

**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: Guidance for Phase 2 Rate Review
Filing and Scheduling of Technical Conference.

RESOLUTION AND ORDER

I. Introduction and Background

On June 30, 2023, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order initiating this proceeding ("June 30 Resolution"). Through the June 30 Resolution, the Energy Bureau ordered a three-phase process to review rates and ordered LUMA Energy, LLC, and LUMA Energy ServCo, LLC (jointly referred to as, "LUMA") to file on October 4, 2023, a report on the filing requirements for rate review ("Phase 1 Report").

On October 4, 2023, LUMA filed a document titled *Motion in Compliance with June 30, 2023, Resolution and Order*, ("October 4 Motion"), in which LUMA included, as Exhibit 1, its 2023 Rate Review Phase I Report ("Phase I Report") as required through the June 30 Resolution.

On October 24, 2023, the Energy Bureau issued a Resolution and Order ("October 24 Order") with the first requirement of information ("1st ROIs") seeking clarifications from LUMA, GENERA PR, LLC ("Genera"), and the Puerto Rico Electric Power Authority ("PREPA") on the Phase 1 Report. The October 24 Order required the LUMA, Genera and PREPA to file on or before November 3, 2023.

On November 3, 2023, LUMA submitted a document titled *Motion Submitting Responses to First Requirement of Information in Compliance with October 24th Resolution and Order* ("LUMA November 23 Motion"), in which LUMA presented as Exhibit 1 its responses to the 1st ROIs. Exhibit 2 of the LUMA November 23 Motion includes Genera's responses to the 1st ROIs. LUMA included as Exhibit 3 of the LUMA November 23 Motion a document titled *Updated Phase I Report* ("Updated Revised Phase I Report") and included Exhibit 4 a Revised Appendix A, Phase II Filing Schedules.¹ As Exhibit 5 of the LUMA November 23 Motion filed a redline that compares the Phase I Report filed on October 4, 2023 with the updated version of the Phase I Report.²

On November 3, 2023, PREPA filed a document titled *Notice of Appearance and Motion for Extension of Time to Comply with the October 24 Resolution and Order* ("PREPA November 3 Motion"), in which it informed that new legal counsel was recently retained and requested additional time to respond to the 1st ROIs.

On November 8, 2023, the Energy Bureau issued a Resolution and Order taking notice of PREPA's legal representatives and granting an extension until November 10, 2023.

On November 10, 2023, PREPA submitted a document titled *Motion in Compliance with Resolution and Order*, responding to the 1st ROIs.

¹ LUMA November 23 Motion, p. 3, ¶ 9.

² LUMA November 23 Motion, p. 3, ¶ 10.



II. Discussion of Phase 1 Report

LUMA's Updated Phase 1 Report³ summarizes progress since the 2017 rate order, reviews the filing requirements from Regulation 8720, assesses the capability to fulfill these requirements for this rate review, and reports on coordination between LUMA, Genera, and PREPA in preparing for the rate review.

A. Progress Since the 2017 Rate Order

LUMA recaps the issues in PREPA's Cost of Service Study ("COSS") and rate design approved by the Energy Bureau during the 2017 rate case and then details the actions completed and in process to address these problems.

LUMA begins with the Energy Bureau's concerns about PREPA's COSS in 2017 – namely, that this study was not based on reliable load data and was flawed in its approach to functionalization and classification of costs. To address the load forecasting issues, LUMA has initiated its Load Forecasting Improvement Plan, which is a five-step program geared to develop more reliable estimates, per class, for monthly and annual peak load for an updated COSS. At the time of the Phase 1 report, LUMA had completed three steps already and was anticipating completing the remaining two steps ("process design" and "build capabilities") by December 2023. LUMA had already developed load research samples and instituted other methodological refinements necessary to produce more reliable load estimates. LUMA expected load research to begin in Q3 2023, with the results of this load research expected to inform the FY25 load forecast. LUMA also expected that it would have demand allocators developed to industry standard by FY25.

At the time of the Phase 1 report, efforts to deploy LUMA's Advanced Metering Infrastructure ("AMI") had commenced. LUMA had begun preliminary meter procurement activities, and it expected to begin rollout of meters in Q1 2025. The adoption of AMI meters across the island will complement LUMA's existing load research efforts by providing additional insight into customer consumption.

