

**GOVERNMENT OF PUERTO RICO
PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU**

NEPR

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**IN RE: PUERTO RICO ELECTRIC
POWER AUTHORITY RATE REVIEW**

CASE NO.: NEPR-AP-2023-0003

**SUBJECT: Urgent Request to the Puerto
Rico Energy Bureau to Partially Vacate
Hearing Examiner's Order of January 8,
2026, and/or "Appeal" of January 8th
Order**

**LUMA'S URGENT REQUEST TO PARTIALLY VACATE HEARING EXAMINER'S
JANUARY 8TH ORDER AND/OR "APPEAL" OF JANUARY 8TH ORDER AND TO
STAY PROCEDURAL CALENDAR**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC and LUMA Energy ServCo, LLC, (jointly referred to as "LUMA"), and respectfully state and request the following:

I. Introduction

1. On January 8, 2026, the Honorable Hearing Examiner, Mr. Scott Hempling, issued an *Order on Miscellaneous Procedural and Evidentiary Matters* ("January 8th Order"). LUMA hereby requests that the Commissioners of this Honorable Puerto Rico Energy Bureau ("Energy Bureau"), assembled as a whole, partially vacate the January 8th Order, insofar as it directs that several exhibits that were neither referenced in nor attached to prefiled testimony nor used and introduced during cross-examination are admitted as evidence on the record.

2. LUMA requests that all other materials uploaded by the parties to the Accion platform and marked after the initial cut-off date of October 27, 2025 and starting with Exhibit 462, that were not introduced into evidence through pre-filed testimony or during cross-examination, remain as documents marked for identification, but not admitted as evidence. As LUMA expounds upon below, by mandating that several documents marked starting with Exhibit

462 be admitted as evidence notwithstanding that they were not incorporated to pre-filed testimonies nor marked as evidence during cross-examination, the January 8th Order reflects the application of two conflicting evidentiary regimes, applied during an active six-week evidentiary hearing. This is arbitrary and contrary to due process. A single uniform rule should govern: the admission of prefiled testimony and materials referenced in or attached to that testimony, and those materials properly marked as evidence and introduced during the evidentiary hearing, including through cross-examination or whose admission was mandated by bench orders issued throughout the hearings (labeled by the Hearing Examiner as *late-filed exhibits*).

3. Finally, considering that the present motion concerns what constitutes the admitted evidentiary record, which directly affects the materials that may be cited in post-hearing briefs, LUMA requests that the Energy Bureau stay the post-hearing briefing schedule set forth by the Hearing Examiner until this motion is adjudicated.

II. Relevant Procedural Background

4. On October 1, 2025, the Hearing Examiner issued an *Order on Rate Case Procedures*. Appended to the October 1st Order was a revised version of a previously issued document titled “Appendix A – Exhibits: Process for Numbering and Admitting,”¹ that established an Accion Discovery Platform-based process for numbering, uploading, and admitting exhibits, prior to and during the approaching evidentiary hearing. **Pursuant to that process, cross-examiners could mark documents as identification no later than 8:00 pm A.T., on the night before the date on which the cross-examiner would introduce the document.** That rule on the

¹ A further revised version of Appendix A was issued by the Hearing Examiner on October 16, 2025.

process to mark exhibits was confirmed by the Hearing Examiner during the pre-hearing Conference held on October 16, 2025.²

5. On October 22, 2025, the Hearing Examiner issued an *Order Extending Deadline to Upload Documents Marked for Identification* (“October 22nd Order”), whereby he set October 27, 2025, as the deadline to upload materials to be marked as identification. The Hearing Examiner ordered the parties to file by October 31, 2025, any objections to materials that were marked for identification as of October 27, 2025. Accordingly, on October 31, 2025, LUMA filed objections to various documents the parties had marked for identification on the Accion Discovery Platform. These objections covered documents uploaded to the Accion Discovery Platform up to October 27, 2025, to wit, up to Exhibit 461.³

6. On November 3, 2025, the Hearing Examiner published a list of documents that the Energy Bureau consultants planned to introduce as evidence.⁴ The Hearing Examiner conditionally admitted the documents into evidence and granted the parties an opportunity to object.

7. The Evidentiary Hearing begun on November 12, 2025.

8. On November 22, 2025, LUMA filed several objections to Exhibits uploaded by the Energy Bureau consultants to the Accion Discovery Platform between November 11 and November 12, 2025, up to PC Exhibit 873. *See Motion Submitting LUMA’s Objections to*

² See https://www.youtube.com/watch?v=keSYC_3or-4, at 7:00 through 8:22.

