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

IN RE: PUERTO RICO ELECTRIC POWER AUTHORITY RATE REVIEW	**CASE NO.:** NEPR-AP-2023-0003 **SUBJECT:** Genera's Responses to Hearing Examiner's List of Legal and Practical Questions issued March 10, 2025

GENERA's RESPONSES TO HEARING EXAMINER'S LIST OF LEGAL AND PRACTICAL QUESTIONS ISSUED MARCH 10, 2025

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW GENERA PR LLC ("Genera"), through its counsels of record, and respectfully states and requests the following:

I. Introduction

On March 10, 2025, the Hearing Examiner issued an Order titled *Hearing Examiner's List of Legal and Practical Questions to Consider* ("March 10th Order"), in which certain legal questions were set forth pertaining to the conference held on March 7, 2025. In addition, the Order included one practical question, calling for input on issues arising from the ongoing rate case process.

Genera respectfully submits the following responses to the March 10th Order. However, Genera notes that specific aspects of the billing process and other procedural details remain beyond its direct purview, given its limited visibility into how particular ratepayer billing mechanisms are executed. Consequently, Genera's remarks herein focus on the questions within its practical and contractual sphere of involvement, endeavoring to provide the Hearing Examiner and the Energy Bureau with as much clarity as possible while recognizing these inherent limitations.

II. Questions on the Energy Bureau's Statutory Discretion to Organize the Rate Case

A. Provisional rate structure

i. Under Act 57-2014, section 6.25(e), may the Energy Bureau establish, within a single proceeding, two provisional rates in sequence—one from July 1, 2025 until the conclusion of the revenue requirement phase (Phase 1); and another from the conclusion of Phase 1 until the conclusion of the rate design phase (Phase 2)?

Nothing in Act 57-2014 prohibits setting one provisional rate during Phase 1 and then revising that rate or establishing a revised provisional rate for Phase 2. Therefore, the simple answer is yes. Section 6.25(e) of the Act enables the Energy Bureau to conduct a preliminary evaluation and establish a provisional (or temporary) rate to prevent regulatory delays from harming either the utility or the public. By initially issuing a provisional rate effective July 1, 2025, the Bureau can move away from outdated 2017 rates. Once the revenue requirement phase concludes, the Bureau can refine this provisional rate to reflect updated cost data before moving to the final rate design. This approach aligns with the Energy Bureau's discretion under Act 57-2014 to ensure just and reasonable rates through proper procedural safeguards such as notice, hearing, and evidence collection, without mandating a rigid method for setting or modifying provisional rates within the prescribed time limits.

ii. Alternatively, since the incremental charge that converts the original 2017 rates into provisional rates lies within a new rider, can the Energy Bureau simply adjust that rider after the revenue requirement phase without that adjustment being considered a second provisional rate?

iii. In both of the above scenarios, is it legally consistent with the last sentence of section 6.25(f) of Act 57 to conduct only one reconciliation at the conclusion of the entire rate case (i.e., after Phase 2 is finalized), with the result effective back to July 1, 2025?

From the text of the law, conducting a single reconciliation at the end of the rate case appears to be in full compliance with Act 57-2014. The statute mandates that once the Energy

Bureau finalizes its rate review, it must instruct the utility to reconcile the charges by crediting or debiting customers to reflect the difference between the temporary and permanent rates. Importantly, the law does not necessitate interim reconciliations; it permits the Energy Bureau to defer all adjustments until after the complete conclusion of both the revenue requirement and rate design phases.

B. Determination of completeness, and the 180-day clock

i. Under section 6.25(c) of Act 57-2014, what are the legal requirements for issuing the formal determination that "the rate review request is complete"—the determination that triggers the 180-day period within which the Energy Bureau must issue a final order on rates?

Under Section 6.25(c) of Act 57-2014, the Energy Bureau is mandated to issue a final order on rate modifications within 180 days after formally declaring a rate review request "complete." This declaration initiates the statutory clock, obliging the Bureau to finalize its deliberations and issue a decisive ruling on the proposed rates within this timeframe, with a potential 60-day extension if necessary. However, the statute does not define the exact criteria for what constitutes a "complete" request, nor does it set a strict timeline for when this determination should be made. This grants the Energy Bureau considerable discretion to assess whether the submission contains all the necessary information to proceed to a final determination.

