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**: Motion Submitting Responses to Requests of Information issued on December 20, 2024 and January 10, 2025

MOTION SUBMITTING RESPONSES TO REQUESTS OF INFORMATION ISSUED ON DECEMBER 20, 2024 AND JANUARY 10, 2025

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

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

I. Introduction and Procedural Background

1. On June 30, 2024, this Honorable Puerto Rico Energy Bureau ("Energy Bureau") issued a Resolution and Order "to initiate [this] adjudicative process to review PREPA's rates" (the "June 30th Order) and opened this instant proceeding. *See* June 30th Order, p. 2. Through the June 30th Order, the Energy Bureau divided the rate review process into three (3) separate phases and ordered LUMA to file a report on or before October 4, 2023 containing its understanding of the filing requirements for the rate review process, based on Regulation 8720[1] and prior Energy Bureau orders. *See id*., pp. 2-3.

2. On October 4, 2023, LUMA filed a *Motion in Compliance with June 30th Resolution and Order – Submission of Phase I Report* ("Phase I Report").

3. On October 24, 2023, this Energy Bureau issued a Resolution and Order determining that LUMA's Phase I Report complied with the June 30th Order ("October 24th Order). This Energy Bureau also issued a First Requirement of Information in Attachment A of the October 24th Order ("First ROI"), including requests addressed to LUMA, Genera, and PREPA.

4. On November 3, 2023, LUMA filed a *Motion Submitting Responses to First Requirement of Information in Compliance with October 24th Resolution and Order*, whereby it submitted its response to this Energy Bureau's First ROI.

[1] Known as the New Regulation on Rate Filing Requirement for the Puerto Rico Electric Power Authority's First-Rate Case ("Regulation 8720").

5. On March 15, 2024, this Energy Bureau issued a Resolution and Order whereby, amongst other things, it assessed LUMA's Phase I Report, issued several directives and scheduled a Virtual Technical Conference for April 17, 2024 ("March 15th Order"). Moreover, in the March 15th Order, this Energy Bureau divided Phase II of the rate review process into two steps. Furthermore, the Energy Burau directed LUMA, Genera, and PREPA to submit responses to Attachment One on or before April 8, 2024. Finally, it also directed LUMA to file the proposed revenue requirement for Phase II, Step I, on or before June 1, 2024.

6. On April 8, 2024, LUMA filed a *Request for Continuance of Technical Conference and Motion Submitting Responses to Attachment One to the Resolution and Order of March 15, 2024*, whereby it requested that the Technical Conference programmed by this Energy Bureau for April 17, 2024 be rescheduled ("April 8th Motion"). LUMA also submitted its responses to this Energy Bureau's requests for information included in Attachment One of the March 15th Order.

7. On April 9, 2024, this Energy Bureau issued a Resolution and Order cancelling the Technical Conference scheduled for April 17, 2024.

8. Shortly thereafter, on April 12, 2024, this Energy Bureau issued a Resolution and Order ("April 12th Order") whereby it set aside Phase II and Phase III including all deadlines and/or milestones established through the March 15th Order until "the Title III Court has rendered its decision on the confirmation of the Amended Plan, so that all matters associated with PREPA's exit from Title III may be considered simultaneously." *See* April 12th Order, p. 3

9. On June 5, 2024 this Energy Bureau issued a Resolution and Order whereby it determined that "additional information is required for its review of LUMA's rate review filing" ("June 5th Order"). Therefore, the Energy Bureau ordered LUMA to respond – within ten (10) days of the notification of the June 5th Order – to several Requirements of Information set forth in Attachment A to the June 5th Order, regarding trial balances.

10. In compliance with the June 5th Order, on June 17, 2024, LUMA filed its responses to the requests of information included in Attachment A to the June 5th Order. *See Motion Submitting Responses to Attachment A to the June 5th, 2024 Resolution and Order*.

11. After nearly six (6) months, on December 10, 2024, this Energy Bureau issued a new Resolution and Order providing clarity regarding its expectations for and an update on the expected filing requirements for the rate review ("December 10th Order"). The Energy Bureau emphasized that any filing for new rates must comply with the Energy Bureau's established filing

requirements, which were being finalized in collaboration with the Energy Bureau's consultants, and indicated its expectation to finalize such requirements by early February 2025. *See* December 10th Order, p. 1.

12. On December 16, 2024, this Energy Bureau issued another Resolution and Order ("December 16th Order"), with the aim of providing:

> preliminary guidance on rate case procedures and scheduling to ensure an orderly and efficient process that advances the public interest while complying with statutory requirements. This approach aims to ensure that the rate case process will be conducted in a manner that is efficient, transparent, and aligned with the Energy Bureau's statutory obligations under Act 57-2014, while providing all stakeholders with clear procedural guidance and opportunities to participate.

December 16th Order, p. 1.

13. Through the December 16th Order, the Energy Bureau scheduled a Technical Conference for December 20, 2024 and listed a series of "substantive issues", including "the rate-case scope, three-year rate case approach, the separation of revenue requirement from rate design, the public consultant reports process, and other key structural elements of the upcoming rate case", *see* December 16th Order, p. 3, that would be addressed at said Technical Conference, to be led by Mr. Scott Hempling. Lastly, the December 16th Order included a section titled "*Procedure for completing the filing requirements*" which outlined proposed deadlines and milestones.

14. Following the December 20th Technical Conference, this Energy Bureau issued a Resolution and Order ("December 20th Order") whereby, through its Attachment A, it set forth additional requests for information for LUMA, Genera, and PREPA (December 20th ROIs). The Energy Bureau indicated that, "[a]s the entity contractually responsible for coordinating the rate case process, LUMA shall collect the information from Genera and PREPA necessary to respond to ROIs. Genera and PREPA may also file separate responses if necessary." *See* December 20th Order, p. 1. The deadline for the responses to the December 20th ROIs was set for January 17, 2025. Moreover, the Energy Bureau scheduled a Technical Conference for January 10, 2025, to address any questions that LUMA, PREPA, and Genera could have about the December 20th ROIs and the filing requirements in general.

15. Prior to the January 10th Technical Conference, on January 3, 2025, the parties were served with a document titled *Technical Conference of January 10, 2025: Consultants' Agenda and Explanation* ("January 3rd Agenda"). Said document aimed to identify the topics to be discussed during the January 10th Technical Conference, as divided in three topics. To wit: i) the procedural and substantive context for the December 20th ROIs; specifically, the relationship

between the budget and the revenue requirement; ii) matters relating to the scope of the instant proceeding at it pertains to riders and Renewable Energy Credits; and iii) immediate next steps. Moreover, the Energy Bureau's consultants attached an *Appendix on Legal Issues* to the January 3rd Agenda.[2] The Energy Bureau's consultants clarified that "[f]or the January 10 conference, the purpose is not to discuss these issues on the merits but to see if they are stated clearly, and to discuss alternative procedures for addressing them." *See* January 3rd Agenda, p. 6.

16. After the January 10th Technical Conference was held, the parties were then served with a document titled *Consultants' Request of Parties Arising from Technical Conference of January 10, 2025* ("January 10th Request"). Therein, the Energy Bureau's consultants requested that, in addition to the December 20th ROIs, the parties address a series of further requests for information, on or before January 17, 2025 and through a "formal filing", regarding the following: i) advantages and disadvantages of optimal budget and alternative budgets; ii) legacy debt; iii) riders; iv) Renewable Portfolio Standard (RPS) compliance costs; and v) performance level associated with the proposed revenue requirement. Lastly, the Energy Bureau's consultants provided instructions regarding the responses to the questions posed through the *Appendix on Legal Issues* contained in the January 3rd Agenda[3], to submitted on or before January 17, 2025.

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[2] By way of the *Appendix on Legal Issues*, the Energy Bureau's consultants posed the following questions:

i) Whether a procedure that combines a budget approval with a rate case is consistent with Sec. 7.3(a) of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("OMA"), and what would be the role of the Puerto Rico Public-Private Partnerships Authority ("P3A") in said procedure;
ii) Whether it is necessary to issue the new, case-specific filing requirements via a formal regulation and if applicable administrative law precludes a regulatory agency from stating a new policy in an adjudicative proceeding in lieu of a formal rule making proceeding;
iii) What are the Energy Bureau's statutory powers to hold LUMA and Genera financially accountable for imprudent action and inaction and if the Energy Bureau can prevent recovery in rates of expenses imprudently incurred by LUMA or Genera, while making them financially responsible;
iv) Would the Energy Bureau's determinations regarding possible imprudent actions by LUMA or Genera have a collateral estoppel effect in a contract breach action brought by P3A; and
v) What is the legal relationship between the revenue requirement established in the captioned proceeding, and the performance incentives that stem from OMA and related Energy Bureau orders?

See January 3rd Agenda, pp. 6-7.

[3] Specifically, the Energy Bureau's consultants requested the following:

> On the five legal issues stated in the Appendix to the January 3, 2025 document entitled "Technical Conference of January 10, 2025: Consultants' Agenda and Explanation," please do any or all of the following:
>
> 1. Provide any requests for clarification, stating what specifically is not clear. Even better, provide your preferred clarification.
> 2. Recommend a procedure for briefing the questions.
> 3. For questions 3 and 4: Comment on whether, and the extent to which, these questions are relevant to rate proceeding, understanding that these questions are on the Commissioners' minds, could become relevant as a result of Bureau decisions in the rate proceeding, and likely will require attention and decision at some point.

See January 10th Request, p. 3.

17. On January 17th, 2025, LUMA filed a *Motion for One-Day Extension of Time to Submit Responses to Requests of Information Issued on December 20, 2024 and January 10, 2025*. Therein, LUMA informed the Energy Bureau that it needed a one-day extension of time to produce comprehensive responses to the December 20th ROIs, included in Attachment A to the December 20th Order, the additional requests for information issued by way of the Energy consultants' January 10th Request, and the questions posed through the *Appendix on Legal Issues* contained in the January 3rd Agenda. Accordingly, LUMA requested leave to submit a complete package on January 18, 2025 by 5:00 p.m.

18. In compliance with both the December 20th Order and the January 10th Request, LUMA hereby submits its responses to December 20th ROIs, included in Attachment A to the December 20th Order, as well as its responses to additional requests for information issued by way of the Energy consultants' January 10th Request. *See Exhibits 1 through 4*. LUMA is also submitting its responses to the questions posed through the *Appendix on Legal Issues* contained in the January 3rd Agenda. *See Exhibit 4*.

WHEREFORE, LUMA respectfully requests the Energy Bureau **take notice** of the above; **accept** LUMA's responses to the December 20th ROIs, the *Appendix on Legal Issues* contained in the January 3rd Agenda, and the January 10th Request; and **deem** LUMA in compliance with all of the referenced requests for information issued by this Energy Bureau and its consultants.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 18th day of January, 2025.

I HEREBY CERTIFY that this Motion was filed using the electronic filing system of this Energy Bureau and that electronic copies of this Motion 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; and Alexis G. Rivera Medina, arivera@gmlex.net; and to Genera PR, LLC, through: Jorge Fernández-Reboredo, jfr@sbgblaw.com; Alejandro López-Rodríguez, alopez@sbgblaw.com; regulatory@genera-pr.com; legal@genera-pr.com.

Pursuant to Mr. Hempling's instructions, a courtesy copy of the present Motion was also notified to the following: agraitfe@agraitlawpr.com; hrivera@jrsp.pr.gov, contratistas@jrsp.pr.gov; victorluisgonzalez@yahoo.com; Cfl@mcvpr.com; nancy@emmanuelli.law; jrinconlopez@guidehouse.com; Josh.Llamas@fticonsulting.com; Anu.Sen@fticonsulting.com; Ellen.Smith@fticonsulting.com; Corey.Brady@weil.com; jmartinez@gmlex.net; jgonzalez@gmlex.net; pvazquez.oipc@avlawpr.com; lrn@roman-negron.com; epo@amgprlaw.com; loliver@amgprlaw.com; acasellas@amgprlaw.com; Robert.berezin@weil.com; Gabriel.morgan@weil.com; corey.brady@weil.com; lramos@ramoscruzlegal.com; tlauria@whitecase.com; ccolumbres@whitecase.com; iglassman@whitecase.com; tmacwright@whitecase.com; jcunningham@whitecase.com; mshepherd@whitecase.com; jgreen@whitecase.com; hburgos@cabprlaw.com; dperez@cabprlaw.com; howard.hawkins@cwt.com; mark.ellenberg@cwt.com; casey.servais@cwt.com; bill.natbony@cwt.com; Thomas.curtin@cwt.com; escalera@reichardescalera.com; arizmendis@reichardescalera.com;

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Exhibit 1

Responses to December 20th Requests of Information

Responses to December 20, 2024, Requests

NEPR-AP-2023-0003

January 17, 2025

Rate Review

List of Responses and Attachments

Response ID	Document Type	Response Subject
RFI-LUMA-AP-2023-0003-20241220-PREB-001	Response in PDF	Phase I Report and its associated Appendix A
	Attachment*	
RFI-LUMA-AP-2023-0003-20241220-PREB-002	Response in PDF	All costs and revenues, including Title III
RFI-LUMA-AP-2023-0003-20241218-PREB-003	Response in PDF	Changes from the 2025 IRP
RFI-LUMA-AP-2023-0003-20241220-PREB-004	Response in PDF	Schedules for revenue requirement versus rate design
RFI-LUMA-AP-2023-0003-20241220-PREB-005	Response in PDF	Update on limitations of PREPA's financial reporting
RFI-LUMA-AP-2023-0003-20241220-PREB-006	Response in PDF	Update on balance sheet remediation initiative
RFI-LUMA-AP-2023-0003-20241220-PREB-007	Response in PDF	Most recent available audited financial statements
RFI-LUMA-AP-2023-0003-20241220-PREB-008	Response in PDF	Changes in values versus underlying absolute values
RFI-LUMA-AP-2023-0003-20241220-PREB-009	Response in PDF	Schedules deferred due to Title III
RFI-LUMA-AP-2023-0003-20241220-PREB-010	Response in PDF	Update on the Cost-of-Service Study
RFI-LUMA-AP-2023-0003-20241220-PREB-012	Response in PDF	Outstanding questions about the filing requirements

*Note: *Denotes attachments that have been provided in Microsoft Excel format.*

Response in Compliance with December 20, 2024, Resolution and Order

NEPR-AP-2023-0003

Response: RFI-LUMA-AP-2023-0003-20241220-PREB-#1

SUBJECT

Phase I Report

REQUEST

Update the Phase I Report and its associated Appendix A to reflect the following:

As stated in the Energy Bureau's Order of December 16, 2024, this rate case will establish expected revenue requirements, and rates, for FY2027 and FY2028 in addition to the test and rate year of FY2026.

a. Confirm that all references to the test year can be updated to FY2026; and
b. Detail the ability of each utility to provide estimates of changes to costs, revenues, and other provided values (akin to pro forma adjustments) for the two subsequent fiscal years (FY27 and FY28), for each schedule.