³ The Hearing Examiner ruled on LUMA’s objections on November 5, 2025. See <https://energia.pr.gov/wp-content/uploads/sites/7/2025/11/20251105-AP20230003-HE-Order-on-LUMA-objections-to-ROIs.pdf>

⁴ See *Hearing Examiner’s Order on Objections to Testimony and on Miscellaneous Prehearing Matters*, available at <https://energia.pr.gov/wp-content/uploads/sites/7/2025/11/20251103-AP20230003-HE-order-on-objections-and-misc.pdf>.

Documents Marked for Identification in the Accion Discovery Platform. On November 24, 2025, the Hearing Examiner ruled on LUMA’s objections to those Exhibits.⁵

9. On December 2, 2025, the Hearing Examiner issued an *Order on Exhibits, FTI Report, and Miscellaneous Procedural Matters* (“December 2nd Order”). Therein, the Hearing Examiner ordered the parties to file any objections to documents marked Exhibits 874 to 925 in the Accion Discovery Platform by December 12, 2025. *See* December 2nd Order, p. 1.

10. The December 2nd Order also stated that the Hearing Examiner did not require cross-examining counsel to seek admission of the materials used during cross-examination for documents marked Exhibits 1-925 and that if the parties did not raise objections to those documents by December 12, 2025, the Hearing Examiner would deem them admitted. *Id.*, at pp. 1-2.

11. However, in the December 2nd Order, **the Hearing Examiner indicated that he would not admit into evidence materials that are not referenced in or attached to pre-filed testimony and were not introduced during cross-examination.**⁶

12. Furthermore, the Hearing Examiner imposed the following:

Limits on uploading new exhibits: As of today, December [2], 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.”

⁵ *Hearing Examiner’s Order on Cross-Examination, November 25 Plan, Counsel Panel, and Miscellaneous Items*

⁶ Specifically, the December 2nd Order provided as follows:

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.”

December 2nd Order, p. 2 (*italics* in original).

Id., at p. 2.

13. In compliance with the December 2nd Order, and in the middle of the six-week long evidentiary hearing, on December 12, 2025, LUMA filed *LUMA's Objections to Documents Marked for Identification in the Accion Discovery Platform* ("December 12th Objections"), where it objected to two documents that had been marked for identification in the Accion Discovery Platform (BH Ex. 917 and BH Ex. 919), asserting that these documents were not exchanged in discovery and **were not used or introduced as evidence during cross-examination**. LUMA notes, however, that it expressly reserved its right to request that the Hearing Examiner strike any materials not referenced in or attached to pre-filed testimony **and not introduced during cross-examination that may remain in the Accion Platform at the close of the evidentiary hearing**. See December 12th Objections, at p. 2, n. 2.

14. The Evidentiary Hearing concluded on December 19, 2025.

15. Having concluded the evidentiary hearing calendar, on December 22, 2025, the Hearing Examiner issued a new *Order on Exhibits, Miscellaneous Post-Hearing Matters, and Legal Issue* ("December 22nd Order"). Despite LUMA's December 12th Objections, the Hearing Examiner admitted all of Exhibits 874 through 925, "having received no objections". Furthermore, the Hearing Examiner admitted all Exhibits marked 926 onward, **"if used during cross-**

examination".⁷ Moreover, pursuant to the December 22nd Order, the Hearing Examiner outlined the post-hearing briefing schedule.⁸ *See* December 22nd Order, at p. 4.

16. Expediently, within four calendar days and amid the Christmas holiday, on December 26, 2025, LUMA filed its *Motion for Partial Reconsideration of Hearing Examiner Order dated December 22, 2025* ("December 26th Reconsideration"). Therein, LUMA moved for partial reconsideration of the December 22nd Order, and requested that the Hearing Examiner grant LUMA's December 12th Objections to BH Exhibits 917 and 919, which had not been addressed in the December 22nd Order. LUMA also requested that the Hearing Examiner reconsider the apparent admission of **Exhibits 462 through 925 without first segregating and excluding materials not referenced in or attached to pre-filed testimony nor used during cross-examination, as contemplated by the December 2nd Order**. In support, LUMA identified a set of documents marked as Exhibits 462-925 (Table 1) that pertain to LUMA and that were neither referenced in nor attached to pre-filed testimony nor introduced at cross-examination and therefore should be removed from the evidentiary record consistent with the December 2nd directive. LUMA also catalogued additional documents numbered 926-1067 (Table 2) concerning LUMA that were

⁷ Specifically, the Hearing Examiner stated the following:

Admission of documents beginning with number 926: I am admitting all of them, **if used during cross-examination**, because there were no objections during the hearing.