Concerning functionalization and classification, LUMA relates that the Energy Bureau found there to be issues in PREPA's approach that stemmed from PREPA's failure to track costs in a fashion permitting the determination of cost causation by function or class. At the time of LUMA's Phase 1 Report, the company was waiting on Puerto Rico's Public-Private Partnership Authority ("P3A") to complete its work on unbundling PREPA's balance sheets. LUMA is not a party to this work and must stand by until the unbundling is completed. Once ready, these unbundled balance sheets will enable LUMA to update the functionalization and classification of costs in its COSS. Meanwhile, LUMA is undertaking remediation of transmission and distribution financial data, through the Critical Financial Controls Program and the Critical Financial Systems Program. LUMA has made more progress in the remediation activities associated with the Critical Financial Controls Program.

LUMA expects that it will complete a full COSS in FY2028, contingent on the availability of audited balance sheet results for PREPA's first year of operations as a transformed utility—2024—and completion of the final phase of its own Load Forecasting Improvement Plan. LUMA also intends to file a partial COSS using direct allocation of costs, to the extent possible.

Turning to rate design, LUMA concludes the main cause of deficiencies in PREPA's approach to be shortcomings in the underlying load data and inappropriate estimation of the marginal costs of generation. LUMA expects that its Load Forecasting Improvement Plan and the deployment of AMI will address the shortcomings in load information. LUMA has also taken interim steps to improve marginal cost estimation before availability of better data through estimating system average hourly costs. LUMA secured access to the OSI-PI software from Genera and is using this to estimate hourly marginal energy costs. Additionally, the installation of the new Energy Management System ("EMS") will provide access to real-time generation plant fuel data. The critical EMS upgrades program is expected to reach a

³ As updated in the LUMA November 3 Motion as Exhibit 2 titled Updated Phase I Report.



remediated state in FY2025. Finally, LUMA has tried to enhance the precision of its data on generation fleet costs to improve dispatch decisions.

B. Review and Assessment of Filing Requirements for this Rate Review

LUMA assesses each filing requirement in Regulation 8720 as Appendix A to the Updated Phase 1 Report. In Appendix A, LUMA identifies whether it can fulfill the requirement, meet the requirement with an alternative approach, partially meet the requirement with an alternative approach, or if the requirement is not applicable or relevant.

In total LUMA states it can fulfill 20 of the 61 filing requirements. For the remaining requirements, LUMA indicates that 5 can be met with alternative approaches, 19 can be partially met with alternative approaches, and 17 are not applicable. LUMA cites several limiting factors contributing to this assessment including PREPA's bankruptcy, balance sheet remediation, and data related to the test year.⁴

First, as for PREPA's bankruptcy, LUMA describes its impact on the ability to finance capital investments with debt. LUMA states that because PREPA remains under Title III bankruptcy it is unable to finance capital investment with debt and instead all capital investments must be paid for in the year they are incurred. LUMA concludes that the debt service coverage amount, originally adopted by the Energy Bureau in the 2017 rate order, is not relevant to the establishment of a net income component for the revenue requirement.⁵

Second, LUMA indicates that ongoing balance sheet remediation initiatives and limitations related to PREPA's financial reporting impact its ability to fulfill filing requirements. LUMA states that PREPA's balance sheet needs to be restored and a set of regulatory accounting books will need to be established for each operating company to allow LUMA to provide regulatory income statements to inform future rate reviews. The Phase 1 Report indicates that LUMA, PREPA, and Genera will not be able to establish a robust Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts ("USOA") until FY2027.⁶

Finally, LUMA proposes a modification to the "Test Year" as defined in Regulation 8720 as a "one-year historical period used to determine rate base, operating income, interest coverage ratio and debt service coverage ratio."⁷ LUMA understands the Energy Bureau's 2017 rate order directed future rate proceedings to include the most recent fiscal year, adjusted for known and measurable changes from that year. However, LUMA provides several reasons for why data from the most recent fiscal year is insufficient for ratemaking. The most current fiscal year having independently audited information and an auditor's report for PREPA's financial statements is FY2021. LUMA explains that PREPA and its auditors are still working on the audit of PREPA's financial statements for FY2022. LUMA does not believe that the most recent available audited financial statements for FY2021 will be a good cost indicator for FY2025 and beyond because "LUMA, PREPA, and Genera are in the process of making significant changes to transform Puerto Rico's electric system".⁸ LUMA proposes to use a forward-looking test year based on budgeted information for FY2025. LUMA indicates it will use FY2025 for the test year and the rate year.⁹

⁴ Phase 1 Report, pp. 16-19.