RESPONSE

a. Confirmed. LUMA refiles on the record of this proceeding of this rate review *Exhibit 2 Updated Phase I Report* and *Exhibit 3 Updated Appendix A of the Phase I Report*. LUMA made minor changes in its *Updated Phase I Report* to clarify the test period as described in part b. below. In addition, LUMA made changes to Appendix A of the Phase I Report in columns H, I, J, and K to indicate the schedules LUMA believes are required for the revenue requirement versus the rate design phases of this rate review proceeding, the schedules that are deferred pending an outcome of the Title III proceedings[1] and those schedules for which the requirement should be suspended because they cannot be provided due to limitations of the Puerto Rico Electric Power Authority (PREPA) financial reporting or other reason(s), as specified. Finally, LUMA added a line for new Schedule A-0 that is discussed in the Consultants' Agenda and Explanation for the January 10, 2025, Technical Conference[2].

b. LUMA is actively conducting a company-wide, three-year business planning process that is building departmental budgets using a bottom-up approach. Each department is supporting the development of the business plan using real and future estimated headcount to forecast labor

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[1] *In re Financial Oversight & Management Board for Puerto Rico as representative of Puerto Rico Electric Power Authority*, Case No. 17-BK-4780-LTS (D.P.R.)

[2] *In Re: Puerto Rico Electric Power Authority's Permanent Rate*, docket NEPR-MI-2020-0001.

costs and determining and forecasting non-labor costs that are necessary to support LUMA's overall objective plans. Allocations will be used to ensure appropriate costing to operating expenses, non-federal capital, or federal capital projects.

In other words, LUMA is not making pro forma adjustments to the FY2026 revenue requirement for the two subsequent fiscal years (for example, by applying an inflation factor). Rather, LUMA is effectively requesting approval of a test period rather than a test year, where each fiscal year is developed from a bottom-up forecast containing the costs required for LUMA to execute on its plan(s). All of which will be reflected in the filing schedules submitted to the Puerto Rico Energy Bureau (Energy Bureau or PREB) as part of this rate review.

LUMA respectfully submits that the bottom-up business plan approach that will be submitted in this rate review will chart a course to fund the utility, and specifically LUMA's operations to transition to an improved and more resilient electrical grid while addressing the insufficiencies of the base rates which were last set in 2017.[3]

As described in previous responses to the Energy Bureau,[4] LUMA's income statement accounts are materially correct in connection with the operations it currently conducts. However, historical accounting issues with PREPA's balance sheet remain outstanding. Please also refer to RFI-LUMA-AP-2023-0003-20241220-006.

3 Such an approach is also consistent with the "three-year rate case" approach described in the 2017 Rate Order, where the Energy Bureau establishes prospective rates that reflect all reasonable costs (PREPA must incur) to serve customers reliably.

4 Motion Submitting Responses to Attachment a to the June 5th, 2024, Resolution and Order, RFI-LUMA-AP-2023-0003-20240605-PREB-LUMA-02-01

Response in Compliance with December 20, 2024, Resolution and Order

NEPR-AP-2023-0003

Response: RFI-LUMA-AP-2023-0003-20241220-PREB-#2

SUBJECT

Schedules and Associated Costs

REQUEST

As stated in the Energy Bureau's Order of December 16, 2024, this rate case will map all costs and all revenues, regardless of source or payee, including the Puerto Rico Government and Federal government grants, cost sharing, and loans

a. Ensure that the schedules include information about all costs and revenues;
b. Ensure that the schedules contain debt that is subject to the Title III process, as well as other debts (such as debts to the Puerto Rico Government); and
c. Ensure that the schedules contain costs and revenues associated with pension plans.

RESPONSE

a. As discussed in RFI-LUMA-AP-2023-0003-20241220-PREB-001, LUMA is developing bottom-up forecast costs for each of fiscal year (FY) 2026 through FY2028 that will be reflected in the schedules submitted to the Energy Bureau. To the best of its ability, LUMA will identify the source of funding for operating and maintenance expenses and capital expenditures proposed in the revenue requirement i.e., federal funding (e.g., Federal Emergency Management Agency - FEMA or Department of Housing and Urban Development – HUD) or base rates.

b. LUMA is not a party to the Title III process. As described in the Updated Phase I Report,[1] LUMA's understanding is that the Puerto Rico Electric Power Authority (PREPA) and/or the Financial Oversight and Management Board for Puerto Rico (FOMB) will develop and submit the materials and information necessary to collect revenues for payment of PREPA's *Legacy* Debt and Pension obligations. Accordingly, LUMA proposed then and continues to propose now that Schedules A-3, D-1, D-3 and L-1 be deferred pending resolution of the Title III proceedings.

c. LUMA assumes PREPA's revenue requirement will include *prospective* pension obligations that customers are responsible for paying in FY2026 through FY2028.

[1] Motion Submitting Responses to First Requirement of Information in Compliance with October 24th Resolution and Order, November 3, 2023, Exhibit 3, Updated Phase I Report, Section 5.1, PREPA Legacy Debt Charge and Pension Obligations

Response in Compliance with December 20, 2024, Resolution and Order

NEPR-AP-2023-0003

Response: RFI-LUMA-AP-2023-0003-20241220-PREB-#3

SUBJECT

Generation Portfolio

REQUEST

As stated in the Energy Bureau's Order of December 16, 2024, this rate case must account for changes in the generation portfolio that are consistent with the Approved IRP and the results of the ongoing IRP process.

a. Schedule F-3 requires capital expenditures for generation, as well as for the remainder of the electric transmission and distribution systems. Provide a detailed discussion of how the filing can reflect the various generation options (retirements and additions) under consideration in the 2025 IRP analysis; and

b. When making projections of expenditures for FY26, FY27, and FY28, it will likely be required to itemize the costs associated with specific assets entering or leaving service as a result of some trigger event (such as the availability of a replacement resource), or other capital investments which are uncertain in time. Detail how LUMA's filing will enable the Energy Bureau to make these itemized determinations when setting expected revenues and rates for FY27 and FY28.

RESPONSE

a-b. The final 2025 Integrated Resource Plan (IRP) is scheduled to be filed on May 16, 2025 (2025 IRP). Based on the timeline of the adjudicative process, LUMA estimates that hearings on the 2025 IRP will happen in the third quarter of 2025 and the Energy Bureau’s decision on an approved 2025 IRP is not expected until late in the third quarter of 2025 at the earliest. Given this estimated schedule, the Energy Bureau-approved 2025 IRP will not be known to LUMA prior to the current schedule for LUMA to submit its revenue requirement(s) for FY2026, FY2027, and FY2028 in this rate review docket.

However, for clarity, preliminary results filed with the Energy Bureau on November 25, 2024[1], indicate that the resources through FY2028 are primarily the existing fleet of generation resources and a number of changes which LUMA considers “fixed” capacity additions and “fixed”

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[1] See LUMA’s Motion Submitting First Interim Filing of the IRP in Compliance with the Resolution and Order of October 29, 2024, submitted on November 25, 2024, Docket No. NEPR-AP-2023-0004.

capacity retirements that have *already* been approved by P3A and/or the Energy Bureau and are not subject to change by LUMA in the 2025 IRP. These fixed additions and retirements include:

Fixed Capacity Additions

- Tranche 1: 578.8 MW (PV) + 350 MW (Battery Energy Storage System – “BESS”) between 2025 and 2026
- Tranche 2: 66 MW (PV) + 60 MW (BESS) in 2026
- ASAP batteries: 360 MW (BESS) in 2026
- Genera Peaking Units: 336 MW (LNG RICE and CT) in 2027
- Genera Batteries: 430 MW (BESS) in 2026
- PREPA Hydroelectric 67 MW in 2026
- Thermal Generation 454 MW (LNG) in 2028

Fixed Capacity Retirements

- Genera GT 1, 2, 11, 19, 20, 21 and 22 Peaking Units: 147 MW (Diesel) in 2027[2]
- AES 1 and AES 2: 454 MW (Coal) in 2028[3]

Therefore, based on the current assumptions in the preliminary 2025 IRP, any resource costs prior to CY2030 FY2030 will be limited to those associated with the current fleet of generation, the fixed additions and retirements and a yet unknown quantity of BESS capacity. Different levels of BESS may be added in FY2027 and FY2028 depending on the final preferred portfolio approved by the Energy Bureau. All interconnection costs of new fixed capacity additions such as Tranche 1 and Tranche 2 will flow through the Purchase Power Cost Adjustment (PPCA) rider that is outside of base rates, and LUMA does not add to or benefit from these adjustments because they are only in response to the cost of electricity generation.

Accordingly, as of now, the 2025 IRP has an immaterial impact on LUMA’s revenue requirement(s) for FY2026, FY2027, and FY2028 and projections of expenditures as described in the question are not contemplated.[4]

[2] To be replaced by 336 MW (LNG RICE and CT) in 2027

[3] To be replaced by Thermal Generation 454 MW (LNG) in 2028

[4] There *may* be some costs associated with the management of the purchased power that does not flow through the PPCA

Response in Compliance with December 20, 2024, Resolution and Order

NEPR-AP-2023-0003

Response: RFI-LUMA-AP-2023-0003-20241220-PREB-#4

SUBJECT

Schedules for Revenue Requirement and Rate Design

REQUEST

As stated in the Energy Bureau's Order of December 16, 2024, the Energy Bureau is planning to address the revenue requirement in this proceeding, and rate design in a separate (perhaps overlapping) proceeding. Identify which schedules LUMA believes are required for the revenue requirement proceeding, and which would only be necessary for a rate design proceeding.

RESPONSE

Please refer to *Exhibit 3 Updated Appendix A of the Phase I Report* for LUMA's recommendations on Schedules for the revenue requirement versus the rate design.

Response in Compliance with December 20, 2024, Resolution and Order

NEPR-AP-2023-0003

Response: RFI-LUMA-AP-2023-0003-20241220-PREB-#5

SUBJECT

PREPA's Financial Reporting and Variation in Schedules

REFERENCE

For several schedules in Appendix A, the Appendix states “Information cannot be provided for this Rate Proceeding due to limitations of PREPA's financial reporting and the ongoing accounting / balance sheet remediation initiatives that are currently part of Puerto Rico's 2023 Fiscal Plan. LUMA will provide the most recent available audited financials as an alternative" or a substantively similar statement.

REQUEST

Provide an update on activities to mitigate the limitations of PREPA's financial reporting, and identify and describe any variation among the various schedules in the impact of these activities.

RESPONSE

LUMA is aware of the ongoing Accounting (and balance sheet) Remediation work currently being undertaken by the Puerto Rico Department of the Treasury in coordination with PREPA as discussed in RFI-LUMA-AP-2023-0003-20241220-PREB-006. LUMA is not a party to the current phase of the work and consequently cannot provide an update to PREPA's activities to mitigate the limitations of PREPA's financial reporting.

Once this project reaches completion and a full balance sheet is restored for PREPA, the utility should be able to accurately report on items such as plant in service amounts, accumulated depreciation, and calculate theoretical required return on rate base amounts. Until then, and as (re-) submitted in *Exhibit 3 Updated Appendix A of the Phase I Report*, the utility remains unable to provide schedules A-4, A-5, B-1, E-1, E-3, E-4, E-5, F-2 not inclusive.

Response in Compliance with December 20, 2024, Resolution and Order

NEPR-AP-2023-0003

Response: RFI-LUMA-AP-2023-0003-20241220-PREB-#6

SUBJECT

Accounting / Balance Sheet Remediation Initiatives

REQUEST

Provide an update on the accounting / balance sheet remediation initiatives.

RESPONSE

It is LUMA's understanding that following the Puerto Rico Department of the Treasury's May 7, 2024 deadline for Request for Proposal(s) on "Accounting Remediation" FTI Consulting was awarded the first phase of the contract. Beyond this, and as stated in RFI-LUMA-AP-2023-0003-20241220-PREB-005, LUMA is unable to provide updates. Should the Energy Bureau require additional information related to the accounting / balance sheet remediation initiative, LUMA respectfully submits the Energy Bureau inquire with the Puerto Rico Department of the Treasury directly.

As stated in previous responses to requests for information,[1] historical accounting issues with PREPA's balance sheet are outside of LUMA's control and broader remediation efforts by PREPA remain outstanding.

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[1] Responses to October 24, 2023, Requests, PREB-LUMA-01-06(a-b); Responses to March 15, 2024 Requests, Introduction & PREB-01; and Responses to June 5, 2024 Requests, PREB-LUMA-02-01.

Response in Compliance with December 20, 2024, Resolution and Order

NEPR-AP-2023-0003

Response: RFI-LUMA-AP-2023-0003-20241220-PREB-#7

SUBJECT

Audited Financials

REQUEST

What are the "most recent available audited financials"? When are subsequent audited financial expected to be available?