December 22nd Order, p. 3 (*italics* and **bold** in original).

⁸ Specifically, the Hearing Examiner adopted the following briefing schedule:

- Tuesday, January 20, 2026: Initial briefs on revenue requirement
- Monday, February 2, 2026: Reply briefs on revenue requirement
- Monday, February 9, 2026: Initial briefs on rate design
- Monday, February 23, 2026: Reply briefs on rate design
- Friday, March 6: Initial briefs on legal and policy issues
- Friday, March 20, 2026: Reply briefs on legal and policy issues

not admitted during cross-examination and accordingly requested that those materials be stricken from the evidentiary record as not admitted.

17. On January 8, 2026, the Hearing Examiner issued the subject order, which LUMA requests that the Energy Bureau vacate. In what is here relevant, in Section IV of the January 8th Order, this Hearing Examiner denied LUMA's December 26th Reconsideration as to all exhibits numbered 462-925, reasoning that those materials had already been admitted under the evidentiary framework then in effect and that applying later-adopted rules retroactively would be unfair.⁹ The Hearing Examiner explained that his earlier orders: i) admitted Exhibits 1-461; ii) admitted Exhibits 462-873; iii) deemed admitted all materials not objected to through Exhibit 925; and iv) "prospectively" (by way of the December 2nd Order) changed the practice beginning with Exhibit 926 to require use during cross for admission of materials not associated with prefiled testimony. As to materials numbered 926-1067, the Hearing Examiner applied the averred "prospective" rule only to materials marked by the parties, but exempted several marked by the Energy Bureau consultants: documents not referenced in or attached to prefiled testimony and not used during cross-examination are not admitted.

18. In summary, through the January 8th Order, the Examiner admitted a series of exhibits that were used during cross-examination between December 3 and 19, 2025.¹⁰ Additionally, regarding certain materials marked by the Energy Bureau's consultants numbered

⁹ The Hearing Examiner also denied LUMA's request in the December 26th Reconsideration regarding the following exhibits marked by PREPA's Bondholders: Exhibits 757, 758, 760, 761, 763, 764, 767, 769, 771, 773, 778, 782, 783, 786, 788, 7909, 78, 979, 984. LUMA confirmed that those materials were referenced, shown to witnesses, or used during cross-examination. Thus, LUMA is not contesting that ruling herewith.

¹⁰ Specifically, Exhibits 939, 944, 948, 951, 965, 978, 979, 982, 983, 984, 988, 992, 993, 997, 1013, 1016, 1017, 1022, 1026, 1031, 1032, 1033, 1037, 1038, 1047, 1048, 1048.1, 1049, 1050, 1052, 1054, 1058, 1059, 1066.

above 925 that were not used at the hearing, the Hearing Examiner admitted said materials as late-filed exhibits. This means that, except for the exhibits listed as used during cross between December 3-19, 2025, late-filed exhibits above 925, and “late-filed exhibits” sponsored by the Energy Bureau’s consultants, the Hearing Examiner declined to admit any other materials numbered above 925, and instructed Accion to update the evidentiary platform accordingly.

19. Finally, the January 8th Order revised the briefing schedule previously laid out by way of the Hearing Examiner’s December 22nd Order.

III. Request to vacate the order admitting documents that were not incorporated into pre-filed testimonies nor introduced as evidence during cross-examination.

20. The January 8th Order confirms that two conflicting evidentiary directives now govern the admission of exhibits that the parties marked as identification after the initial cut-off to mark evidence of October 27, 2025: one admitting into evidence exhibits numbered 462 through 925 and several documents that the Energy Bureau consultants marked as identification but did not use in cross-examining witnesses, and a different rule mandating exclusion of documents that the parties marked as identification while the hearing was ongoing, beginning with Exhibit 926, but that the parties did not use during cross-examination. That inconsistency, introduced in the midst of a six-week evidentiary hearing, is unjust, inconsistent, and contrary to due process. The Energy Bureau should restore uniformity and fairness by applying a single rule regarding documents marked as exhibits after October 27, 2025, starting with Exhibit 462: admitting exhibits only if they are (i) prefiled testimony, and other materials referenced in or attached to that prefiled testimony, or (ii) materials used during cross-examination and properly introduced during the evidentiary hearing.

