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Received:

Jan 17, 2026

6:22 PM

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

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| **IN RE:** PUERTO RICO ELECTRIC POWER AUTHORITY RATE REVIEW | **CASE NO:** NEPR-AP-2023-0003<br><br>**SUBJECT:** Motion for Bureau to Confirm Inclusion of Exhibits 462 and higher and to Partially Modify Hearing Examiner's Order of January 8th, 2026, if necessary |

**MOTION FOR BUREAU TO CONFIRM INCLUSION OF ALL EXHIBITS NUMBERED 462 AND HIGHER IN THE RECORD AND TO PARTIALLY MODIFY THE HEARING EXAMINER'S JANUARY 8, 2026 ORDER, IF NECESSARY**

**TO THE HONORABLE ENERGY BUREAU:**

**COMES NOW,** the Solar and Energy Storage Association of Puerto Rico ("SESA") by and through undersigned counsel, and respectfully states as follows:

## I. INTRODUCTION

SESA humbly requests the Honorable Bureau to confirm the inclusion into the record of all exhibits numbered 462 and above and, if it deems necessary to implement the above, modify the *Hearing Examiner's January 8th Order,* which set rules regarding the evidentiary record in this proceeding. The Bureau, sitting as the ultimate decisionmaker is completely free to exercise its independent authority to determine the scope of the evidentiary record upon which its final decision will rest. We remind the Bureau that all ROIs submitted by SESA fully complied with and were submitted within the applicable deadline established for submitting ROIs (November 7th, 2025), whereas dozens of these ROIs submitted by SESA were responded to after the mandated 10 day timeframe, which was due to no fault of SESA. Furthermore, at the time of ROI

submission, and respondent answer or response, there existed no rule mandating that ROIs would be inadmissible as evidence if those ROIs were not specifically referenced verbally during the evidentiary hearing. On the contrary, what was well established by the Hearing Examiner, and consistently reiterated by the Examiner dozens of times during the multiple evidentiary hearings, was his reiterated order repeatedly ordering and emphasizing that parties had to refrain from calling witnesses for the purpose of reading aloud content from ROIs during hearings. These reiterated orders by the Hearing Examiner appeared reasonable and effective to keep hearings progressing at a good pace; productive, efficient, procedurally economical for the parties and this Honorable Bureau. The Hearing Examiners' actual instructions were, repeatedly, "Counsel, put it in your final brief instead."

As such, the Hearing Examiner's determination that certain ROIs, like SESA's would be unable to be entered into the record later is in direct conflict with the established expectation that all ROIs duly submitted uploaded into the Accion Power platform would be automatically admitted into the evidentiary record, bolstered by the Hearing Examiner's repeated verbal instructions and orders to parties that they include reference to any ROIs in their final briefs, rather than using valuable hearing time to call witnesses for the unnecessary and time-consuming purpose of re-reading and verbally repeating an ROI's content. The consistent rulings by the Hearing Examiner created the firm expectation and understanding that ROI content was already firmly part of the rate case record and as such, and that parties would be able to reference those in their final briefs.

For the above reasons, SESA humbly requests that the Honorable Bureau correct this injustice and confirm the inclusion into the record of all exhibits numbered 462 and above. Via the requested remedy the Bureau protects the interests of the parties that, like SESA, acted according to the

rulings and expectations created by the Examiner during the evidentiary hearing process. This remedy is clearly in the interest of fairness and due process for all parties and of ensuring a complete evidentiary record for the benefit of the parties, the public and the Bureau itself.

## II. DISCUSSION

### A. THE ENERGY BUREAU'S AUTHORITY TO DEFINE THE EVIDENTIARY RECORD IS INHERENT AND PLENARY

The Energy Bureau's authority to determine what constitutes the evidentiary record for purposes of its final order is plenary and inherent, independent of the Hearing Examiner's interlocutory evidentiary management. While the Hearing Examiner exercised discretion in managing a complex, multi-week evidentiary hearing, the Bureau is not bound to adopt every intermediate evidentiary line-drawing when compiling the record that will support its final decision and be subject to judicial review.

The question SESA brings to this Honorable Bureau is therefore not whether the Hearing Examiner acted permissibly at each procedural juncture, but what evidentiary record best supports a reasoned, transparent, and reviewable final order. SESA's request is directed solely to that determination.

### B. RELIEF PROPERLY LIES WITH THE ENERGY BUREAU

SESA recognizes that the Hearing Examiner has already considered and denied requests concerning the admissibility of discovery-related exhibits, including those submitted by SESA. Having sought relief from the Hearing Examiner and received an adverse ruling, SESA does not request further reconsideration at the examiner level.

