers, subject only to objection deadlines. Nothing in the December 2 Order conditions the admissibility of ROIs on their use during cross-examination. The provision stating that materials "not referenced in or attached to pre-filed testimony, and not introduced during cross-examination" will not be admitted applied to future or unused materials that were never admitted in the first instance; it does not retroactively revoke the admission of discovery responses already governed by specific ROI admission rules. Reading the Order as LUMA proposes would improperly collapse these distinct categories and impose a retroactive evidentiary limitation without notice, in violation of basic principles of fair process.

Equally important, the timing of the upload of the challenged exhibits cannot justify their exclusion because that timing was dictated entirely by the procedural framework established by the Hearing Examiner and by LUMA's own actions. By order dated October 22, 2025, titled *Order Extending Deadline to Upload Documents Marked for Identification* (the "October 22 Order"), the Hearing Examiner set October 27, 2025, as the deadline for parties to upload materials to be marked for identification and established December 31, 2025, as the deadline for objections to materials

marked for identification as of that date. At the time that deadline passed, LUMA had not yet produced the discovery responses at issue. LUMA did not provide its responses to SESA's requests for information until November 17, 2025, nearly three weeks after the identification deadline had elapsed. SESA therefore had no ability, procedurally or practically, to upload these materials by October 27, 2025.

Nothing in the December 2 Order announces a new evidentiary sanction for discovery responses produced after the identification deadline, nor does it authorize exclusion of ROIs based on production timing when that timing resulted from the responding party's own delay. Accepting LUMA's position would invert the logic of the Hearing Examiner's orders and distort the discovery process by allowing a responding party to dictate admissibility through delay. No reasonable reading of the Hearing Examiner's orders supports such a result, and no orderly adjudicatory process could permit a party to benefit from its own failure to timely comply with discovery obligations.

LUMA's position also ignores the practical realities of complex administrative litigation. At the close of evidentiary hearings, no party can know with certainty which discovery responses will ultimately prove relevant in final or reply briefs. That determination necessarily depends on the arguments advanced by other parties and on how the Hearing Examiner frames the issues in his eventual decision. Retroactively striking discovery responses after the hearings have concluded would deprive parties of the ability to fully and fairly present their arguments and would undermine the integrity of the post-hearing briefing process.

Moreover, adopting LUMA's proposed rule would introduce serious due process and appellate concerns. Parties structured their discovery strategy, witness examinations, and evidentiary presentations in reliance on the Hearing Examiner's repeated guidance that discovery responses would be admitted and need not be read into the record. Had the Hearing Examiner announced

at the outset that only those ROIs receiving verbal "airtime" during the hearings would be admitted into evidence, parties would have proceeded differently. Imposing such a requirement after the fact would be manifestly unfair and would expose the proceeding to substantial risk on review. Finally, there is no prejudice to LUMA in allowing these discovery responses to remain in the evidentiary record. LUMA authored the responses at issue, is fully aware of their contents, and had every opportunity to explain, supplement, or contextualize them during the hearings. By contrast, striking the responses would prejudice SESA and other parties by eliminating evidence that was properly obtained, properly uploaded, and properly relied upon throughout the case.

WHEREFORE, SESA respectfully requests that the Hearing Examiner deny LUMA's Motion for Partial Reconsideration of Hearing Examiner Order Dated December 22, 2025 in its entirety; affirm the December 22 Order as issued; confirm that SESA Exhibits 933 through 936 and 994 through 1012 constitute properly admitted evidence; and reaffirm that all properly uploaded responses to requests for information are admitted into the evidentiary record regardless of whether they were referenced during cross-examination, particularly where any delay in production or upload resulted from the responding party's own conduct.

Respectfully submitted on January 2, 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@sbgblaw.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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