21. The December 2nd Order suggested two different treatments for exhibits depending solely on their numbering cut-off. As to materials marked through Exhibit 925, the Hearing Examiner stated he had not required cross-examining counsel to seek admission of materials used during cross and that, absent objections by December 12, those materials would be deemed admitted. The December 2nd Order deemed admitted all ROIs not attached to prefiled testimony through Exhibit 873 and set a December 12 Objections deadline for exhibits 874-925. At the same time, the December 2nd Order “prospectively” altered the practice for “future materials,” beginning with Exhibit 926, requiring that materials not associated with prefiled testimony would be admitted only if they were introduced during cross-examination at hearing. Materials neither used nor referenced would not be admitted and would remain “Marked for ID but Not Used.”

22. The December 22nd Order compounded the inconsistency following the conclusion of the evidentiary hearing. It declared that, “having received no objections,” exhibits 874-925 were admitted, notwithstanding LUMA’s timely December 12 Objections to BH 917 and 919 **and LUMA’s reservation of rights to seek to strike documents that were not referenced or incorporated into pre-filed testimonies and that were not used in cross-examination after the close of the evidentiary hearing.** The December 22nd Order simultaneously cemented the reasonable rule for materials numbered 926 and above, admitting those exhibits only “if used during cross-examination”, and directed parties to identify which such materials were used and when, further reinforcing the use-at-hearing requirement for post-925 exhibits.

23. The January 8th Order rests upon said bifurcated framework that came to life while the evidentiary hearing was ongoing. It denies LUMA’s reconsideration request as to Exhibits 462-925, on the rationale that those materials had already been admitted under the “framework in place at the time,” and that applying the later-adopted use-at-hearing approach retroactively would be

unfair. The January 8th Order simultaneously applies the reasonable rule to several of the Exhibits marked by the parties starting with number 926, admitting only those used during cross, but at the same time admits as evidence, as late-filed exhibits, several documents that the Energy Bureau consultants marked as identification between December 8 and December 19, 2025, but did not introduce while examining witnesses during the hearings.¹¹

24. This moving-target approach is arbitrary and contrary to due process. Due process in an adjudicatory rate case requires a fair opportunity to confront and test the evidence admitted against a party. By admitting into evidence a wide slate of documents numbered 426 through 925 that were neither attached to nor referenced in prefiled testimony and were not used or introduced during cross-examination, the Hearing Examiner's procedural framework impaired the parties' ability to confront that material through the usual trial mechanisms. The Hearing Examiner's December 2nd directive recognized this very concern by prospectively **limiting admission for non-referenced materials to those used during cross, and by expressly declining to admit other unused, unreferenced materials at all.** Those principles (use at hearing or linkage to prefiled testimony) are the correct guardrails for this Energy Bureau to adopt to compile an evidentiary record built on admissible, tested evidence.¹²

25. Section 2.01 of the Energy Bureau's *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*, Regulation No. 8543 (Dec. 18, 2014), which governs the current proceeding, sets forth that the "Rules of Evidence may apply, in

¹¹ See Note 7, *supra*.

¹² See Section 3.1(a) of the Government of Puerto Rico Uniform Administrative Procedure Act, Act No. 38-2017, as amended, 3 LPRA § 9641 (2025) (establishing that the following rights must be preserved in every formal adjudicative proceeding before an agency: the right to be timely notified of the charges or complaints or claims against one of the parties; the right to present evidence; the right to an impartial adjudication; and the right to have the decision based on the record).

a supplemental manner to this Regulation, in any judicial proceeding before the [Energy Bureau] when, in the exercise of its discretion to handle cases before it, the [Energy Bureau] determines it by way of an order.”¹³ Further, Section 3.13(c) of Act No. 38-2017 provides that relevance is one of the guiding principles of admissibility of evidence. 3 LPRA § 9653(c) (2025).