⁵ *Id.*, pp. 16-17.

⁶ *Id.*, p. 17.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Id.*



C. Coordination

LUMA indicates it requires input from Genera and PREPA to complete 12 of the 16 filing requirements in Regulation 8720. LUMA states it has begun engagement with Genera and PREPA to collaborate on these requirements. As part of this engagement LUMA, hosted a virtual workshop on September 12, 2023.

The Phase 1 Report also includes preliminary witness lists for LUMA, Genera, and PREPA.¹⁰

III. Energy Bureau's Initial Review of Phase 1 Report

The Energy Bureau has conducted an initial review of LUMA's Phase 1 report. LUMA's progress in addressing many shortcomings identified in the 2017 Rate Order is encouraging. However, the discussion in the Phase 1 Report on the balance sheet remediation activities raises significant concerns that the rate case information for the FY2025 test year/rate year, or any comparable periods, will not be presented using the standard industry accounting guidance in the FERC USOA for electric utilities.

In addition, LUMA's description of the modified COSS does not provide enough detail to understand how this alternative approach may affect the rate review. The Energy Bureau reinforces that the main flaws in the COSS prevented addressing rate design in the prior rate case. LUMA has had several years to address these flaws and the Energy Bureau expects that LUMA will prepare appropriately for Step 2 by devoting enough internal and external resources to prepare a modern rate design that reflects the ongoing transformation of Puerto Rico's electricity system.

To further review these areas, the Energy Bureau **SCHEDULES** a **virtual** Technical Conference **on April 17, 2024, commencing at 10:00 a.m. ("April 2024 Technical Conference")**. The April 2024 Technical Conference will address the extent to which the accounting information prepared for LUMA, PREPA, and Genera conforms to the guidance provided in the FERC USOA. Attachment One of this Resolution and Order provides further details on the information to prepare for the April 2024 Technical Conference. The Energy Bureau also **DIRECTS** LUMA to provide responses to the items identified in Attachment One of this Resolution and Order on or **before April 8, 2024**.

IV. Guidance on Phase 2 Filing

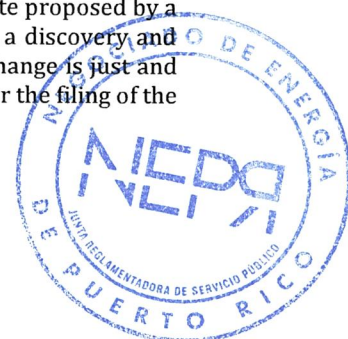
After initial review of the Updated Phase 1 Report, the Energy Bureau provides the following high-level guidance to help LUMA and stakeholders prepare for the next phases of the rate review. The Energy Bureau is likely to provide additional guidance on the proposed filing requirements after discussion at the April 2024 Technical Conference.

A. Two-Step Review of Revenue Requirement and Rate Design

The Energy Bureau believes that separating the full rate review into two steps will allow for thorough analysis of the request while meeting required timelines for decision making.¹¹ Step 1 will focus on reviewing and finalizing the updated revenue requirements for LUMA, Genera, and PREPA. After a final decision on the revenue requirement, the Energy Bureau will formally begin Step 2 to review rate design. The sequential review will allow LUMA

¹⁰ LUMA witnesses provided in Table 4-1, pg. 19; Genera witness provided in Appendix B, and PREPA witnesses provided in Appendix C.

¹¹ Act 57 of 2014 in Section 6.25(c) "Modification of Approved Rate" states, "Any change in rate proposed by a certified electric power company, whether to increase or decrease the same, shall undergo a discovery and public hearing process to be held by the Commission to determine whether the proposed change is just and reasonable. The review process and the issue of the order shall not exceed six (6) months after the filing of the request."



further opportunity to address the limitations with the modified COSS identified in the Phase 1 report.¹²

1. Step 1 – Revenue Requirement

For initiating this step of the review, LUMA should file the schedules identified from the “Rate Review – Phase 1 Matrix” that apply to supporting the revenue requirement. These include Schedules A-F and H-L, excluding the items that LUMA has identified as a “Suspended Requirement.”