RESPONSE

PREPA's most recent available audited financial statements are FY2022. LUMA continues to support the execution of audits for subsequent years by providing data as requested by either PREPA and/or KMPG. LUMA respectfully submits the Energy Bureau direct detailed audit update requests directly to PREPA. LUMA understands KPMG audits remain underway.

Response in Compliance with December 20, 2024, Resolution and Order

NEPR-AP-2023-0003

Response: RFI-LUMA-AP-2023-0003-20241220-PREB-#8

SUBJECT

Changes to Schedules

REQUEST

In some cases, the requested Schedule (e.g., Schedules E-3 and E-4) would include the changes in values rather than the absolute values. Clarify whether the changes are available as requested, even if the underlying absolute values are not available due to financial reporting or audit limitations.

RESPONSE

Neither the changes in values nor the underlying absolute values will be accurate because of PREPA's outstanding accounting issues that pre-date LUMA's service commencement date, including the lack of an accurate opening balance. As shown in *Exhibit 3, Updated Appendix A of the Phase I Report*, LUMA cannot file Schedules A-5, E-3, E-4 or F-2[1] because of limitations in PREPA's financial reporting, and as discussed in RFI-LUMA-AP-2023-0003-20241220-PREB-005, no activities to mitigate the limitations of PREPA's financial reporting have been made such that **no** schedules previously identified as "Partial – Alternative Proposed" or "No – Not Applicable/Relevant" can now be filed. In lieu of Schedules A-5, E-3, and E-4 LUMA will provide the most recent available audited financial statements.

[1] Schedules identified by Regulation 8720 that require changes in values subsequent to the test year(s)

Response in Compliance with December 20, 2024, Resolution and Order

NEPR-AP-2023-0003

Response: RFI-LUMA-AP-2023-0003-20241220-PREB-#9

SUBJECT

Title III Schedules

REQUEST

Amend the Phase I Report and its associated Appendix A to identify Schedules that can be provided in part [e.g., defer those portions of Schedules that will be addressed by the Title III process, and provide those portions of the data which are not subject to that deferral).

RESPONSE

Please refer to *Exhibit 2 Updated Phase I Report* and *Exhibit 3 Updated Appendix A of the Phase I Report*.

Response in Compliance with December 20, 2024, Resolution and Order

NEPR-AP-2023-0003

Response: RFI-LUMA-AP-2023-0003-20241220-PREB-#10

SUBJECT

Cost of Service Analysis

REFERENCE

For several schedules in Appendix A, the Appendix states "LUMA intends to file a modified cost of service analysis that uses direct allocation of costs wherever possible. LUMA acknowledges the data limitations and the complexities underlying their root causes, and continues to actively participate in moving the utility toward remediation."

REQUEST

Provide a detailed update regarding LUMA's progress in developing a cost of service analysis, including the scope of LUMA's analyses and the timeframe on which different levels of analysis are expected to be available.

RESPONSE

As discussed in previous responses to the Energy Bureau's requests for information, LUMA's ability to conduct a full cost-of-service study (COSS) using the *1992 NARUC Cost Allocation Manual* is dependent on completion of PREPA's balance sheet remediation efforts and implementation of FERC accounting.[1] Pending completion of these activities, as well as LUMA's *Critical Financial Systems* and *Critical Financial Controls* Improvement Programs, a full COSS could be performed in FY2028 for the next rate review after the current one.[2]

For the purposes of rate design, LUMA proposes a modified COSS where cost functionalization will be based on the cost categories used in the budget (new Schedule A-0) and cost classification will be based on direct and indirect allocators that are readily available.[3] LUMA continues to gather load research data to be able to develop direct allocators for coincident and non-coincident class demands.

A modified COSS could be prepared and submitted in as little as four weeks from the time the utility's revenue requirement is finalized (including PREPA and Genera). If the revenue requirement is filed on

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[1] Responses to March 15, 2024 Requests, Introduction, PDF pg. 11

[2] Responses to First Requirement of Information, Exhibit 3, Updated Phase 1 Report, Section 2.2.1 Projected Timing for Cost of Service Study, PDF pg. 36

[3] Responses to March 15, 2024 Requests, RFI-LUMA-AP-2023-0003-20240315-PREB-05

April 1, 2025, then the modified COSS could be filed as early as May 1, 2025. However, LUMA understands from the December 16th Resolution and Order, as well as discussion during the December 20th virtual technical conference, the Energy Bureau intends to conduct the revenue requirement and rate design as two separate phases, each with their own 180-day timeline,[4] and does not intend to undertake rate design until, at least, the revenue requirement process is underway. Given the high regulatory workload associated with the revenue requirement (for both LUMA and the Energy Bureau), LUMA agrees that the rate design proceeding should not commence at least after provisional rates take effect and the Energy Bureau declares the revenue requirement filing complete. LUMA will prepare and file the modified COSS on the timeline established by the Energy Bureau in the rate design proceeding.

[4] Resolution and Order dated December 16, 2024, Preliminary Guidance on Rate Case Procedures and Notice of Upcoming Conference, Section II (C)

Response in Compliance with December 20, 2024, Resolution and Order

NEPR-AP-2023-0003

Response: RFI-LUMA-AP-2023-0003-20241220-PREB-#12

SUBJECT

Outstanding Filing Requirements Questions

REQUEST

Identify and provide outstanding questions that LUMA has about the Filing Requirements, which the Energy Bureau can address in its Order.

RESPONSE

LUMA does not have outstanding questions about the filing requirements, but submits the following questions regarding the merging of the annual budgets process with the rate review[1]:

1. How will integrating the annual budget process into the rate case process affect how LUMA will report on Improvement Programs as part of NEPR-MI-2020-0019?
2. Normally submitted in NEPR-MI-2021-0004, how will budgets for Improvement Programs be determined or approved based on this new approach?

[1] *See* pages 1-2 of Resolution and Order of December 16, 2024, Preliminary Guidance on Rate Case Procedures and Notice of Upcoming Conference, Section II (B), Docket No. NEPR-AP-2023-0003.

Exhibit 2

Updated Phase I Report

Exhibit 2
Updated Phase I Report

LUMA

Rate Review – Phase I Report

NEPR-AP-2023-0003

October 4, 2023

2023 Rate Review – Phase 1 Report

Contents

Tables & Figures

0.0 Introduction

PREB RESOLUTION AND ORDER INITIATING RATE REVIEW

Through Resolution and Order issued on June 30, 2023 (June 30th Order), the Puerto Rico Energy Bureau (PREB or Energy Bureau) initiated an adjudicative process to review the rates of the Puerto Rico Electric Power Authority (PREPA) and established a three-phase process to conduct its review.[1] Phase I entails a review of previously established rate review filing requirements after which the Energy Bureau will make a determination with regards to the particular requirements that will apply to a rate review application filed in the instant proceeding.[2]

The June 30th Order requires LUMA to file a report containing LUMA's understanding of the filing requirements and, in particular, to (1) describe LUMA's current understanding of the filing requirements for this rate review, (2) describe the current status for each requirement, (3) describe steps taken to address deficiencies identified in the 2017 Rate Order[3], particularly the requirement for a current Cost-of-Service Study (COSS), (4) provide a list of schedules LUMA intends to submit, (5) report on the coordination between LUMA, PREPA and Genera, and (6) explain how the filing will address the proposed Legacy Debt Charge and PREPA's pension obligation costs.[4] It is noted that LUMA is not responsible for PREPA's legacy debt or pension obligations.

In compliance with the June 30th Order, LUMA has developed the following Report which contains its assessment and responses to the various requirements outlined in said Order. Section 1 of this Report provides an overview of historical and existing circumstances which informed LUMA's assessment of the filing requirements. Sections 2 through 5 address the information requested by the Energy Bureau in the June 30th Order.

It is important to note that LUMA is issuing this Report in response and compliance with a request by the Energy Bureau who initiated the rate review process. Under the T&D OMA, LUMA is "responsible for preparing, presenting, defending current or future […] rate cases or other regulatory or legal matters *as they relate to the Agreement [T&D OMA]*, as the Owner's representative before the Energy Bureau and any other local, state or federal government agencies."[5] [(T&D OMA Annex I, Sections I.G and I.H.) Emphasis added.) .), *see also* T&D OMA, Section 5.6 (g). That is, LUMA is not responsible for activities that go beyond the Operation and Maintenance (O&M) Services or are outside the O&M of the Transmission and Distribution System (T&D System). More specifically, LUMA is not responsible for regulatory and legal filings that pertain to other PREPA activities, including rates for the operation and

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[1] *See* Resolution and Order of June 30, 2023, Docket No. NEPR-AP-2023-0003.

[2] *Id*.

[3] *See* Final Resolution and Order of January 10, 2017, Docket No. CEPR-AP-2015-0001.

[4] *See* page 2 of Resolution and Order of June 30, 2023, Docket No. NEPR-AP-2023-0003.

[5] *Id*. at ¶ I-3 of Annex 1.

maintenance of generation assets, or other PREPA activities such as Title III proceedings[6] under the Puerto Rico Oversight, Management, and Economic Stability Act[7] (PROMESA).

LUMA appreciates the opportunity to submit this Report to begin a constructive process, receive important guidance from the Energy Bureau, and support the robust electrical system that Puerto Ricans expect and deserve.

1.0 Background and Context

LUMA is tremendously proud of the progress it has made since assuming responsibility for the O&M of Puerto Rico's T&D System on June 1, 2021.[8] LUMA has made significant and measurable progress in improving electrical service across all categories in fulfillment of its mission for Puerto Rico: improved safety for employees and the public; a heightened focus on customer needs; a more reliable, resilient, and modern grid; effective emergency response; and an acceleration in the shift to renewable energy. These advances have been made in the face of the highest inflation in decades, unforeseen global events, supply chain disruptions, natural disasters, and many other challenges, both global and specific to Puerto Rico.[9]

While LUMA remains focused on making improvements for its customers, financial pressures that Puerto Rico and the electric system are facing have resulted in the need to be more vigilant and prudent than ever when it comes to responsibly spending and allocating resources across an improving, but still fragile system, while maintaining affordability for customers.

PREPA's current Base Rates were determined by the Energy Bureau in the 2017 Rate Order[10]. In its first three (3) years of operating the T&D System, LUMA has met its commitment of only using the revenues generated by the existing Base Rates[11], while leveraging and maximizing federal funds for eligible capital works. Accordingly, LUMA has not sought any adjustments to PREPA's Base Rates, which are the portion of customer electric rates that fund the costs pertaining to LUMA's operation of the grid, as well as other PREPA costs, since it took over operations of the T&D System on June 1, 2021. Any, and all, adjustments made to rates over the three (3) years LUMA has operated the grid pertain to the cost of generation, fuel, and purchased power, or to other smaller adjustments to subsidies and other items, which are entirely outside of LUMA's control. As a reminder, LUMA does not generate electricity and does not determine the impact that fuel costs have on customer rates. Furthermore, LUMA does not benefit financially from any change in rates due to increased generation fuel costs and LUMA's costs to operate the T&D System are separate from the cost of fuel for generation or the cost of power purchased from private generators.

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[6] *See* Title III case under PROMESA pending for PREPA in the Title III Court, captioned as *In re Financial Oversight & Management Board for Puerto Rico as representative of Puerto Rico Electric Power Authority*, Case No. 17-BK-4780-LTS (D.P.R.).

[7] See Pub. L. 114–187, §4, June 30, 2016, 130 Stat. 551, Known as "the Puerto Rico Oversight, Management, and Economic Stability Act" and also as "PROMESA".

[8] Pursuant to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("T&D OMA") executed on June 22, 2020, among the Puerto Rico Electric Power Authority ("PREPA"), the Puerto Rico Public-Private Partnerships Authority ("P3A") and LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively, "LUMA").

[9] As described in Section 8 of LUMA Annual Report for Fiscal Year 2022 of October 29, 2022, Docket No. NEPR-MI-2021-0004.

[10] *See* Final Resolution and Order of January 10, 2017, Docket No. CEPR-AP-2015-0001.

[11] *Id.*

Currently **LUMA's costs to operate the T&D System compose approximately 15% of the total customer rates**. The other 85% of customer rates are used to pay for generation operations (currently carried out by Genera PR for all of PREPA's thermal power plants), fuel for Genera operations, energy purchases made by PREPA from private generators including Ecoeléctrica and AES, PREPA corporate expenses (including Title III bankruptcy costs), subsidies to customers, public lighting and the Contribution-in-Lieu of Taxes to municipalities. As mentioned above, this remaining 85% of the costs are separate from LUMA's costs to operate the T&D System and are entirely outside of LUMA's control. During the first two (2) years of operation, and while meeting its commitment to stay within budget and not seek an increase to Base Rates, LUMA has improved reliability (by lowering the frequency of interruptions as measured by a 35% lower System Average Interruption Frequency Index (SAIFI), upgraded customer service (decreasing call wait times to an average below two (2) minutes), dramatically accelerated the deployment of rooftop solar (approving approximately 60,000 customers for net metering), and established effective emergency preparation and response in the face of natural disasters (restoring service to 90% of customers within 12 days after a system-wide blackout caused by Hurricane Fiona).[12]

During this time, LUMA has also dramatically increased the deployment of federal funding. When LUMA began operations in June 2021, PREPA had 41 projects with Initial Scopes of Work (SOW) to be submitted to the Federal Emergency Management Agency (FEMA) to rebuild the T&D System,[13] and only one (1) project had a Detailed SOW (DSOW). As of October 4, 2023, LUMA has initiated the approval process with FEMA for 400 projects, out of which 245 have been submitted with DSOWs. In total LUMA has $11.3 billion of projects in the FEMA approval process. In addition, LUMA has received FEMA obligations for 122 projects representing an investment of $613 million. Furthermore, LUMA currently has 99 projects under construction or energized with federal funding.