26. The statutory powers of regulatory commissions such as this Energy Bureau are subject to due submission to constitutional restraints. *See Escudero v. Minimum Wage Bd. of P.R.*, 66 DPR 600, 602 (1945). In the context of review of administrative decisions and consistent with the core elements of constitutional due process, the Puerto Rico Supreme Court has held that the exercise of discretion by an administrative agency must be rooted in reasonableness and in accordance with applicable law. *See e.g., Hernández Feliciano v. Municipio de Quebradillas*, 211 DPR 99, 115 (2023); *Ramírez v. Policía de PR*, 158 DPR 320, 339 (2003). Puerto Rico’s Highest Court has further defined discretion as “a form of reasonableness applied to judicial discernment to arrive to a just conclusion.” *Ramírez*, 158 DPR at 339; *see also Pueblo v. Ortega Santiago*, 125 DPR 203, 211 (1990) (translation provided). Thus, the Energy Bureau’s discretion to issue or review rulings that admit evidence into the record of this proceeding, must be guided by reasonableness, and applicable law, including guaranteeing due process and ensuring fairness.

27. A suggestion that the Hearing Examiner granted the parties an opportunity until December 12th to file written objections to documents marked as identification cures the problem is unreasonable in the context of a live evidentiary hearing that continued through December 19, 2025. Until the hearing concluded, parties could not have known whether, when, or for what purpose any particular ‘Marked for ID’ material would be used in cross-examination. Requiring

¹³ *See also* Section 3.13(e) of Act No. 38-2017, 3 LPRA § 9653(e) (2025), which provides that although the Puerto Rico Rules of Evidence do not apply to adjudicative proceedings, the basic principles of evidence may be used to secure a speedy, just, and inexpensive determination of the proceeding.

parties to lodge blanket objections by December 12th, while the hearing was still in progress, detached objections from actual use at the hearing and undermined the very cross-examination safeguard that the December 2nd Order embraced for non-referenced materials. The December 12th deadline, therefore, cannot justify maintaining a dual regime that deems some materials admitted regardless of use at the hearing.

28. Equally important, merely uploading a document to Accion as ‘Marked for ID’ without more does not establish relevance or admissibility under Puerto Rico Rules of Evidence 401¹⁴ and 402¹⁵, 32 LPRA Ap.VI. After the evidentiary hearing began on November 12th, the only authorization to upload new materials (apart from late-filed exhibits) was for impeachment, due by 8:00 p.m. the evening before cross-examination. *See* October 16th Order, Appendix A, page 5.¹⁶ At the October 16, 2025, pre-hearing conference, the Hearing Examiner confirmed that the night before the identification process was for impeachment purposes, not a backdoor to introduce substantive evidence.¹⁷ **Because impeachment identifications are not automatically admitted**

¹⁴ Puerto Rico Rule of Evidence 401 provides that “[r]elevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without such evidence. This includes evidence that may be used to impeach or uphold the credibility of a witness or deponent.

¹⁵ Puerto Rico Rule of Evidence 402 provides that “[a]ll relevant evidence is admissible, except as otherwise provided by constitutional mandate, by statute or by these Rules. Evidence which is not relevant is not admissible.

¹⁶ Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2025/10/Appendix-A-revised-FINAL-15-Oct-6-files-merged.pdf>.

¹⁷ *See* https://www.youtube.com/watch?v=keSYC_3or-4, at 7:00 through 8:22:

Margarita Mercado: Oh, okay. That’s fine. Um, I also had a question as to what you recently mentioned that by 8:00 pm the day before, um, uh, parties can upload, um, identifications to use in cross-examination. The order mentions that that is allowed to introduce evidence. Um, I wanted clarification on that because my understanding would have been that this would be for impeachment purposes. So, if someone who has substantive evidence that should be identified before like the, before the hear[ing]... before we start the hearing everyone should identify their

as substantive exhibits, materials that were never used in cross-examination should remain ‘Marked for ID but Not Used’ and should not be part of the evidentiary record. It would be especially arbitrary and unreasonable to deem admitted the large tranche of materials marked after November 12th when, by October 16th, the Hearing Examiner had already clarified that the night-before identification process was for impeachment only, and by December 2nd had prospectively limited admission of non-referenced materials to those actually used at the hearing.

29. The Hearing Examiner’s proffered justification for maintaining a different rule of admission for some exhibits, does not withstand scrutiny for at least three reasons.

30. **First**, the December 2nd Order was issued while the hearing was in active progress and after nine hearing days had elapsed. This was at the very moment when the parties’ attention and resources were concentrated on presenting and testing evidence. Adjusting the rules midstream and then holding parties to a regime whereby, for pre-926 materials, written objections were required, meanwhile the hearing was ongoing, and the objecting party did not know when or whether the documents marked as identification would be used in cross-examination, or for what

evidence. This should be also for impeachment only. Um, the, the allowance to introduce those identifications the day before.