The April 2024 Technical Conference will review the impact of current balance sheet remediation activities on some of these schedules, the status of LUMA, PREPA, and Genera’s accounting for FY2023, and their budgeting for FY2024 with the electric utility accounting guidance in the FERC USOA. As noted above. The Energy Bureau is likely to provide further direction on potential corrective actions after review of LUMA’s responses to Attachment One and discussion during the technical conference.

2. Step 2 – Rate Design

In Step 2 LUMA should submit the applicable schedules for the rate design review. Based on the information in the “Rate Review – Phase 1 Matrix”, the required information is included in Schedules G, M, and N.

In the Step 1 filing, LUMA should also provide an update on the status of Schedules G, M, and N, including discussion of expected progress on these schedules when formal review of the rate design begins (about 12 months after filing the revenue requirement request).

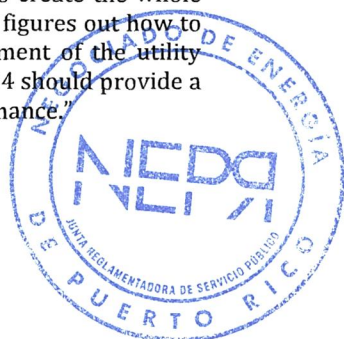
B. Key Requirements for Completeness Determination

The Energy Bureau identifies three requirements, which are described further below, as essential to determine a complete revenue requirement. Understanding the potential uncertainty on timing of the Legacy Debt charge, the Energy Bureau expects LUMA to submit the Phase 2 Step 1 filing with the best information available and can supplement the record as new information becomes available. This process will allow progressive review of key components of the revenue requirement without waiting for finality on all components. The Energy Bureau’s also **NOTIFIES** all stakeholders that the period for intervention will begin with the Phase 2 Step 1 filing, but the formal review process requires the Energy Bureau to determine that all elements are filed and deemed compliant with the rate case requirements.

1. *Bottom-up revenue requirements for 2025 test year* – In the June 30 Resolution, the Energy Bureau directed LUMA, Genera, and PREPA to develop “bottom-up” estimates for their revenue requirements.¹³ LUMA’s Phase I report requests a Fiscal Year 2025 test year, and the Energy Bureau **AGREES** with LUMA’s reasoning for this request. The Energy Bureau **CLARIFIES** that a complete revenue requirement filing will need to provide “bottom-up” estimates from LUMA, Genera, and PREPA for a FY 2025 test year.
2. *PREPA pension obligations* – Based on the information in the Phase I Report, PREPA will support and submit testimony on future pension obligations. The Energy Bureau also **CLARIFIES** that a complete

¹² See Phase 1 Report at pp. 7-12.

¹³ See June 30 Resolution at p. 4. The Energy Bureau provided the following guidance on establishing “bottom up” estimates, “The annual budget filings since the last rate case were required to maintain the same base rate. This rate review needs to establish new revenue requirements from a ‘bottom-up’ assessment of the current needs of the system. A bottom-up assessment requires that LUMA build a budget proposal by determining the detailed budget needs by each department of each company and adding them together to create the whole budget. In contrast, a ‘top-down’ assessment starts with a cap on the total rates, and then figures out how to allocate the resulting funds to each department of each company. A bottom-up assessment of the utility system’s requirements based on the most recent financial information from fiscal year 2024 should provide a reasonable basis to determine the system’s needs grounded in recent cost data and performance.”



revenue requirement filing will need detailed documentation of the proposed pension obligations, which will be discussed further during the April 2024 Technical Conference. The Energy Bureau will issue further guidance on this topic as needed after the April 2024 Technical Conference.

3. *Final decision on Legacy Debt Charge*– The opening order for this proceeding expected a possible Phase 3 to review the Legacy Debt Charge determined in a final bankruptcy court decision. The timing of a final decision remains uncertain. Therefore, the Energy Bureau expects to begin Phase 2 with LUMA’s filing on the timeline below. The Energy Bureau **CLARIFIES** that a complete filing will still require the final decision from the Title III Court and subsequent filing on the proposed structure of the Legacy Debt Charge.