While reaching these milestones, LUMA has also been asked to expend significant management time and resources on broader energy system challenges, including the reorganization of PREPA and providing information and other technical assistance to the on-going Title III bankruptcy process. Finally, as part of meeting Puerto Rico's public energy policy objectives, LUMA has actively engaged in other activities that were not previously managed by PREPA, including design and launch of Energy Efficiency (EE) and Demand Response (DR) programs, Electric Vehicle (EV) infrastructure support initiatives, active support for growth and interconnection of utility-scale renewable energy including the Energy Bureau-led Requests for Proposals, and technical analysis and field work to add generation resources and reduce the risk of insufficient energy resources to meet customer demand (including the addition of 350 MW of temporary emergency generation by FEMA). PREB has also required additional reporting in multiple areas.

2.0 Progress Since 2017 Rate Order

2.1 Background

Among the determinations made in the 2017 Rate Order, the Energy Bureau found that "the gaps in data and the numerous subjective and debatable judgements in PREPA's COSS, leave us without confidence

[12] *See* In Re: The Performance of the Puerto Rico Electric Power Authority, Docket No. NEPR-MI-2019-0007.

[13] See PREB Resolution and Order dated June 8, 2021 In Re: Review of the Puerto Rico Electric Power Authority's 10-Year Infranstructure Plan – December 2020.

that the filed COSS describes cost causation accurately."[14] The Energy Bureau found multiple problems with PREPA's COSS, including (i) unreliable load data, (ii) lack of information with which to allocate demand amongst customer classes, and (iii) problems with functionalization and classification of costs.[15] Given these deficiencies, the Energy Bureau determined to "view PREPA's COSS as a guide"[16] and set rates based on the information made available to the Energy Bureau at that point in time.[17] Accordingly, the Energy Bureau focused on setting PREPA's revenue requirement, allocating the revenue requirement among the customer classes, determining permanent rates based on rate design, and reconciling permanent rates with provisional rates.

On April 24, 2017, the Energy Bureau opened a Notice of Investigation[18] to address the issues that were not addressed in the 2017 Rate Order. These topics were related to PREPA's data limitations and COSS, "including the cost of service, marginal cost and rate design."[19] Said proceeding has remained stayed since September 18, 2017.

This Section of the Report responds to item (c) of Part II a.i of the June 30th Order[20] and discusses the progress achieved to date in connection with the issues identified by the Energy Bureau in the 2017 Rate Order, and the status of ongoing efforts to achieve full remediation.

2.2 Improving the Cost-of-Service Study

The Energy Bureau stated that the COSS submitted in PREPA's petition was "insufficient for the Energy Bureau to determine the reasonableness of the results."[21] The Energy Bureau was concerned with the inputs used by PREPA to develop its proposed COSS, particularly the load data and PREPA's functionalization and classification determinations.

LOAD DATA AND DEMAND ALLOCATORS

A load profile for a customer class is a graphic display of that customer's load shape depicting how the demand for that particular customer class varies over time. Load shape is crucial information for procuring generation sufficient to meet expected load throughout each day and over the course of the year. The Energy Bureau noted that PREPA did not implement a load research program,[22] had load shapes that came from inconsistent years and data sources, were the same for large and small customers in the

[14] *See* page 325 of Final Resolution and Order of January 10, 2017, Docket No. CEPR-AP-2015-0001.

[15] *See* page 319-324 of Final Resolution and Order of January 10, 2017, Docket No. CEPR-AP-2015-0001.

[16] *Id*. at ¶327.

[17] *Id*. at ¶¶326 – 329.

[18] *See* Resolution and Order of April 24, 2017, Docket No. CEPR-IN-2017-0001.

[19] *See* Final Resolution and Order of January 10, 2017, Docket No. CEPR-AP-2015-0001.

[20] See page 3 of Resolution and Order of June 30, 2023, Docket No. NEPR-AP-2023-0003.

[21] *See* page 3 of Resolution and Order of November 3, 2016, Docket No. CEPR-AP-2015-0001.

[22] See page 112 of Final Resolution and Order of January 10, 2017, Docket No. CEPR-AP-2015-0001.

same class and were "simulated" rather than observed.[23] The Energy Bureau also stated that additional information to facilitate a reasonable review of the load shapes was not included.[24]

LUMA Progress

LUMA's findings after conducting its gap assessment during the Front-End Transition Services period aligned with the determinations made by the Energy Bureau, in that the root cause of the problems with PREPA's load data and demand allocators was the lack of a formal load research program that applied industry standard methodologies to forecast total system load. The data presented by PREPA was simulated and did not accurately reflect customers' usage patterns and costs, and, consequently, was deemed by the Energy Bureau as insufficient to inform a COSS.[25] At the time of its 2016 rate review filing, PREPA had not performed load research and study activities since 2014 and PREPA stated that it lacked the necessary data and information to produce a reliable COSS.[26]

To address the load data and demand deficiencies, LUMA developed a Regulatory Long-Term Load Forecast Review[27] (hereafter referred to as the Load Forecasting Improvement Plan) to deliver a more accurate and useful forecast of monthly class-level consumption and annual peak demand. Many improvements to the Load Forecasting Improvement Plan have already been implemented, including but not limited to data remediation, regression model updates, and load research sample development. These enhancements implemented by LUMA support the use of improved data on load and demand allocators and will provide greater accuracy and a more reliable data set for review by the Energy Bureau.

LUMA's Load Forecasting Improvement Plan contains five (5) phases[28]:

1) Internal Governance and Organization Design
2) Review Current and Future Methodologies
3) Establish Data Needs
4) Process Design
5) Build Capabilities

LUMA completed Phases 1 through 3 in 2022. For Phase 1, a Load Forecasting Governance Committee was formed and tasked with overseeing the load forecasting improvement process.[29] For phases 2 and 3, LUMA conducted an assessment of the current state and planned future state methodologies for load forecasting and established the data requirements necessary for the program. Phases 4 and 5 entail

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[23] *Id*.

[24] *Id*.

[25] *See* Verified Petition for Approval of 1) Permanent Rate and 2) Temporary Rates of May 27, 2016, Docket No. CEPR-AP-2015-0001.

[26] *Id*..

[27] *See* LUMA's Motion on Submission of Regulatory Long-Term Load Forecast Review of June 30, 2022, Docket NEPR-MI-2021-0001.

[28] *Id*. at ¶¶41-42.

[29] *See* page 45 of LUMA's Motion on Submission of Regulatory Long-Term Load Forecast Review of June 30, 2022, Docket NEPR-MI-2021-0001.

designing processes and building load forecasting capabilities within the LUMA organization. Phases 4 and 5 are currently ongoing and are expected to be completed by December of 2023 on a timeline that can inform the Fiscal Year (FY) 2025 load forecast.

Some of the immediate improvements that LUMA has accomplished because of the Load Forecasting Improvement Plan are as follows:

- LUMA developed and implemented computer program code to correct historical anomalies in aggregate consumption data.
- LUMA applied a rigorous model testing approach and undertook several ancillary analyses to deliver a more robust unadjusted forecast of class-level consumption.
- LUMA is developing a load research sample by choosing a representative group of customers from each class, whose interval data can be collected. Their electrical demand will be measured hourly or every 15 minutes. LUMA anticipates that the data collection phase will begin in the third quarter (Q3) of calendar year (CY) 2023 and last at least a year. The goal of this sampling process is to find groupings of customers that accurately reflect the consumption patterns of the customers in each rate class, and other characterizations such as net metering.

All these improvements help to refine load forecasting accuracy.

In addition to the Load Forecasting Improvement Plan, LUMA's Automated Metering Infrastructure (AMI) Implementation Improvement Program will improve future COSS input by enabling reliable data inputs from the wider customer group. The AMI Implementation Program establishes two-way, remote meter reading reporting and control capabilities, which offer granular consumption data, bi-directional metering, outage notifications, and power quality measurements.[30]

As stated in the AMI Implementation Program brief in LUMA's FY2024 Annual Budget filing[31], LUMA has begun the business process workshops and vendor RFI, and implementation is estimated to begin by the first quarter (Q1) of FY2025. Once LUMA's AMI Implementation Program is complete, LUMA will be able to collect detailed customer usage information on an hourly basis, identify system losses with system energy balances and electric consumption analysis, and enhance operational and financial performance.

With LUMA's Load Forecasting Improvement Program and AMI Implementation Program in place, LUMA will be able to collect granular customer consumption data to be used to model more accurate and data driven demand allocators in a future COSS.

As described above and because of the steps taken in the Load Forecasting Improvement Program, LUMA intends to file a partial COSS that uses direct allocation of costs, where available. This is an important advance over the previous COSS submitted by PREPA.

Going forward, LUMA expects that as the remaining programs in the Load Forecasting Improvement Program outlined above are implemented and their impacts are realized, the quality of the COSS it performs will further improve. LUMA expects to collect load data and develop demand allocators in line

[30] *See* page 55 of LUMA's FY2024 Annual Budgets Filing of May 16, 2023, Docket No. NEPR-MI-2021-0004.

[31] *Id*. at ¶¶79-84.

with industry standard methodologies by FY2025, once the Load Forecasting Improvement Program has been fully completed, and that the quality of input data used to develop demand allocators will continue to increase as customer meters are replaced with automated metering technology.

PREPA'S FUNCTIONALIZATION AND CLASSIFICATION DECISIONS

In the 2017 Rate Order, PREB identified five (5) key issues[32] with PREPA's decisions on cost functionalization and classification: incorrectly assigning fixed generation costs as demand-related, ignoring transmission that should have been classified to generation, incorrectly sub-classifying distribution as primary and secondary, allocating customer-costs based on meter cost, and assigning overhead costs based on labor.

The Energy Bureau stated that PREPA's inability to separate costs into the correct functions and categories stemmed from problems in PREPA's functionalization and classification of specific costs. PREPA, as a vertically integrated utility, did not track its actual costs in a manner that could be leveraged to determine cost causation by function or class. As a result, PREPA was unable to classify and functionalize costs in its COSS to the Energy Bureau's satisfaction.

PREPA's costs have yet to be unbundled, with balance sheet remediation activities currently underway to establish unbundled costs and baselines. Until such time when these activities are completed, LUMA does not have the benefit of meaningful balance sheet accounts representing historical information that can be used as a starting point to establish a uniform system of accounts to allow full and proper functionalization of costs by functions.

Puerto Rico's Financial Oversight and Management Board (FOMB) has allocated $25 million to Puerto Rico's Public-Private Partnership Authority (P3A) in the FY2024 Certified Fiscal Plan for the Commonwealth of Puerto Rico for asset reconciliation and accounting remediation work.[33] This work is necessary to properly unbundle PREPA's historic costs into the generation, transmission, distribution, customer service, and other functions, such that baseline costs can be established and used to form rate design decisions. LUMA is not responsible for these activities and is unable to impact the remediation of financial information that existed before June 2021. LUMA's ability to operate in line with industry standards, including, but not limited to, the development of a fulsome embedded COSS, is dependent on PREPA completing its accounting and balance sheet remediation efforts.

The introduction of the T&D System Operator (LUMA) and the Legacy Generation Assets Operator (Genera) facilitates the functionalization of accounting information, as each function will be recorded and reported separately as per its Operating and Maintenance Agreement (OMA) requirements.[34] LUMA is only able to influence the manner in which it records its costs and the quality of the data that it creates. To

[32] *See* page 110-111 of Final Resolution and Order of January 10, 2017, Docket No. CEPR-AP-2015-0001.

[33] *See* page 46 of Fiscal Plan for Commonwealth of Puerto Rico, *Volume 1 Transformation Plan*, *Restoring Growth and Prosperity*, certified as of April 3, 2023 by the Financial Oversight and Management Board for Puerto Rico (last seen, October 4, 2023).

[34] Pursuant to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("T&D OMA") executed on June 22, 2020, among the Puerto Rico Electric Power Authority ("PREPA"), the Puerto Rico Public-Private Partnerships Authority ("P3A") and LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively, "LUMA") and Pursuant to the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement executed on January 24, 2023, among the Puerto Rico Electric Power Authority ("PREPA"), the Puerto Rico Public-Private Partnerships Authority ("P3A") and Genera PR, LLC (Genera).

that end, in its System Remediation Plan (SRP), LUMA explained that its Critical Financial Controls and Critical Financial Systems programs,[35] which are expected to be in a remediated state in FY2027, will improve and remediate the financial management systems and technology to enable LUMA to better functionalize and classify its financial information going forward, and to unbundle the costs of the T&D System. The delineation of the GenCo entity will effectuate functionalized generation costs for use in a future COSS.

LUMA Progress

LUMA has made significant progress on the planned activities for the Critical Financial Controls Program. Of the 63 critical gaps that were identified prior to Commencement, seven (7) have been fully remediated, 52 have been partially remediated, and only four (4) remain open.[36] Although many improvements pertaining to the Critical Financial Systems Program are in progress, LUMA was able to make progressive changes in a short period of time. In FY2022, LUMA implemented an online budgeting and forecasting system that links to the actual operation and maintenance expenses in Oracle and fully remediated the gap pertaining to the manual timecard process by implementing an automated system where employee expenses can be recorded to a project and task structure.[37]

Based on the foregoing, PREPA, LUMA and Genera continue to work toward unbundling the financial records of the utility through several initiatives. LUMA is encouraged by the allocation of funding for the remediation of PREPA's balance sheet as this represents a critical step in unbundling the costs of the utility and improving the data that supports functionalization and classification decisions.

2.2.1 Projected Timing for Cost of Service Study

As with any study, the quality of the COSS will improve over time as the quality of inputs improves. Properly developed load forecasts and remediated financial records will facilitate a meaningful COSS that can be relied upon for cost causation and used to inform rate design.

While there are many moving parts to perform a COSS in accordance with best practices, LUMA has determined that based on the schedule for financial controls and financial systems programs in FY2027 and assuming completion by other parties of their financial remediation activities, a full COSS could be performed in FY2028. This schedule also depends on availability of audited results for the first year of PREPA's operations as a transformed utility (FY2024) and completion of the balance sheet remediation activities funded through the 2024 Certified Fiscal Plan.