The completeness of the request could plausibly hinge on the full suite of submissions, including responses to interventions and any adjustments post-testimony in later phases. For instance, if critical adjustments or data are anticipated during the rate design phase, the Energy Bureau might opt to defer the completeness determination until it has received this essential information. This approach ensures that the 180-day review period does not commence prematurely, allowing the Energy Bureau sufficient time to conduct a thorough evaluation based on a complete record.

Delaying the completeness determination until after receiving all pertinent information and responses in a multi-phase process aligns with the practical requirements of comprehensive regulatory review. It allows the Energy Bureau to avoid the pitfalls of a rushed analysis due to a prematurely started clock and ensures that all substantive inputs are considered before the final decision-making phase begins.

In conclusion, while Act 57-2014 mandates a 180-day period to finalize a rate review once a request is deemed complete, it also provides the Energy Bureau with the discretion to determine the optimal timing for this declaration. There is no explicit prohibition in Act 57-2014 against the Energy Bureau waiting to issue the determination of completeness.

C. Final determinations, appeals, and phased orders

i. Assume, as above, a single formal proceeding with two phases, Phase 1 being revenue requirement and Phase 2 being rate design. Instead of issuing a single Final Order at the end of Phase 2, can the Energy Bureau issue two separate Final Orders, one at the end of each Phase, without the Phase 1 order on revenue requirements triggering immediate appeal rights (and the duty to seek appeal) under Puerto Rico administrative law (Ley 38-2017)?

ii. Is there any way to structure or label the Phase 1 determination to avoid triggering the appeal period? Is the Energy Bureau's only option, given a single formal proceeding, to issue a single Final Order at the close of Phase 2?

Under Puerto Rico's Act No. 38-2017 and administrative law framework, any party dissatisfied with a final decision by an administrative agency must file an appeal within a specified timeframe or risk losing the right to judicial review. Whether a particular agency determination is appealable depends less on the label attached to it and more on whether the determination conclusively resolves a substantial issue in the proceeding.

(a) Two Separate Final Orders in a Single Proceeding

If the Energy Bureau issues two separate "Final Orders" in one rate proceeding—one at the end of Phase 1 (revenue requirement) and another at the end of Phase 2 (rate design)—the

Phase 1 order could be viewed by the courts as final for appeal purposes. This is because it conclusively settles an essential element of the case: the precise revenue requirement that the utility is authorized to recover. Any party disagreeing with that determination might feel compelled to appeal immediately to preserve its legal arguments. As a result, the proceeding could generate two rounds of appeals, one challenging the revenue requirement and another contesting the eventual rate design. This duplication of litigation can increase costs, prolong the process, and potentially complicate how interim or permanent rates are applied.

(b) Structuring or Labeling the Phase 1 Determination

The Energy Bureau can attempt to discourage mid-proceeding appeals by avoiding the term "final" in the Phase 1 order and making clear that the determination remains subject to further revision or integration with Phase 2 findings. If the Phase 1 determination is labeled and treated as truly provisional—for example, by leaving open the possibility of adjusting the revenue requirement based on evidence in Phase 2—courts are more likely to view it as non-final. In that scenario, the mandatory appeal period would not begin until the Energy Bureau issues its ultimate ruling at the end of Phase 2.

However, even careful labeling is not an absolute safeguard. If the substance of the Phase 1 order definitively resolves the revenue requirement such that there is no genuine prospect of further revision, a reviewing court may still deem it "final." Courts will look beyond the agency's label ("interim," "partial," etc.) and examine whether the rights or obligations at issue are effectively settled. If so, the order might trigger the appeal clock, despite the agency's intent to defer finality until Phase 2.

The most sure-fire way to avoid splitting a single rate proceeding into multiple appeals is to issue one comprehensive final order covering both the revenue requirement and the rate design

at the close of Phase 2. In this scenario, any objection to the Phase 1 outcome (the revenue requirement) must await the final, unified decision. While this defers judicial review and may frustrate parties who wish to challenge the revenue requirement immediately, it prevents piecemeal litigation and ensures that a single appeal period will open only after all issues have been resolved.

D. Duration limitation for provisional rates

i. Does the italicized phrase, allowing the Commission to extend the term for "just cause," allow the Energy Bureau to keep the provisional rate in effect through the entire time needed to conduct evidentiary procedures on both the revenue requirement and the rate design? Is the need to conduct sufficient evidentiary procedures to correct rates that have not changed in eight years "just cause"? Would the consequence of ceasing the provisional rate after 60 days be a reversion to the 2017 rates that apparently all agree are the wrong rates?