C. **Expected High-Level Timeline**

The Energy Bureau establishes the following milestones for the rate review:

1. **April 8, 2024** – LUMA, Genera, and PREPA file responses to Attachment One of this Resolution and Order.
2. **April 17, 2024** – The Energy Bureau will hold a Virtual Technical Conference to review LUMA’s progress on the required filings. A subsequent resolution will provide the agenda and discussion questions for this meeting.
3. **June 1, 2024** – LUMA files proposed revenue requirement for Phase 2- Step 1 review.
4. **To be determined** – The Energy Bureau will provide further guidance after the April Technical Conference on the timeline for Step 2 - rate design review.

IV. **GUIDANCE ON RELATED DOCKETS**

FY2025 Annual Budget – LUMA should file the Annual Budget for FY2025 using the same guidelines and process that have been established in NEPR-MI-2021-0004. Review of the FY2025 budget is necessary since it will provide the underlying information for LUMA’s portion of the new revenue requirement that will be established in the rate case docket.

Integrated Resource Plan (“IRP”) – In developing the revenue requirement for this rate review, LUMA should use all relevant information and projected capital expenditures from the IRP under consideration in NEPR-AP-2023-0004.

V. **CONCLUSION**

The Energy Bureau **ORDERS** LUMA, Genera, and PREPA to provide responses to Attachment One of this Resolution and Order **on or before April 8, 2024**.

The Energy Bureau **SCHEDULES** the Virtual Technical Conference to further review and discuss LUMA’s Phase I report **on April 17, 2024, commencing at 10:00 a.m. EST**.

The Energy Bureau **ORDERS** LUMA to submit Phase 2, Step 1 filing **on or before June 1, 2024**, consistent with the guidance in this Resolution and Order.

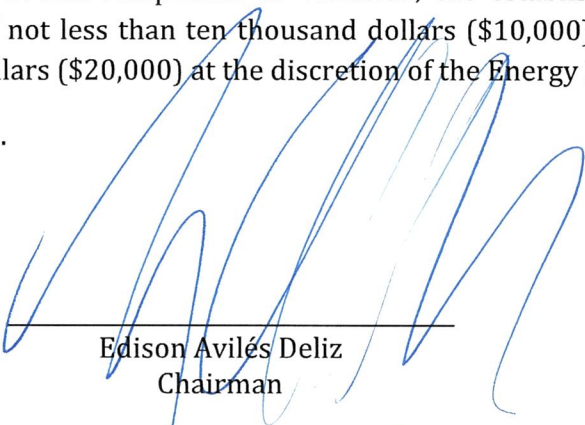
The Energy Bureau **ORDERS** PREPA and Genera to collaborate with LUMA to meet the timeline for the Phase 2 filing consistent with the guidance in this Resolution and Order.



The Energy Bureau **WARNS** LUMA, Genera and PREPA that:

- (i) noncompliance with this Resolution and Order, regulations and/or applicable laws may carry the imposition of fines and administrative sanctions of up to \$25,000 per day;
- (ii) any person who intentionally violates Act 57-2014, as amended, by omitting, disregarding, or refusing to obey, observe, and comply with any rule or decision of the Energy Bureau shall be punished by a fine of not less than five hundred dollars (\$500) nor over five thousand dollars (\$5,000) at the discretion of the Energy Bureau; and
- (iii) for any recurrence of non-compliance or violation, the established penalty shall increase to a fine of not less than ten thousand dollars (\$10,000) nor greater than twenty thousand dollars (\$20,000) at the discretion of the Energy Bureau.

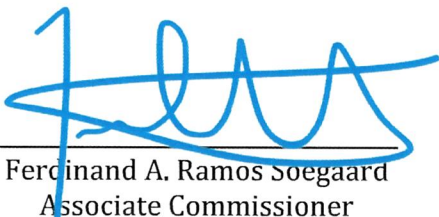
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Edison Avilés Deliz
Chairman



Lillian Mateo Santos
Associate Commissioner



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Associate Commissioner



Sylvia B. Ugarte Araujo
Associate Commissioner

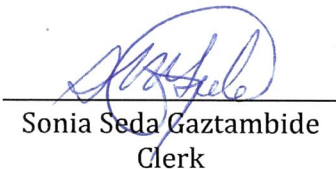


Antonio Torres Miranda
Associate Commissioner

CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau have agreed on March 15, 2024. I also certify that on March 15, 2024 a copy of this Resolution and Order was notified by electronic mail to mvalle@gmlex.net; arivera@gmlex.net; margarita.mercado@us.dlapiper.com; brannen@genera-services.com; jfr@sbgblaw.com; alopez@sbgblaw.com; regulatory@genera-pr.com; and I have moved forward with filing the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today March 15, 2024.