The timing of the COSS also depends on completion of Phase 5 of the Load Forecasting Improvement Plan (currently scheduled for completion in December 2023 to inform the FY2025 load forecast). The AMI Implementation Program will further improve the quality and granularity of customer consumption data, but its completion is not required for LUMA to deliver a COSS.

[35] *See* LUMA's Motion on Submittal and Request for Approval of System Remediation Plan of February 24, 2021, Docket No. NEPR-MI-2020-0019.

[36] *Id*. at ¶¶273-275.

[37] *Id*. at ¶¶282-283.

2.3 Improving Rate Design

In its Notice of Investigation,[38] the Energy Bureau outlined several deficiencies with PREPA's proposed rate design and deferred these discussions to a subsequent proceeding, also initiated in the Notice of Investigation. As previously mentioned, this investigation proceeding remains stayed and has not been reopened by the Energy Bureau.[39]

LUMA Progress

Generally, LUMA determined that rate design deficiencies were most likely attributed to data limitations and the inappropriate estimation of the marginal cost of generation (further addressed in the next section). The successful execution of LUMA's Load Forecasting Improvement Program and AMI Implementation Program, described above, will enable the development of a robust load forecast research study and detailed data collection to support effective rate design. These elements will enable LUMA to address many of the deficiencies/concerns raised by the Energy Bureau in both the Rate Order and the Notice of Investigation. The Load Forecasting Improvement Program will allow LUMA to identify and track various metrics (energy usage over time, demand at various times, number of customers of various types) across customer classes and at a granular level of detail that can be leveraged for rate design. The AMI Implementation Program will allow the collection of granular data surrounding customer consumption behavior that was not available in the prior rate case and can be used to inform rate design in a future COSS.

2.4 Marginal Costs

Marginal cost refers to the incremental cost of producing or serving one more unit (kWh of energy, or one more customer served etc.). Utility marginal cost studies are used to determine these incremental costs. In the 2017 Rate Order, the Energy Bureau determined that PREPA's marginal cost studies were unreliable.[40] The Energy Bureau identified various deficiencies, including but not limited to: under-estimating fuel prices, ignoring renewable resource costs, assuming load-related distribution plant would not increase O&M costs, and failing to distinguish between marginal and average losses.[41] PREPA's data limitations impede full recording of the marginal cost of generation.

LUMA Progress

LUMA has implemented several measures to improve its ability to estimate costs until verifiable data is available. Since LUMA took over operations in June 2021 up until the introduction of Genera as the GenCo operator, LUMA has been able to estimate system average hourly costs. As was reported to the Energy Bureau, LUMA required access to the OSI-PI data software in order to enable the calculation of more accurate hourly marginal energy costs. LUMA made multiple attempts to obtain access from PREPA to the OSI-PI fuel data to better understand each plant's hourly fuel consumption and electric

[38] *See* Resolution and Order of April 24, 2017, Docket No. CEPR-IN-2017-0001.

[39] *See* Resolution and Order of October 5, 2023, Docket No. CEPR-MI-2017-0007.

[40] See page 118-119 of Final Resolution and Order of January 10, 2017, Docket No. CEPR-AP-2015-0001.

[41] *Id*.

production to be able to perform marginal cost analyses. PREPA refused on multiple occasions to provide this data. Despite the Energy Bureau ordering them to share the OSI-PI data requested by LUMA, PREPA ultimately stalled until Genera assumed operation and maintenance of PREPA's power plants on July 1, 2023.[42] Genera has since provided LUMA with access to this data.

PREPA's loudest objection to allowing access to the data was their statements that the data was unreliable and incomplete. LUMA is currently assessing the data quality.[43] Once the OSI-PI data is analyzed and to the extent that the data from OSI PI is reliable, LUMA anticipates having better information to estimate fuel prices in a future marginal cost study. Implementation of the new Energy Management System (EMS) will allow provide more complete, real-time generation plant fuel data that can be used to inform marginal cost studies. This implementation is documented in the SRP Program: *Critical Energy Management System Upgrades*[44], which is expected to reach its remediated state in FY2025.

Due to the low effective availability of generation resources, System Operations was rarely faced with dispatch decisions that absolutely depended on accurate marginal cost information. With very low resource adequacy most dispatch decisions during recent years have been based on dispatching enough generation to meet customer demand and to avoid load shed. At the same time LUMA was responding[45] to PREPA's refusal to provide the OSI-PI data, LUMA undertook several actions to improve the precision of the generation fleet estimated cost structure. This helped improve decision-making but also helped explain retrospectively, what had happened to production costs over the previous period. The improvement steps LUMA has undertaken are listed below for reference:

1. Several exercises to run PROMOD analysis retrospectively over several months to improve LUMA's understanding of estimated heat rates. Heat rate is not a single, static measure, but is modeled using a "heat rate curve" which reflects how efficiency changes with small increases in production. PREPA did not perform a heat rate test on its units in over 10 years[46], but Genera has already presented its plan to perform these tests on an annual basis which is more consistent with Prudent Utility Practices.

2. LUMA worked across the System Operations and analytical teams to ensure consistency of data and analysis of actuals across different software tools (including PROMOD as well as other more operationally focused software). This effort included review of heat rate data, but also ramp times, production costs, start-stop limitations, and several other variables. These assumptions are now consistently applied in all models.

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[42] *See* page 2 of Resolution and Order of March 24, 2023, Docket No. NEPR-MI-2023-0001.

[43] *See* PREPA's Motion to Inform PREPA's Position in Regard to the OSI PI Data of March 31, 2023, Docket No. NEPR-MI-2023-0001.

[44] *See* page 46 of LUMA's Motion of August 23, 2023, Docket No. NEPR-MI-2021-0001.

[45] *See* LUMA's Response to PREPA's Motion to Inform PREPA's Position in the Regard to the OSI PI Data of April 27, 2023, Docket No. NEPR-MI-2023-0001.

[46] *See* PREPA's Motion to Inform PREPA's Position in Regard to the OSI PI Data of March 31, 2023, Docket No. NEPR-MI-2023-0001.

3. LUMA procured a license for Plexos to run in conjunction with PROMOD. The two models are similar, but Plexos enables faster analysis of what-if scenarios that can assist diagnostic analysis. After the LUMA Plexos model was built, LUMA had to install the system variables to support the model and to calibrate Plexos output with PROMOD analysis to ensure consistency of analysis and assumptions.

4. LUMA updated the data in the EMS module for Systems Operations' control room personnel to support decision-making with automated data. This involved training personnel on new procedures, integrating more SCADA data directly into the EMS module, as well as repairs or modifications to hardware to allow various data collection devices to operate automatically.

5. Installed Automatic Generation Control (AGC) capability to several more individual units at San Juan and Palo Seco as part of a longer-term implementation of AGC to all units. Prior to June 2021 commencement, AGC was only available at Ecoelectrica, and some of the units at Aguirre.

6. Developed a single set of all planning data variables in Plexos such that it could be shared with research teams, including personnel from the National Laboratories and the technical consultant supporting the Integrated Resource Plan (IRP) preparation. A single set of data allows for consistent operating and cost data assumptions to avoid multiple, conflicting planning studies (as occurred prior to LUMA).

Regarding the impact of renewable resource costs, LUMA is implementing a multi-phase, comprehensive process to develop a new IRP.[47] LUMA expects to deliver an updated IRP in 2024, at which time the estimated impact of renewable resource costs as well as other resource costs will be available and will better represent the current and future system. Typically, utilities and planning entities utilize outputs and other data from the integrated resource plan process to inform a rate review. Scheduling a rate review soon after the conclusion of an IRP proceeding would allow for incorporation of more current and more accurate marginal cost and general resource cost data in the rate review process.

Finally, similar to the COSS and rate design sections above, root causes for challenges with determining the marginal cost of generation can be traced to PREPA's lack of formal load forecasting and the consolidation of costs as an integrated utility company, without detailed functional cost data.

2.5 Conclusion

In conclusion, since starting operations, LUMA has taken significant steps to address the deficiencies and flaws in PREPA's review process identified by the Energy Bureau in the 2017 Rate Order[48] and the Notice of Investigation[49]. The impacts of the quality of data and the system controls that LUMA inherited continue to hinder full preparation of cost of service and comprehensive rate design. LUMA is currently advancing the key programs to overcome the inherited deficiencies. These programs include: **Load Forecasting Improvement Plan**, **AMI Implementation Program**, **Critical Financial Controls Program**,

[47] See In Re: Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modifies Action Plan, Docket No. NEPR-MI-2020-0012.

[48] *See* Final Resolution and Order of January 10, 2017, Docket No. CEPR-AP-2015-0001.

[49] *See* Resolution and Order of April 24, 2017, Docket No. CEPR-IN-2017-0001.

Critical Financial Systems Program, and **Critical Energy Management System Upgrades Program**.[50] Prudently completing the implementation of these programs will take years.

3.0 Review and Assessment of Regulation 8720 Filing Requirements

In this section, LUMA will respond to items (a) and (b) of Part II.a.i. of the Energy Bureau's June 30th Order.[51]

It must be noted at the outset that the filing requirements of Regulation 8720[52] reflected PREPA's specific operational, financial, and organizational circumstances at that point in time. Subsequent to issuance of the filing requirements in Regulation 8720[53] and the 2017 Rate Order,[54] PREPA filed for bankruptcy[55] under Title III of PROMESA and implemented a system-wide transformation, having separated its T&D and Generation operations, transferred O&M responsibility over to separate entities and reorganized its operations into separate subsidiaries, including GenCo, HydroCo and PropertyCo.[56] As a result of these changes, limitations exist in LUMA's ability to meet certain requirements of Regulation 8720[57]. The filing requirements applicable to this proceeding must be modified to align with PREPA's current structure and challenges as outlined below.

3.1 Assessment Summary

LUMA has fully assessed the requirements from Regulation 8720[58] and grouped them into one of four (4) categories depending on whether the capability to fulfill the requirement exists. A summary is provided in Table 3.1 below along with a brief explanation of requirements. LUMA has consulted with PREPA and Genera on its Assessment Summary and LUMA understands that they are supportive of LUMA's proposal(s).

[50] *See* LUMA's FY2024 Annual Budgets Filing of May 16, 2023, Docket No. NEPR-MI-2021-0004.

[51] *See* page 3 of Resolution and Order of June 30, 2023, Docket No. NEPR-AP-2023-0003.

[52] *See* Regulation 8720, known as "*New Regulation on Rate Filing Requirement for the Puerto Rico Electric Power Authority's First-Rate Case*" of March 28, 2016.

[53] *See* Regulation 8720, known as "*New Regulation on Rate Filing Requirement for the Puerto Rico Electric Power Authority's First-Rate Case*" of March 28, 2016.

[54] *See* Final Resolution and Order of January 10, 2017, Docket No. CEPR-AP-2015-0001.

[55] *See* Title III case under PROMESA pending for PREPA in the Title III Court, captioned as *In re Financial Oversight & Management Board for Puerto Rico as representative of Puerto Rico Electric Power Authority*, Case No. 17-BK-4780-LTS (D.P.R.).

[56] Pursuant to the Puerto Rico PREPA-GENCO-HYDROCO Operating Agreement ("Hydroco") executed on June 16, 2023, among the Puerto Rico Electric Power Authority ("PREPA"), PREPA Genco LLC, PREPA Hyrodco LLC, LUMA Energy ServCo, LLC ("LUMA"), and the Puerto Rico Public-Private Partnership Authority ("P3A").

[57] *See* Regulation 8720, known as "*New Regulation on Rate Filing Requirement for the Puerto Rico Electric Power Authority's First-Rate Case*" of March 28, 2016.

[58] *See* Final Resolution and Order of January 10, 2017, Docket No. CEPR-AP-2015-0001.

Table 3-1. Regulation 8720 – Assessment Summary

Ability to File	Schedule Count	Description
Yes – No Alternative Proposed[1]	20	Requirement met; no alternatives proposed
Yes – Alternative Proposed[2]	5	Requirement met; alternative proposed to schedule(s)
Partial – Alternative Proposed[3]	~~19~~20	Requirement partially met; alternative proposed because not all inputs are available
No - Not Applicable[4]	17	Requirement not applicable or not relevant
Total	**~~61~~62**	

[1] LUMA can fulfill the requirement and does not require clarification.
[2] LUMA can fulfill the requirement but proposes an alternative to the requirement to closer align with current circumstances. LUMA submits that these modifications result in schedules that will contribute more meaningfully to the rate review.
[3] The requirements can be partially met and must be modified to reflect PREPA's circumstances.
[4] The requirements are not relevant or applicable in the current rate review due to PREPA's current limitations.

3.2 Assessment Detail

3.2.1 Limiting Factors

PREPA'S BANKRUPTCY

In the context of a healthy utility, the rate base/rate of return ratemaking model is used for assessment. The revenue requirement includes expenditures required to serve the utility's customers at a reasonable cost plus a positive return based on capital investments and coverage of utility debt, and an allowance to recognize the risk of such investments. For example, a return on equity component recognizes the cost of attracting investors. The cost of debt is based upon the (weighted average) cost of debt issuances. It is called the "rate base approach" because the capital expenditures become the base on which investors who finance those expenditures earn a return.

The revenue requirement must allow the utility to cover its O&M expenses, depreciation, taxes, and interest on long-term debt. Rate cases are warranted when utility revenues result in net income that does not allow the utility the opportunity to earn the authorized overall rate of return (ROR). This is the model widely used in the mainland U.S. (and Canada) to set rates for investor-owned utilities and some public power entities. Both investor-owned and government-owned utilities require rates sufficient to generate positive cash flow, or net income, to provide dividends to owners and maintain cash reserves to handle unforeseen situations. Additionally, a history of stable, positive cash flow is one of the factors rating agencies use for evaluating the debt issuances of utilities; the better financial health a utility is in, the lower the cost of borrowing, which reduces costs to customers.

In the 2017 Rate Order, the Energy Bureau already noted that PREPA's weak financial condition meant its only source of funding for long-term capital expenditures was from customers.[59] As PREPA remains under

[59] *See* Final Resolution and Order of January 10, 2017, Docket No. CEPR-AP-2015-0001.