Scott Hempling: That’s exactly right. Did I ever say something that contradicts that, Ms. Mercado, or something that was not clear? Please tell me.

Margarita Mercado: But the order says introduce documentary evidence. Um, so it’s, it doesn’t say for impeachment purposes. So that’s where it’s coming from.

Scott Hempling: Yep. Don’t try to play with me with this folks. Okay. You’ve got time. Get it done now. You’ve got rebuttal for interveners coming up and you’ve got surrebuttal for the applicants and that is that.

Now that doesn’t preclude your hearing examiner or your commissioners from saying they want something new, but, um, that’s the only way that can happen.

Everybody good?

purpose. The mid-hearing ruling that the January 8th Order seeks to enshrine functionally sidestepped the cross-examination requirement that ensures reliability and fairness. Consistent with procedural fairness and due process, this Energy Bureau should reject validating an evidentiary process that affords diminished confrontation rights in the midst of trial by admitting as evidence documents that the parties and the Energy Bureau consultants were only allowed to mark as identification to use for impeachment purposes but did not reference during cross-examination.¹⁸

31. **Second**, the December 22nd Order’s global statement that “having received no objections, I admit [874-925] all” ignored the record’s contrary indications, including the timely objections LUMA lodged to BH 917 and 919¹⁹ **and** LUMA’s reservation of rights to strike materials neither tied to prefiled testimony nor used at hearing. Said ruling also runs counter to the statement of the December 2nd Order and ruling that materials not referenced in or attached to pre-filed testimony, and that were not introduced during cross-examination, would not be admitted into evidence.²⁰

¹⁸ LUMA posits that the same uniform “use-or-reference” rule must apply to the Energy Bureau consultants’ materials numbered above 925 that were not used in cross-examination and were admitted as ‘late-filed exhibits’ by way of the January 8th Order. During the December 16th hearing, the Hearing Examiner announced that consultant materials above 925 not used in cross would be considered late-filed, and the January 8th Order admitted a subset (Exhibits 940, 944, 952-964, 1034-1036, and 1064-1067) ‘as late-filed’ after stating that no objections were received. However, the December 2nd directive prospectively limited admission for non-referenced materials to those actually used at hearing, leaving the rest in ‘Marked for ID but Not Used.’ Merely applying a ‘late-filed’ label to unused consultant materials does not overcome that standard or establish relevance, foundation, or reliability. Because these exhibits were not used during cross-examination and are not referenced in or attached to prefiled testimony, **they should not be part of the evidentiary record.**

¹⁹ The January 8th Order ultimately sustained LUMA’s objections to BH 917 and 919, demonstrating that the December 22 determination was in fact overbroad and required correction when tested. That experience confirms the risk in deeming admission for large blocks of documents not introduced through evidentiary mechanisms.

²⁰ Specifically, the December 2nd Order provided as follows:

32. **Third**, the January 8th Order’s own application of the “prospective” rule to documents marked 926 and above, with a careful sorting of exhibits used during cross, and a segregated late-filed exhibit process, demonstrates both the feasibility and the fairness of a uniform standard. Where the record showed cross-examination use, the January 8th Order admitted evidence. Otherwise, the January 8th Order declined admission for materials above 925. That is the coherent evidentiary discipline that should be applied to ensure evidentiary and procedural fairness.

33. Applying a single, uniform rule is necessary, practical and fair. The December 2nd Order established the correct standard: admit all prefiled testimony, and all materials referenced in or attached to prefiled testimony; and for other materials, admit only if introduced during cross-examination. Materials neither used at the hearing nor tied to prefiled testimony should remain “Marked for ID but Not Used” on the Accion Platform and should not be part of the evidentiary record. That approach protects the parties’ confrontation rights, avoids padding the record with untested documents, and supports the Energy Bureau’s obligation to base its decision on competent evidence appropriately introduced.

34. The Energy Bureau, sitting as a whole, should vacate the January 8th Order to the extent it preserves admission of exhibits above Exhibit 462 that were neither referenced in nor attached to prefiled testimony nor used and introduced during cross-examination. It should direct that the uniform “use-or-reference” rule be applied uniformly across Exhibits 462-1067, consistent

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.”