Sonia Seda Gaztambide
Clerk



ATTACHMENT ONE – Preparation for April 2024 Technical Conference

In the preparation for this Technical Conference, LUMA, PREPA and Genera **SHALL** each provide:

- 1) chart of accounts and be prepared to address and explain any and all currently known deviations from the FERC USOA for FY2023, FY2024, budgeted information for FY2025, and projected years that will be presented in the rate review.
- 2) whether the budgeted information for FY2025 can or will be adjusted for the rate case filing to conform with the accounting guidance provided for in the FERC USOA.
- 3) reliability of each organization's accounting information, including identifying the respective systems of internal controls and descriptions of how frequently and diligently the internal controls are tested, and whether each of the systems of internal controls follow the guidance provided by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) control framework.
- 4) To the extent that budgeted information for FY2025 will be used to establish a revenue requirement, LUMA, PREPA and Genera should also describe their budgeting processes, should detail and explain all key assumptions used in their FY2025 and subsequent year budgets/forecasts, and should describe the review and approval process applicable to their FY2025 budgets.
- 5) Update on the preparation of a modified COSS for Phase 2 Step 2 of the rate review.

For reference:

COSO is the most widely used internal control framework in the United States and is recommended by the Public Company Accounting Oversight Board (PCAOB).

The COSO internal control integrated framework is comprised of five components, including (1) control environment, (2) risk assessment, (3) control activities, (4) information & communication, and (5) monitoring activities. Each of these principles is elaborated on briefly below.

1. Control Environment

The organization demonstrates a commitment to integrity and ethical values. The Board of Directors demonstrates independence from management and exercises oversight of the development and performance of internal control. Management establishes, with Board oversight, structures, reporting lines, and appropriate authorities and responsibilities in the pursuit of objectives. The organization demonstrates a commitment to attract, develop, and retain competent individuals in alignment with objectives. The organization holds individuals accountable for their internal control responsibilities in the pursuit of objectives.

2. Risk Assessment

The organization specifies objectives with sufficient clarity to enable the identification and assessment of risks relating to objectives. The organization identifies risks to the achievement of its objectives across the entity and analyzes risks as a basis for determining how the risks should be managed. The organization considers the potential for fraud in assessing risks to the achievement of objectives. The organization identifies and assesses changes that could significantly affect the system of internal control.

3. Control Activities

The organization selects and develops control activities that contribute to the mitigation of risks to the achievement of objectives to acceptable levels. The organization selects and develops general control activities over technology to support the achievement of objectives.



The organization deploys control activities through policies that establish what is expected and procedures that put policies into action.

4. Information & Communication

The organization obtains or generates and uses relevant quality information to support the functioning of internal control. The organization internally communicates information, including objectives and responsibilities for internal control, necessary to support the functioning of internal control. The organization communicates with external parties regarding matters affecting the functioning of internal control.

5. Monitoring Activities

The organization selects, develops, and performs ongoing and/or separate evaluations to ascertain whether the components of internal control are present and functioning. The organization evaluates and communicates internal control deficiencies in a timely manner to those parties responsible for taking corrective action, including senior management and the Board of Directors, as appropriate.

In addition to the aforementioned COSO components, we would expect to see within each entity's internal controls matrices information concerning "Management Assertions" representing that an entity's financial information has been presented fairly and in conformity with the applicable financial reporting framework and underlying system of accounts. An entity's management implicitly or explicitly makes assertions regarding the recognition, measurement, presentation, and disclosure of the various elements of its financial information and related disclosures. Common categories of management assertions include:

Completeness

- i. Management represents that all transactions and accounts that should be presented in the financial information are included.

Rights and Obligations

- ii. Management represents that recorded assets are the rights of the entity and that recorded liabilities are the obligations of an entity at a given date.

Valuation and Allocation

- iii. Management represents that assets, liabilities, revenues, and expenses have been included in the financial information at appropriate amounts.

Existence or Occurrence

- iv. Management represents that all financial information component actually existed at a given date (balance sheet components) or occurred during the accounting period (income statement components).

Presentation and Disclosure

- v. Management represents that the financial information components are properly classified, described, and disclosed.