Title III bankruptcy, that is still true today.[60] Unable to issue new debt, all utility capital investments must be paid for in the year they are incurred. This is commonly referred to as *cash financing*. Utilities that cash finance their operations have revenue requirements that are the sum of the regular O&M expenses, taxes, and capital expenditures in the test year. By not financing some of the capital investment with debt, the debt service coverage amount – adopted by the Energy Bureau in the 2017 Rate Order[61] – is not a relevant factor for establishing a net income component for the revenue requirement. Instead, the net income to the utility is some percentage of the capital spend.

BALANCE SHEET REMEDIATION

When PREPA can issue new debt, the utility can convert to traditional regulatory financing using a combination of debt and equity to fund capital investment. In preparation for this eventuality, PREPA's balance sheet must be restored, and a set of regulatory accounting books needs to be established for each of the operating companies. These regulatory books will show the amount of gross plant investment, the accumulated depreciation, and the authorized depreciation rates for each type of plant. This will allow LUMA to present regulatory income statements which will form the basis of future rate reviews. Despite this balance sheet remediation receiving some funding in the FY2024 Certified Fiscal Plan, LUMA, PREPA and Genera will not be positioned to establish robust a Federal Energy Regulatory Commission (FERC) Uniform System of Accounts until FY2027.

MODIFICATION TO THE "TEST YEAR"

Regulation 8720 defines a "Test Year" as a "one-year historical period used to determine rate base, operating income, interest coverage ratio and debt service coverage ratio. The historical test year to be used in the formal application is the most recent 12-month period for which audited financial statements exist." [62] In the prior rate review, PREPA proposed to use FY2014 as a test year because it was the most recent 12-months for which audited information was available, and then adjusted that data to take into account: the Restructuring Support Agreement between PREPA and certain bondholders, internal PREPA restructuring, budgets for FY2015 and FY2016, the actual spending for those two (2) years, and actual spending for the beginning of FY2017. [63] The PREB found 2014 to be outdated and an inaccurate representation for predicting the FY2017 revenue requirement. In the absence of current audited data, the Energy Bureau relied on:

1. PREPA's unaudited operating results for the 12 months ended June 30th, 2016.
2. PREPA's approved budget for FY2017.
3. PREPA's business plan (May 2016).

It is LUMA's understanding that in the 2017 Rate Order, the Energy Bureau directed that future rate proceedings include the most recent fiscal year, adjusted for known and measurable changes from that

[60] *See* Title III case under PROMESA pending for PREPA in the Title III Court, captioned as *In re Financial Oversight & Management Board for Puerto Rico as representative of Puerto Rico Electric Power Authority*, Case No. 17-BK-4780-LTS (D.P.R.).

[61] *See* Final Resolution and Order of January 10, 2017, Docket No. CEPR-AP-2015-0001.

[62] *See* Regulation 8720, known as "*New Regulation on Rate Filing Requirement for the Puerto Rico Electric Power Authority's First-Rate Case*" of March 28, 2016.

[63] *See* page 30 of Final Resolution and Order of January 10, 2017, Docket No. CEPR-AP-2015-0001.

year. As of the date of this filing, PREPA and its auditors are still working on the FY2022 audit. The most recent available audited financial statements are for FY2021 and were prepared according to Generally Accepted Accounting Principles (GAAP). However, even if the audited financials were available, LUMA, PREPA and Genera are in the process of making significant changes to transform Puerto Rico's electric system and as a result FY2022 will not be a good cost indicator for ~~FY2025~~ FY2026, FY2027 or FY2028~~and beyond~~. On this basis, it would be insufficient for ratemaking.

Accordingly, LUMA proposes to use a forward-looking test ~~year~~period; in other words, the test ~~year~~period, and the rate years[64] will be the same: ~~FY2025~~FY2026, FY2027 and FY2028. This approach has the advantage of setting rates to forecasted costs in a bottom-up approach consistent with the Energy Bureau's June 30th Order. The revenue requirement in the rate review will be based on the true costs of providing service in Puerto Rico in ~~the~~ each of the test years.

This approach is not unusual in North America. A 2013 research paper by the National Regulatory Institute surveyed 21 state utility commissions and concluded that commissions using forward-looking test years in setting utility rates have had an overall positive experience with no intention to discard forward-looking test years in subsequent rate cases.[65]

In addition, the pace at which the activities performed by the utility are transforming means that a well-developed future outlook is a more accurate depiction of spend profile than historical information. This was confirmed in a 2010 study prepared for the Edison Electric Institute. Although the study focused on investor-owned utilities, the essential conclusion was that shifting to a future test year is a prime strategy when cost increases are being stimulated by the need to rebuild and expand legacy infrastructure to meet environmental and public policy goals.[66] As described throughout this section, that is the situation LUMA, and the Energy Bureau find themselves in.

For these reasons, LUMA respectfully submits it will use ~~FY2025~~ FY2026, FY2027 and FY2028 for the test ~~year~~ period and the rate years.

3.3 Conclusion

For convenience and to facilitate review, LUMA submits as Appendix A, an Excel workbook containing detailed assessments of the requirements set out in Regulation 8720[67], which include: whether LUMA requires clarifications, whether LUMA has the capacity to fulfill the requirement, and whether meeting the requirement will depend on any other entity. For each of the requirements that LUMA proposes to include in Phase II and Phase III of the rate review, the current status is "under development." Finally, LUMA has provided updated descriptions for each requirement that more closely match the current PREPA operating

[64] The Energy Bureau considers the "rate year" the first 12-month period in which the new rates will be in effect.

[65] *See* K. Costello, National Regulatory Research Institute "Alternative Rate Mechanisms and Their Compatibility with State Utility Commission Objectives" at page 74, April 2014 (last seen September 21, 2023).

[66] *See* M.N. Lowry, D. Hovde, L. Getachew, M. Makos, Edison Electric Institute "Forward Test Years for US Electric Utilities" at page 1, August 2010, (last seen September 21, 2023)

[67] *See* Regulation 8720, known as "*New Regulation on Rate Filing Requirement for the Puerto Rico Electric Power Authority's First-Rate Case*" of March 28, 2016.

structure and capabilities (Column F of Appendix A). These updated schedule descriptions are submitted as the applicable filing requirements for this rate review.

This information provides requirement level detail supporting the information provided in Section 3 of this filing, in a format that is user friendly and allows for line-by-line analysis and explanation.

4.0 Report on Coordination

In this Section, LUMA will respond to item (e) of Part II.a.i of the June 30th Order[68].

LUMA requires input from Genera and PREPA to complete 12 of the 61 filing requirements in Regulation 8720[69]. LUMA hosted a virtual workshop with Genera and PREPA on September 12, 2023, to discuss these requirements and establish key contacts to engage for future collaboration.

In Table 4-1 below, LUMA provides its preliminary witness list, with the caveat that the list is subject to change. Similar preliminary witness lists for Genera and PREPA are attached herewith as Appendices B and C, respectively.

Table 4-1. Preliminary Witness List - LUMA

Witness Name	Position	Organization	Issues Covered
Mario Hurtado	Chief Regulatory Officer	LUMA	• PREPA's Structure • Revenue Requirement
Corey Schneider	Chief Financial Officer	LUMA	• Revenue Requirement • Test Year
Joseline Estrada	Manager, Load Forecasting & Research	LUMA	• Load Forecast
Shay Bahramirad	Senior Vice President, Capital Programs	LUMA	• Non-Federally Funded Capital Expenditures
Donato Cortez	Vice President, Special Projects	LUMA	• Operating & Maintenance Expenditures
Sam Shannon	Associate Director	Guidehouse	• Rate Design • Cost of Service

5.0 Preliminary List of Schedules

In this Section, LUMA responds to items (d) and (f) of Part II.a.i. of the Energy Bureau's June 30th Order[70].

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68 *See* page 3 of Resolution and Order of June 30, 2023, Docket No. NEPR-AP-2023-0003.

69 *See* Regulation 8720, known as "*New Regulation on Rate Filing Requirement for the Puerto Rico Electric Power Authority's First-Rate Case*" of March 28, 2016.

70 *See* page 3 of Resolution and Order of June 30, 2023, Docket No. NEPR-AP-2023-0003.

As detailed in Regulation 8720[71], as well as Appendix A of this Report, LUMA intends to submit the following schedules in its Phase II Filing:

Table 5-1. Schedules LUMA Intends to Submit – Rate Review

Schedule
A-0: Budgets for PREPA, LUMA and Genera
A-1: Determination of Base Rates Revenue Requirement
A-2: Test Year Result of Operations with Pro Forma Adjustments
A-5: Summary of Financial Position and Changes in Financial Position (Through End of Test Year and Projected Three Years)
C-1: Test Year Income Statement with Adjustments and Adjusted Results
D-4: Capital Lease detail
D-5: Long Term Purchased Power Agreements (test year and three subsequent years)
E-1: Balance Sheet (test year, two previous years, three subsequent years)
E-2: Income Statement (test year, two previous years, three subsequent years)
E-3: Statement of Changes in Financial Position (test year, two previous years, three subsequent years)
E-4: Statement of Changes in PREPA's Net Position (Deficit) (test year, two previous years, three subsequent years)
E-6: Departmental / Functional Operating Income Statements (test year, two previous years, three subsequent years)
E-7: Various Operating Statistics (i.e. debt service coverage, number of employees) (test year, two previous years, three subsequent years)
E-8: Detail of Contributions in Lieu of Taxes with each government client
E-9: Notes to the Financial Statements
F-1: Projected Income Statement at Present and Proposed Rates for three years
F-3: Projected Construction and Capital Expenditures for Three Years including alignment with IRP
F-4: Detailed Supporting Documentation for Projections
G-1: Fully Allocated Embedded Cost of Service at Present Rates
G-2: Fully Allocated Embedded Cost of Service at Proposed Rates
G-3: Revenue Allocation by Class at Proposed Rates
G-4: Expense Allocation by Class at Proposed Rates
G-5: Allocation Factors and Calculations
G-6: Optional: Alternative Methodologies for Calculating Embedded Cost of Service
H-1: Summary of Revenues by Class at Present and Proposed Rates
H-2: Revenue Requirement Analysis at Present and Proposed Rates (billing determinants)
H-3: Explanation of Changes between Current and Proposed Rates

[71] *See* Regulation 8720, known as "*New Regulation on Rate Filing Requirement for the Puerto Rico Electric Power Authority's First-Rate Case*" of March 28, 2016.

Schedule
H-4: Customer Bill Impact Analysis
H-5: Bill Count and Bill Frequency Analysis
H-6: Proof of Revenue
I-2: Audited Financial Statements
I-4: Business Plan for Rate Year
J-1: Proposed Tariffs
J-2: Current Tariffs Redlined
J-3: Plan of Rider Surcharge Administration for Each Rider
J-4: Energy Efficiency Rider
K-1: Description of Affiliates and Listing of Officers
L-2: Detail of Subsidies Included in Rates
M-1: Rate Design Proposal (including fixed charge, energy charge and where applicable, demand charge)
Pre-Filed Written Testimony for LUMA, Genera, and PREPA
Public Notice

5.1 PREPA Legacy Debt Charge and Pension Obligations

PREPA's Legacy Debt and Pension obligations are currently under a restructuring process pursuant to Title III of PROMESA.[72] The FOMB for Puerto Rico, as PREPA's sole representative in PREPA's Title III case, is responsible for all aspects of PREPA's Title III proceedings, including developing and proposing a Plan of Adjustment (POA) to the Title III court. The FOMB filed its Third Amendment POA for PREPA on August 25, 2023. The Third Amended POA contains the FOMB's proposed approach for restructuring PREPA's Legacy Debt and Pension obligations, including certain economic terms related to the overall recovery available to different classes of creditors, annual debt service costs to PREPA and proposed rates to be added to PREPA customer bills. The Third Amended POA is subject to confirmation by the Title III court and, therefore, there is significant uncertainty as to its outcome, including its particular impact on PREPA and its customers.

Once a POA for PREPA is confirmed by the Title III court, LUMA understands that PREPA and/or the FOMB will develop and submit to the PREB – either within the current proceeding or separately – the materials, information, and documentation necessary and in support of any request for the calculation and inclusion of any charges in customer bills designed to collect revenues for payment of PREPA's Legacy Debt and Pension obligations.

Upon coordination with the FOMB, a preliminary list of witnesses, issues to be addressed by each witness and schedules to be submitted by PREPA and/or the FOMB is attached herewith as Appendix D.

[72] *See* Title III case under PROMESA pending for PREPA in the Title III Court, captioned as *In re Financial Oversight & Management Board for Puerto Rico as representative of Puerto Rico Electric Power Authority*, Case No. 17-BK-4780-LTS (D.P.R.).

Appendix A: Phase II Filing Schedules

Please refer to the attached Excel workbook.

GeneraPR

September 28, 2023

<u>Via electronic mail</u>

Ms. Robin Kostek
Manager, Tariffs and Budget
LUMA Energy, LLC
Email: robin.kostek@lumapr.com

Re: NEPR-AP-2023-0003
June 30, 2023, Resolution and Order

Dear Ms. Kostek,

Pursuant to the requirements set forth under Section II (a)(i)(e)(ii) of the June 30, 2023, Resolution and Order ("June 30th Order") of the Puerto Rico Energy Bureau's ("PREB") Resolution and Order Initiating Rate Review, Case No.: NEPR-AP-2023-0003 Genera PR LLC hereby submits its preliminary and subject-to-change witness list and related issues and topics each witness will address in their testimony.

1. Brannen McElmurray – Chief Executive Officer
   - Testimony of overall rate case process, reasonability and prudence of the revenue requirements and associated costs, in accordance with from paragraph (C) of Section 2.17 of Regulation 8720.