December 2nd Order, p. 2 (*italics* in original).

with LUMA's December 26th Reconsideration. That is, the record should include: (i) all prefiled testimony (including expert reports) and all other materials referenced in or attached to that testimony; (ii) the specific materials used during cross-examination and admitted at hearing; and (iii) properly designated late-filed exhibits that satisfy the same use-or-reference standard or otherwise meet a hearing-announced bench directive grounded in relevance and reliability.²¹ All other materials marked starting with Exhibit number 462, should remain on the Accion Platform as "Marked for ID but Not Used," but not admitted, as the December 2nd Order itself contemplated for unused materials. This uniform approach reflects the Hearing Examiner's own standard applicable to documents marked for identification after October 27th and for impeachment purposes, cures the arbitrariness of a mid-hearing rule shift, and safeguards due process by limiting the record to evidence actually presented and tested in the hearing room.

35. Finally, LUMA respectfully further requests that the Energy Bureau stay the post-hearing briefing schedule, as outlined by the Hearing Examiner in the December 22nd Order and revised in the January 8th Order, until the Energy Bureau adjudicates the present motion. This request is warranted because the relief sought directly affects what constitutes the evidentiary record and the materials the parties may rely on in post-hearing briefs. Namely, whether documents neither referenced in nor attached to prefiled testimony nor used and introduced during cross-examination should be deemed admitted. The requested stay will prevent briefing on a potentially fluid record, promote procedural fairness, and conserve the parties' and the Energy Bureau's

²¹ Specifically, the record should not include Energy Bureau consultant materials numbered above 925 that were not used in cross-examination and were admitted solely as 'late-filed.' Per the January 8th Order, these are: Exhibits 940, 944, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 1034, 1035, 1036, 1036, 1064, 1065, and 1067 as stated by LUMA in the December 26th Reconsideration. *See also* LUMA's December 26th Reconsideration, Table 2, with Exhibits concerning LUMA.

resources while ensuring that post-hearing submissions proceed on a uniform and properly admitted evidentiary foundation.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **vacate** the Hearing Examiner’s January 8th Order insofar as it admits exhibits neither referenced in or attached to prefiled testimony nor used during cross-examination starting with Exhibit 462 and including the Energy Bureau Consultants’ exhibits admitted solely ‘as late-filed’ despite non-use (Exhibits 462, 500, 501, 502, 503, 565, 582, 585, 587 through 591, 593, 595, 596, 598, 600, 602, 608, 609, 614, 619, 620, 705, 711, 724, 860, 862, 869 through 874, 877, 878, 889, 895, 940, 953, 954, 955, 958, 959, 960, 961, 963, 1034, 1035, 1036, 1036, 1064, 1065, and 1067; **apply** a uniform “use-or-reference” rule for all Exhibits starting with Exhibit 462; and **stay** the post-hearing briefing schedule outlined in the Hearing Examiner’s December 22nd Order, as revised by the January 8th Order.

RESPECTFULLY SUBMITTED. ²²

In San Juan, Puerto Rico, this 13th day of January, 2026.

WE HEREBY CERTIFY that this document was filed using the electronic filing system of this Energy Bureau and that electronic copies of this document will be notified to Hearing Examiner, Scott Hempling, shempling@scotthemplinglaw.com; and to the attorneys of the parties of record. To wit, to the *Puerto Rico Electric Power Authority*, through: Mirelis Valle-Cancel, mvalle@gmlex.net; Juan González, jgonzalez@gmlex.net; Alexis G. Rivera Medina, arivera@gmlex.net; Juan Martínez, jmartinez@gmlex.net; and Natalia Zayas Godoy, nzayas@gmlex.net; and to *Genera PR, LLC*, through: Jorge Fernández-Reboredo, jfr@sbgblaw.com; Giuliano Vilanova-Feliberti, gvilanova@vvlawpr.com; Maraliz Vázquez-Marrero, mvazquez@vvlawpr.com; ratecase@genera-pr.com; regulatory@genera-pr.com; and legal@genera-pr.com; *Co-counsel for Oficina Independiente de Protección al Consumidor*, hrivera@jrsp.pr.gov; contratistas@jrsp.pr.gov; pvazquez.oipc@avlawpr.com; *Co-counsel for Instituto de Competitividad y Sustentabilidad Económica*, jpouroman@outlook.com; agraitfe@agraitlawpr.com; *Co-counsel for National Public Finance Guarantee Corporation*, epo@amgprlaw.com; loliver@amgprlaw.com; acasellas@amgprlaw.com; matt.barr@weil.com;