Instead, SESA properly seeks relief from the Energy Bureau in its capacity as the ultimate decisionmaker in this proceeding. Where the issue concerns the composition of the evidentiary record that will form the basis of the Bureau's final order, and that will be reviewed, if necessary, by appellate courts, it is appropriate and necessary for the Bureau itself to consider SESA's request. Accordingly, SESA requests that the Bureau exercise its independent judgment to determine what evidentiary record best serves fairness, transparency, administrative regularity, and judicial review.

## C. IF THE BUREAU DEEMS IT NECESSARY TO IMPLEMENT SESA'S REQUEST, IT SHOULD PARTIALLY MODIFY THE EXAMINER'S JANUARY 8 ORDER

As per the January 8 Order, Exhibits 462–925 were admitted under the evidentiary framework in place prior to December 2, 2025; and Exhibits 926 and higher, were subject to another ruling requiring use during cross-examination (or late-filed designation) for admission.

This arbitrary distinction rests entirely on timing and numbering—not on relevance, reliability, or probative value. The Honorable Bureau can correct this situation, a decision that would benefit all the parties in the case, and ensure a better, more complete record for Bureau consideration.

Earlier in the proceeding, discovery responses were admitted as a category of evidence, reflecting the well-established principle that parties propound discovery precisely because they may wish to rely on the responses in post-hearing advocacy. Nothing in the procedural framework at the time these ROIs were propounded and answered suggested that later-produced discovery responses would be treated differently for purposes of the Bureau's final record.

While the Hearing Examiner concluded that SESA *could have* sought admission of these ROIs during cross-examination notwithstanding his directives discouraging unnecessary reading of

record materials, that conclusion does not resolve the broader institutional question now before the Bureau. The issue is not theoretical availability of a procedural step, but whether the Bureau should now exclude from its final record sworn discovery responses that were properly obtained, uploaded particularly where their timing was dictated by LUMA's own production schedule.

Given its inherent, plenary and superior authority, an Energy Bureau resolution granting SESA's request confirming the inclusion into the record of all exhibits numbered 462 and above would by its own terms supersede any contradictory decisions by the Hearing Examiner, but if the Bureau, in its discretion, finds it useful or necessary to clearly establish that the Hearing Examiner's Order of January 8th 2026 should be partially modified to best implement its superior will, it should do so.

## D. THE HEARING EXAMINER'S "STANDARD PRACTICE" OBSERVATIONS DO NOT CURE THE DUE-PROCESS AND RELIANCE CONCERNS AT THE BUREAU LEVEL

The January 8 Order states that SESA could have introduced the ROIs during cross-examination without reading them aloud and that such a practice is "standard." SESA does not dispute that, as a general matter, counsel may seek admission of documents during cross.

The problem, however, is structural. Throughout the hearing, the Hearing Examiner repeatedly emphasized efficiency and discouraged counsel from engaging in formalistic evidentiary maneuvers that consumed hearing time without advancing live testimony. Parties reasonably structured their examinations in reliance on that guidance and on the established practice that discovery responses would be cited in post-hearing briefing.

Administrative due process does not turn on whether a procedural option was theoretically available in hindsight, but on whether parties were given clear, contemporaneous notice that failure to take a particular step would result in forfeiture of evidence for purposes of the final record. That notice was not provided here.

**E. PRESERVING THE COMPLETE RECORD, SUBJECT TO WEIGHT, IS THE SOUND AND ADMINISTRABLE REMEDY**

SESA respectfully proposes a simple, administrable remedy that the Bureau can easily establish: the Energy Bureau should confirm inclusion of all exhibits numbered 462 and higher in the evidentiary record, while reserving full discretion to assign such weight—or no weight at all—to any exhibit it deems unpersuasive, duplicative, or immaterial.

Admission into the record does not compel reliance. The Bureau remains free to assign little or no weight to any exhibit deems unpersuasive, duplicative, or immaterial. Inclusion, however, promotes transparency, completeness, and reviewability, and avoids artificial gaps that increase appellate risk.

**WHEREFORE,** SESA respectfully requests that the Energy Bureau:

1. Confirm inclusion of all exhibits numbered 462 and higher in the evidentiary record, with weight to be determined by the Bureau in its discretion.
2. Partially modify the Hearing Examiner's January 8th Order which set rules regarding the evidentiary record in this proceeding, if the Honorable Bureau deems it useful or necessary to implement the above.

Respectfully submitted on January 17, 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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