2. Ron Lewis – Chief Financial Officer
   - Accounting, and
   - Finance-related topics.

3. Cesar A Figueroa Diez – Director of Fuel Management
   - Fuel costs,
   - Fuel procurement,
   - Fuel Optimization Plan,
   - Projected savings, and
   - Fuel cost recovery mechanisms.

GeneraPR

September 28, 2023

4. Daniel Hernández Morales – Vice President of Operations
   - Capital expenditures and projections,
   - Construction, and
   - Operations.

As stated above, this preliminary list is provided to comply with the June 30th Order. The officers named herein, and the related issues and topics associated with them, are all subject to change and provided on a conditional basis.

Should you have any questions or require further clarification, please do not hesitate to contact the undersigned, Romano Zampierollo, at rzampierollo@genera-pr.com.

Genera looks forward to continuing working with LUMA for the benefit of the people of Puerto Rico and in compliance with orders from PREB.

Sincerely,

Romano A. Zampierollo
Regulatory and Planning Team

GOVERNMENT OF PUERTO RICO
PUERTO RICO ELECTRIC POWER AUTHORITY
Executive Director I Josué A. Colón Ortiz I director_ejecutivo@prepa.com

September 28, 2023

BY ELECTRONIC MAIL
Robin.kostek@lumapr.com

Ms. Robin Kostek
Manager, Tariffs and Budget
LUMA Energy, LLC and
LUMA Energy ServCo, LLC (LUMA)
PO Box 363508
San Juan, Puerto Rico

Dear Ms. Kostek:

Re.: PREPA Submission of Witness List and Sponsored Testimony for 2024 Rate Review

The Puerto Rico Electric Power Authority ("PREPA") hereby submits to LUMA Energy, LLC ("LUMA"), PREPA's preliminary witness list, and the topics to which each witness will sponsor testimony for inclusion in LUMA's Phase I filing as it relates to the 2024 Rate Review. PREPA's preliminary witness list is as follows:

Witness	Title	Topics for Sponsored Testimony
Josué A. Colón Ortiz	PREPA Executive Director	• Discuss and describe HoldCo and HydroCo structure (i.e. Org Chart) and operations. • Provide overview of PREPA responsibilities / functions, challenges, and proposed solutions / improvements. • Provide high level overview and support for budgetary requirements.
Jaime Umpierre Montalvo	PREPA Director of HydroCo and Operations	• Support and justify revenue requirement for HydroCo.

Witness	Title	Topics for Sponsored Testimony
Nelson Morales	PREPA Finance Director	Discuss and describe the following: • PREPA Finance operational and contractual responsibilities, including consolidated financial reporting and audits, finance department function needs for future bond issuances post-T3 (e.g., investor roadshows, disclosure requirements) • Justify revenue requirement for HoldCo budget. • Necessary funding for service accounts. • Necessary funding for pension obligations.
Lionel Santa Crispín Juan C. Rivera Burgos	PREPA General Counsel PREPA IT/OT Administrator	Discuss and describe other key PREPA areas and responsibilities with significant funding needs (e.g., legal).
Lucas Porter	Ankura Senior Director	Provide overall expert support for discussions on budget, revenue requirements, and rate structure, among other.

Note that the list of witnesses above and topics remains subject to change in all respects.

PREPA team looks forward to continuing work with LUMA and Genera PR, LLC, representatives in the ongoing effort in advancing energy sector transformation initiatives in the most transparent, and responsible way possible for the benefit of the people of Puerto Rico.

Cordially,

Josué A. Colón-Ortiz
Executive Director

c Lionel Santa Crispin, PREPA General Counsel, lionel.santa@prepa.pr.gov
Nelson Morales, PREPA Finance Director, nelson.rivera@prepa.pr.gov
Jaime Umpierre, PREPA HydroCo Director, jaime.umpierre@prepa.pr.gov
Juan C. Rivera Burgos, PREPA IT/OT Administrator, juan.rivera@prepa.pr.gov

Exhibit 2
Updated Phase I Report

MEMORANDUM FOR:

Mr. Mario Hurtado
Chief Regulatory Officer
LUMA Energy

Ms. Rachel Ehrlich Albanese
Counsel for LUMA Energy
DLA Piper

Please be advised that the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board"), in relation to PREPA's upcoming consolidated rate review proceeding, is hereby providing the following required information:

I. Schedule List

A. Legacy Debt Charge

II. Witness List & Topics List

Mr. William Zarakas, a principal at The Brattle Group, an advisor for the Oversight Board, will provide pre-filed direct testimony regarding the proposed **Legacy Charge** rates and present supporting information.

The supporting information may include the proposed Legacy Charge rates by customer class; the customer bill impact analysis and other assumptions and modeling methodology considered in developing the Legacy Charge rates and supporting workpapers; and other information the Puerto Rico Energy Bureau may reasonably request in connection therewith.

The Oversight Board understands LUMA will work with PREPA and other operating entities to provide the witnesses and supporting information for all operational expenses and corresponding rate requests, including those relating to pension expenses, as owners of such information.

Exhibit 3

Updated Appendix A of the Phase I Report

[Submitted separately via email]

Exhibit 4

LUMA Responses to Consultants Requests Arising from January 10, 2025, Technical Conference and questions posed through the Appendix on Legal Issues contained in the January 3rd Agenda

RE: Consultants' Request of Parties Arising from Technical Conference of January 10, 2025

Optimal Budget and Alternative Budgets: How to handle?

Request

Please comment on the advantages and disadvantages of each option, then make a recommendation based on explicit criteria. Explicit criteria concerning the alternative budgets would include (a) estimates by your entity of the additional work effort and time needed to prepare, explain and document the alternatives; and (b) the usefulness of that extra effort to the Bureau.

1. The option described in Part I.A.2 of the January 3 document: optimal budget plus three alternative budgets reflecting 25%, 50%, and 75% of the rate increase caused by the optimal budget—with explanations for the latter three budgets of the specific reductions from the optimal budget, and the consequences of those reductions.
2. Optimal budget plus one alternative, at 50% of the increase associated with the optimal budget—with explanations of the reductions and the consequences. The submitter could update the alternative budget for each of the second (FY27) and third (FY28) year.
3. Optimal budget plus one alternative—that one alternative being a budget and revenue requirement based on the rate increase that the submitter deems appropriate. The alternative would explain the reductions from the optimal budget and the reductions. The submitter could update the alternative budget for each of the second (FY27) and third (FY28) year.
4. Optimal budget only.
5. Other options—for purposes of giving the Bureau sufficient information to make conscientious, fully informed tradeoffs between rate levels and service quality.

LUMA's responses

LUMA remains committed to remediating the Transmission and Distribution System (T&D System) formerly operated by Puerto Rico Electric Power Authority (PREPA) that was not maintained properly for decades. The entire LUMA team is focused on building a more reliable, more resilient, and cleaner energy grid for the future while also prioritizing affordability of electricity service for customers. It is important to remember that LUMA does not make the decisions on future rate changes or the rate structure. LUMA is committed to working with the Puerto Rico Energy Bureau to provide informative cost options so that it, the Energy Bureau, the Financial Oversight and Management Board (FOMB), and others in the rate setting process can determine a future utility rate that balances the need to make critical investments in the system with affordability for customers.

LUMA is developing, and will submit, a bottom-up budget that provides for sufficient funding to implement the programs set forth in the System Remediation Plan (SRP) and to achieve the transition of the utility to a remediated state with improved electric utility service to customers, also referred to as an "optimal budget."

Option 1

Producing multiple alternative budgets places an undue burden on LUMA by requiring the development of multiple bottom-up budgets, all of which require a resource intensive and time-consuming prioritization exercise to produce a budget that is reasonably implementable and enables LUMA to continue to make progress on the SRP and to comply with the T&D OMA. In addition, LUMA is concerned about pre-determined percentage reductions that may lead to a budget proposal that is not reflective of the needs of the T&D System.

Option 2

Similar to Option 1, LUMA is concerned with the application of an artificial and pre-determined reduction that is not reflective of the T&D System's needs.

Option 3

LUMA supports this option with one modification: the alternative budget would be based on an effort to identify and prioritize activities such that it reflects critical activities that cannot be deferred or delayed, or that provide LUMA a reasonable opportunity to achieve current performance metric targets, rather than being based on a determination of what LUMA would consider to be an "appropriate" rate increase. For those activities that are de-prioritized or deferred, LUMA will estimate the impact on performance based on the current performance metrics. This will help the Energy Bureau understand the impact of reductions from the optimal budget.

Option 4

LUMA is amenable to this option as it would allow for any assessment of the revenue requirement and the associated operation and maintenance and capital improvement activities to be conducted without the Energy Bureau being directly, or indirectly, influenced by the outcomes of an alternative budget. Any potential reduction the Energy Bureau may require at the conclusion of the rate review proceeding would, therefore, be based on the evidence and information collected during the proceedings.

As stated above, the optimal budget will allow the utility to implement the programs set forth in the System Remediation Plan (SRP) and to achieve transition to a remediated state with improved electric utility service to customers.

Option 5

See Option 3 above.

Legacy Debt

Request

For purposes of the revenue requirement proceeding, what type of numbers should the filing requirements require? Please provide a recommendation and reasoning.

1. Zero, on grounds that we don't know the number yet.
2. FOMB's latest settlement offer that is publicly available.
3. The full face amount of legacy debt plus accrued interest.
4. Halfway between the FOMB's position and the bondholders' claim.

5. Other?

LUMA's response

LUMA respectfully submits that PREPA is the appropriate party to address this question about the treatment of PREPA's legacy debt. LUMA is not taking a position on the appropriate amount of legacy debt, if any, that should be included in the revenue requirements. As stated in the January 10th Technical Conference and submitted in previous filings on the record of this proceeding, LUMA expects that the FOMB will provide the materials, information and schedules that pertain to PREPA's legacy debt charges that will be collected through customer bills when that information is available from the Title III proceedings, either in a subsequent stage of this rate review or as part of a separate process.[1]

Riders

Request

Concerning the riders for fuel, purchased power, CILT, and subsidies: Should parties who wish to propose changes in design make those proposals in the revenue requirements proceeding, in the separate rate design proceeding, or at some other time? Provide a recommendation and reasoning. Your procedural recommendation should take into account the complexity of your proposed changes and the documentation necessary to support them. If your recommendation is to submit redesigns in the revenue requirements proceeding, what do we need to say about the filing requirements relating to redesign of the riders?

LUMA response

In general, changes to the riders for fuel, purchased power, CILT and subsidies are better suited to the rate design proceeding mainly because of regulatory workload. Many of the same resources and personnel responsible for the revenue requirement will also be preparing and defending the rate design. As submitted in its responses to Dr. Hopkins, LUMA agrees that the rate design should not commence until the proceeding on the revenue requirement has made some progress.[2] LUMA could start turning its attention to rate design after the Energy Bureau declares the rate filing "complete" or after LUMA files Rebuttal Testimony.

However, LUMA submits that the Energy Bureau should consider riders in the revenue requirements proceeding to the extent they are limited and specific, including updates to reconciliation formulas to enable more effective collections and other riders that would be necessary to fund particular programs and initiatives ordered by the Energy Bureau (*i.e.,* Wheeling).

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[1] NEPR-AP-2023-0003 Virtual Technical Conference, January 10, 2025, 1:00:52 to 1:02:04; Motion Submitting Responses to First Requirement of Information in Compliance with October 24th Resolution and Order, Exhibit 3, Updated Phase I Report, Section 5.1 PREPA Legacy Debt Charge and Pension Obligations

[2] RFI-LUMA-AP-2023-0003-20241220-PREB-010

Renewable Portfolio Standard (RPS) Compliance Costs

PREB request

Please comment on whether, to what extent, and how PREPA's proposed budget should address costs associated with Renewable Portfolio Standard (RPS) compliance. Your response should address

1. Whether detailed RPS compliance costs should be required as part of the revenue requirement filing; and
2. If such costs should be included, what level of detail and supporting documentation should be required.

Provide reasoning with your recommendation. The reasoning should address the complexity of documenting and projecting RPS compliance costs, and identify the supporting materials needed to justify those costs in a revenue requirement filing.

LUMA's response

LUMA understands that Renewable Energy Credits (RECs) currently flow through the Purchased Power Cost Adjustment (PPCA). LUMA submits that to the extent a REC purchase obligation arises, either PREPA or LUMA can seek an amendment to the revenue requirement if such an amendment is necessary. To the extent PREPA's budget includes RPS compliance costs, the costs included should be only the costs that are known and measurable within the three-year test period.

Performance Level Associated with the Proposed Revenue Requirement

Request

The filed budgets should include the fixed fee and 100% of the performance-metrics award. The budgets submitted also should specify the level of performance associated with the portion of the revenue requirement that is not associated with the performance-metrics award.

Each of the alternative budgets should address differences from the optimal budget, in terms of effects on the related revenue requirement and on the expected level of performance.

Comment on these tentative requirements. Recommend any guidance that the Bureau should issue to assist submitters in complying with the requirement.

LUMA response

LUMA will include the fixed fee and any applicable incentive fee in its submittal.

Regarding the performance levels associated with less than the optimal budget, as stated above, LUMA intends to indicate in the alternative budget which programs or projects would be deferred or eliminated. This will provide the Energy Bureau with an indication of the reductions in expected performance of O&M Services. Section 7.4 of the T&D OMA provides that the Budget should enable a reasonable opportunity to achieve the Performance Metrics, and if the Budget does not, then adjustments to the Performance Metrics shall be reasonably considered.

Legal Issues

Request

On the five legal issues stated in the Appendix to the January 3, 2025 document entitled "Technical Conference of January 10, 2025: Consultants' Agenda and Explanation," please do any or all of the following:

1. Provide any requests for clarification, stating what specifically is not clear. Even better, provide your preferred clarification.

2. Recommend a procedure for briefing the questions.

3. For questions 3 and 4: Comment on whether, and the extent to which, these questions are relevant to rate proceeding, understanding that these questions are on the Commissioners' minds, could become relevant as a result of Bureau decisions in the rate proceeding, and likely will require attention and decision at some point.