²² On May 9, 2025, this Energy Bureau issued a Resolution and Order, requiring that all substantive English-language filings be accompanied by concise Spanish summaries to enhance public accessibility and participation. *See also* Energy Bureau Resolution and Order of June 4, 2025 (clarifying that full translations are optional but summaries are mandatory). In compliance with the Energy Bureau’s standing directives regarding accessibility and ensuring citizen participation, LUMA is hereby submitting the corresponding Spanish-language summary of this Revised Motion. *See Exhibit 1.*

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Exhibit 1

Solicitud Urgente de LUMA al Negociado de Energía de Puerto Rico para Parcialmente Dejar sin Efecto la Orden del Oficial Examinador del 8 de Enero y Paralizar el Calendario Procesal, presentada por LUMA Energy, LLC y LUMA Energy ServCo, LLC

LUMA solicita que el pleno del Negociado de Energía de Puerto Rico (“NEPR”) revoque parcialmente la Orden del 8 de enero de 2026 del Oficial Examinador y restablezca un criterio uniforme de admisibilidad probatoria aplicable a los exhibits marcados con posterioridad al 27 de octubre de 2025, a partir del Exhibit 462. LUMA sostiene que la orden impugnada instauró, durante una vista evidenciaria de seis semanas de duración, dos regímenes probatorios contradictorios, lo cual resulta arbitrario, caprichoso y contrario al debido proceso.

LUMA expone que la orden del 8 de enero de 2026 consolida dos reglas incompatibles: una para los Exhibits 462–925 que fueron admitidos aun si no estaban vinculados a testimonios ni se usaron en contrainterrogatorio); y otra para los Exhibits 926–1067, para los cuales se exigió uso en contrainterrogatorio como condición para admitirlos en evidencia, exceptuando un subconjunto de documentos de los consultores del NEPR admitidos como “tardíamente presentados” a pesar de que no se utilizaron en la vista evidenciaria.

LUMA establece que esta determinación es arbitraria y lesiona el debido proceso porque les impide a las partes confrontar los documentos que no se utilizaron mediante los mecanismos usuales del juicio, lo que contradice la directriz del 2 de diciembre que había reconocido esa protección.

LUMA sostiene que la fecha límite del 12 de diciembre de 2025, para presentar objeciones ocurrió mientras la vista evidenciaria seguía en curso, lo que hacía imposible que las partes supieran si los exhibits “Marked for ID” se utilizarían en la vista ni para cuál propósito. Ello así, desnaturalizando la protección del contrainterrogatorio que la orden del 2 de diciembre de 2025, había reconocido para exhibits que no se utilizaron en contrainterrogatorio. Además, el propio récord administrativo recoge que, durante el transcurso de la vista evidenciaria, el proceso de marcar documentos como identificación era para marcar documentos que se utilizarían para impugnar testigos; no para introducir prueba sustantiva.

Respecto a los exhibits de los consultores del NEPR que ellos marcaron como identificación entre el 8 y el 19 de diciembre de 2025 y que el Oficial Examinador admitió en evidencia mediante la orden del 8 de enero como exhibits “tardíamente presentados”, a pesar de que no se utilizaron en la vista evidenciaria, LUMA argumenta que esos documentos no cumplen con los requisitos de pertinencia, fundamento y confiabilidad puesto que no se incorporaron a testimonios ni se utilizaron en contrainterrogatorio.

LUMA solicita que el Pleno del NEPR revoque parcialmente la Orden del 8 de enero de 2026, en la medida en que mantiene la admisión de exhibits a partir del Exhibit 462, que no están referenciados ni anejos a testimonios y que no se utilizaron ni se presentaron en evidencia durante contrainterrogatorios. Asimismo, solicita que el NEPR aplique un único estándar uniforme “uso-o-referencia” a los Exhibits 462–1067: (i) admitir testimonios y materiales referenciados en o anejos a esos testimonios; (ii) admitir materiales usados en contrainterrogatorio e introducidos en la vista evidenciaria; y (iii) admitir exhibits “tardíamente presentados” solo si cumplen el mismo estándar o una directriz de estrado basada en pertinencia y confiabilidad. Todo lo demás debe

permanecer “Marked for ID but Not Used”. Por último, LUMA solicita que se suspendan los términos de presentación de alegatos hasta que se adjudique la moción, por incidir directamente en la delimitación del récord admisible sobre el cual habrán de basarse los escritos.