LUMA's responses

1) LUMA does not have any requests for clarification.

2) LUMA proposes that briefing on legal question 1[3] may occur at the Energy Bureau's request, within the next three weeks.

3) Regarding legal question 2,[4] LUMA understands that this should not be briefed by the parties and is a determination to be made by the Energy Bureau, exercising its authority under applicable law, including The Energy Transformation and Relief Act, Act 57-2014, as amended, and the Government of Puerto Rico Uniform Administrative Procedure Act, Act 38-2017. Clarity and certainty on the filing requirements is of paramount importance to prepare compliant submissions in this rate case. LUMA is willing to continue discussions on filing requirements.

4) LUMA hereby states its position as to the relevance of Questions 3 and 4. LUMA also explains why briefing of these questions during this rate case is inconsistent with the T&D OMA.

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[3] Question 1 contained in the *Appendix on Legal Issues* states the following:

> Is the procedure discussed on December 20 and in the memo, of combining a budget approval with a rate case, consistent with LUMA OMA sec. 7.3(a)? ("Operator shall, no later than ninety (90) days prior to the commencement of such Contract Year, submit to Administrator the proposed Budgets for such Contract Year; provided that if any proposed Budget requires a rate adjustment to be approved by PREB, Operator shall have the right, at its sole discretion, to submit the proposed Budgets for such Contract Year directly to PREB rather than to Administrator." In this context, what is the role for the P3A? Also: Given that each of the three companies will provide its own optimal budget and alternative budgets, unconstrained by a preexisting rate ceiling, is there any place for a P3A allocation?

[4] Question 2 contained in the *Appendix on Legal Issues* states as follows:

> Is it necessary to issue the new, case-specific filing requirements via a formal regulation, as distinct from an order in this proceeding—given that these requirements will likely apply solely to this proceeding? In any event, is there an administrative law principle that prevents a regulatory agency from stating a new policy in an adjudicative proceeding instead of in a rulemaking proceeding? *See SEC v. Chenery Corp*., 332 U.S. 194 (1947) (Chenery II).

Questions 3 and 4 that were provided previously in the Appendix on Legal Issues in the Consultant's Agenda and Explanation on the Technical Conference of January 10, 2024 state as follows:

3. *What are the Bureau's statutory powers, if any, to hold LUMA and Genera financially accountable for imprudent action and inaction; that is, action or inaction that causes costs, revenues, or service quality to depart from the levels that the Bureau would expect if performance were prudent? By what means, if any, can the Bureau prevent recovery in rates of expenses imprudently incurred by LUMA or Genera, while making one of those companies financially responsible for covering the shortfall?*

4. *Aside from any Bureau power to hold LUMA and Genera financially accountable for imprudence, consider this scenario: The Bureau makes findings, after a fully litigated case in which LUMA or Genera was a party, that (a) LUMA or Genera has acted imprudently or failed to act prudently, and (b) the consequences to customers amounted to a specific dollar level of excess cost. Would the Bureau's conclusion have collateral estoppel effect in a contract breach action against the company brought by P3A?*

Questions 3 and 4 are not related to the development of the revenue requirement in the first instance, which is based upon the revenues needed to fund the operations of the utility to provide electricity service to the electricity customers of the utility. Instead, Questions 3 and 4 relate to the Energy Bureau's statutory authority to (1) find the Operators imprudent, (2) disallow costs included in the revenue requirement based upon the actions of LUMA and Genera that are found to be imprudent, (3) hold the Operator responsible for the shortfall in revenues to the utility to cover any disallowed costs, and (4) collaterally estop the Operators in a contract breach brought by Puerto Rico Public-Private Partnerships Authority ("P3A"), based on a finding that the utility was imprudent.

(i) The Energy Bureau's ability to find LUMA imprudent and to disallow costs incurred to provide O&M services is governed by the provisions of the T&D OMA.

The T&D OMA defines Prudent Utility Practice, as follows:

> at any particular time, the practices, methods, techniques, conduct and acts that, at the time they are employed, are generally recognized and accepted by companies operating in the United States electric transmission and distribution business as such practices, methods, techniques, conduct and acts appropriate to the operation, maintenance, repair and replacement of assets, facilities and properties of the type covered by this Agreement. The interpretation of acts (including the practices, methods, techniques, conduct and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto) shall take into account the facts and the characteristics of the T&D System and System Power Supply known at the time the decision was made. Prudent Utility Practice is not intended to be limited to the optimum or minimum practice, method, technique, conduct or act, to the exclusion of all others, but rather to be conduct or acts that a prudent operator would take to accomplish the intended objectives at just and reasonable cost consistent with reliability, safety, expediency and good customer relations.

See T&D OMA, Section 1.1.

Thus, Prudent Utility Practices are very fact-specific and must consider generally accepted practices in the industry as well as take into account the facts and characteristics of the T&D System and Power Supply System at the time. Also, as noted in the definition, these are not intended to be the optimum or minimum practices, but also a spectrum of possible practices consistent with reliability, safety, expedience and good customer relations, among other factors.

The T&D OMA also recognizes that the T&D System that LUMA is operating is not in a remediated state and that it needs significant remediation. As noted in Section 4.1(d) of the T&D OMA, the Parties agreed that certain components of the T&D System and the manner that it is operated do not currently meet the standards of performance required under the T&D OMA, including the fact that certain matters related to the T&D System and operating and administrative practice may not comply with the Contract Standards and the parties expected a period of remediation to transition to the Standards of Performance. Moreover, Sections 5.1 and 5.4 of the T&D OMA include the acknowledgement that the Operator's obligations to provide O&M Service are subject to the System Remediation Plan.

A finding of imprudence under the T&D OMA would be dependent upon a review of particular actions in light of the facts known at the time and would need to consider not only generally accepted industry standards, but whether or not LUMA could meet those standards in light of the condition of the utility's T&D System in a particular circumstance and the amount of funding LUMA receives from PREPA, as discussed below. It would also require a detailed review of the options available to LUMA at the time.

(ii) The T&D OMA requires PREPA to fund T&D costs and sets forth procedures Regarding Disallowance of Costs.

Section 3.2 of the T&D OMA provides that PREPA, as the Owner, is required to fund the Service Accounts for LUMA to pay T&D Pass-Through Expenditures, Capital Costs and Outage Event Costs. The T&D OMA provides that as Operator, LUMA is entitled to draw funds from the Operating Account, to pay for T&D Pass-Through Expenditures incurred in providing O&M Services and to withdraw funds from the Capital Account Non-Federally Funded, subject to T&D OMA provisions. *See* T&D OMA, Articles 7.5 (a) and (c). The T&D OMA specifies the circumstances whereby costs may be disallowed and provides procedures to settle disputes, including those related to disallowed costs. *See* T&D OMA, Section 7.6 (disallowed costs), Article 15 (Dispute Resolution).

(iii) LUMA is not responsible for any shortfalls of the costs to provide services to PREPA's customers under the T&D OMA.

Questions 3 and 4 assume that LUMA can be held responsible for any shortfall in funding of the utility created by the disallowance of costs. LUMA's obligations in connection with providing O&M Services, as well as the compensation it receives for those services and its liabilities regarding disallowed costs, are governed by the T&D OMA. Accordingly, any discussion of responsibility for funding shortfalls must be focused on the parties' rights and obligations under the T&D OMA.

LUMA is compensated for providing O&M Services, through a Service Fee that includes a fixed fee and a variable performance-based incentive. *See* T&D OMA, Section 7.1. As indicated in Section 3.7 of the T&D OMA, PREPA expressly acknowledged that LUMA will rely on the funding of the Service Accounts by PREPA to perform the O&M Services and that LUMA will have the opportunity to earn the Service Fee in Full. Section 7.1 defines the Service Fee as including both a Fixed Fee and an Incentive Fee. That section also states that the Service Fee shall not be subject to any abatement, deduction, counterclaim or set off of any kind or nature.

Section 7.1(c) of the T&D OMA provides that the incentive fee is based on Operator's ability to timely achieve or exceed the performance metrics set forth in Annex IX (*Performance Metrics*) (the "Performance Metrics"). It states that LUMA shall be entitled to earn the incentive fee in any given Contract Year ("*Incentive Fee*"), which fee is set forth in Annex VIII (*Service Fee*), adjusted on a Pro Rata basis for a partial Contract Year and calculated as set forth in Annex X (*Calculation of Incentive Fee*). This provision states that "*the Owner and Administrator agree that an amount equal to the maximum amount of the Incentive Fee available in any given Contract Year shall be included in the Operating Budget for such Contract Year."* The T&D OMA also includes provisions for service fee disputes in Section 7.1(e).

Finally, Section 7.7 of the T&D OMA provides that LUMA "shall have no obligation or responsibility to incur or pay any costs or make expenditures in providing the O&M Services hereunder (other than Disallowed Costs) to the extent any of the Service Accounts do not contain sufficient funds to pay such costs and expenditures." *See* T&D OMA, Section 7.7. As such, "to the extent sufficient funds are not available for withdrawal by [LUMA] from the Service Accounts, the Front-End Transition Account or the Back-End Transition Account, as applicable, [LUMA] shall take reasonable measures to maintain the continuity of the O&M Services in accordance with the Contract Standards to the extent possible in the absence of its receipt of such sufficient funding." *Id*.[5]

Given that LUMA's obligations in connection with providing O&M Services, as well as the compensation it receives for those services and its liabilities regarding disallowed costs, are ruled by the T&D OMA, LUMA suggests that any discussion must be focused on the parties' rights and obligations under the T&D OMA. If the Energy Bureau seeks briefing on this issue, it should be outside of the rate case, occur after any disputes resolution procedures under the T&D OMA are conducted, be based on the facts and circumstances underlying any dispute on costs or performance, and arise under the Energy Bureau's legal authority under applicable law, including Act 57-2014, the Puerto Rico Energy Public Policy Act, Act 17-2019, and the Puerto Rico Electric Power System Transformation Act, Act 120-2018, and in accordance with the T&D OMA.

5) LUMA hereby provides comments on Question 5.

Question 5[6] involves the contractual incentive payment per Section 7.1(c) of the T&D OMA. LUMA is not eligible to earn the Incentive Fee until satisfaction or waiver of the outstanding conditions under the

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[5] This, "without limiting [LUMA's] termination rights . . . and except to the extent [that LUMA] exercises its rights to cease providing the O&M Services pursuant to Section 14.4 (Termination for Owner Event of Default) . . ." T&D OMA, Section 7.7.

[6] Question 5 of the *Appendix on Legal Issues* states:

> What is the legal relationship between (a) the revenue requirement established in this proceeding, and (b) the treatment of performance incentives in the OMAs and in the Bureau's order on those incentives? For example, as a legal matter does the revenue requirement level established by the Bureau have to be sufficient to allow LUMA and Genera to produce performance results that satisfy PREPA's statutory obligation to serve (which obligation has transferred to LUMA)? Does that interpretation mean that the purpose of the incentive payments is solely to reward "super-efficiency"? Or is there some overlap between the dollars paid by customers via the revenue requirement and the additional dollars paid by customers via the performance incentives—meaning that some of the incentives are compensating for merely normal efficient performance? If so, does that mean that, to prevent double counting, the Bureau must reduce the base revenue requirement by the amount of those incentives?

Supplemental Terms Agreement.[7] The date when these conditions will be satisfied or waived remains uncertain and involves actions and considerations that are outside of LUMA's control. Pursuant to Section 7.1(c)(i) of the T&D OMA, the legal requirement regarding the revenue requirement and payment of the incentive fee is that "an amount equal to the maximum amount of the Incentive Fee available in any given Contract Year shall be included in the Operating Budget for such Contract Year."

The T&D OMA also requires that budgets be sufficient to allow LUMA to implement the System Remediation Plan ("SRP"), *see* T&D OMA, Section 4.1(d)(iv), and afford LUMA a reasonable opportunity to earn the incentive fee for achieving the performance metrics, *see* T&D OMA, Section 7.4. Furthermore, the approved budgets should be sufficient to allow LUMA to meet the performance standards set forth in the T&D OMA, consistent with the T&D OMA's definition of Prudent Utility Practices, as well as the approved System Remediation Plan[8], and considering operational requirements and processes set forth in LUMA's System Operation Principles that already were approved by the Energy Bureau. Legal briefs, regarding the interrelation between T&D OMA performance standards and the revenue requirement, should be scheduled after a rate review petition is filed.

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[7] Pursuant to the T&D OMA and the Puerto Rico Transmission and Distribution System Supplemental Terms Agreement (the "Supplemental Terms Agreement"), which is an integral part of the O&M Agreement, LUMA is eligible for the incentive payment upon the occurrence of the Commencement of Operations Date, which assumes that the performance metrics are approved and PREPA emerges from the bankruptcy process under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA). See T&D OMA, Sections 4.5 (Conditions Precedent to Commencement of Service), and 4.7(b) (Establishment of Service Commencement Date); Supplemental Terms Agreement, Section 2.2 (Effective Date of Supplemental Terms Agreement; Agreement Regarding Commencement of Operations Date) (Interim Period Commencement of Operations Date). Pursuant to the Limited Waiver Agreement dated June 1, 2021 ("Limited Waiver"), the parties to the T&D OMA waived several of the conditions precedent to commencing operations, including the approval of performance metrics. See Limited Waiver, Section 1(b), and Sections 4 and 5. LUMA agreed to begin operating the T&D System on an interim basis under the Supplemental Terms Agreement, even though PREPA remained a debtor in bankruptcy proceedings under Title III. On November 30, 2022, the parties extended the Interim Operating Period until satisfaction or waiver of the condition that: (i) the Title III exit shall have occurred and (ii) the Title III Plan and order of the Title III Court confirming same shall be reasonably acceptable to LUMA.

[8] Regarding the System Remediation Plan, *see* T&D OMA Sections 1.2 (h); 4.1 (d); 5.1, 5.4, 5.6, 5.15, and 13.3.