Section 6A(e) of Act 83-1941 not only authorizes the Energy Bureau to establish a temporary rate within thirty (30) days of a rate request filing but also stipulates that this rate remains in effect "during the period of time needed" for the full evaluation of the request, extending up to when a new final rate is implemented. Importantly, the text specifies that the provisional rate "shall remain in effect … up to the date on which the new bill is implemented, which shall not exceed sixty (60) days after the approval of the rate, unless the [Energy Bureau] extends such term for just cause." We are of the opinion that this flexible "just cause" standard provides the Energy Bureau with the authority to continue the provisional rate if it determines that a complex review—potentially involving an extensive revenue requirement phase and a subsequent rate design phase—cannot be concluded within a mere sixty (60) days following approval. Large-scale processes that require rigorous discovery, expert testimony, and evidentiary hearings cannot realistically be compressed into a short timeframe.

Situations in which the existing rates (e.g., those from 2017) have been in effect for many years highlight the potential complexity. We are of the opinion that requiring the Energy Bureau

to conclude its work or revert to outdated rates within sixty (60) days would contradict the statute's purpose of ensuring just and reasonable rates. If the Energy Bureau were not permitted to extend the provisional rate beyond sixty (60) days, it would risk either rushing its evaluation or forcing a return to clearly obsolete charges. Both scenarios would defy the spirit of the law. Consequently, we consider that the extended evidentiary process itself—aimed at correcting years of outdated rates—should rightly constitute "just cause".

ii. Section 6.25(e) of Act 57-2014 has language similar to that in Section 6A(e) of Act 83-1941, except that the Act 57 language lacks the "just cause" addition. Is there any legal reason why the Energy Bureau cannot rely on the Act 83 language, especially since that language applies to rates charged by PREPA, which is what we have in our situation?

There is no direct conflict between the language of Act 57-2014 and Act 83-1941 regarding the establishment of provisional rates. Both Acts are designed to facilitate the implementation of temporary rates during the Energy Bureau's review process. However, Act 83-1941 explicitly provides a basis—"just cause"—for extending the duration of provisional rates beyond sixty days. Since Act 57-2014 does not explicitly prohibit such an extension, it is reasonable for the Energy Bureau to continue relying on the provisions of Act 83-1941, especially for rates pertaining to PREPA.

iii. In both the Act 83 language and the Act 57 language, what is the referent of the word "which" in the phrase "which shall not exceed sixty (60) days after the approval of the rate"? Is the referent the phrase "the period of time needed"? Or is the referent the phrase "the date on which the new bill is implemented"? Could the Legislature have meant that the Energy Bureau has to process a request for a billion-dollar revenue requirement and a complex rate design in only 60 days, otherwise the rates charged would revert to the very rates that are being questioned?

The phrase "which shall not exceed sixty (60) days after the approval of the rate" specifically refers to the duration for which the provisional rate remains effective after its approval. Genera recognizes that this interpretation restricts the effectiveness of the provisional rate to a

maximum of sixty days post-approval. Such a limitation is impractical and contrary to the legislative intent, especially considering the complexity

A more reasonable interpretation is that once the rate has been formally approved, the new, permanent rate must be implemented—and the old, provisional rate terminated—within sixty days, unless the Energy Bureau justifiably extends this period for "just cause." This allowance for extension is essential as it enables the Energy Bureau to conduct a thorough and unhurried review of rate requests, ensuring that all factors are properly considered before final implementation.

E. Practical question

i. When FY 2026 begins on July 1, 2025, PREPA, LUMA, and Genera will be receiving and spending revenue arising from provisional rates. Assume that those provisional rates will be based on a proposed FY 2026 budget that the Energy Bureau has not yet approved. If the Energy Bureau, at the end of the proceeding sets permanent rates below the provisional rates, the companies would already have spent an amount exceeding what the permanent rates support. Where then would the money come from to refund to customers their overpayments during that interim period? Are there only two choices—(a) the customers' own future payments, or (b) prospective underspending, after the Energy Bureau's decision, relative to the approved budget? Are there other ways to avoid this problem?

The Hearing Examiner poses a practical question: if, after new provisional rates take effect on July 1, 2025, the Puerto Rico Energy Bureau ("Energy Bureau") ultimately approves lower permanent rates, how should any over-collection be refunded to customers—particularly if part of that revenue has already been allocated to operational needs?

It is assumed that there are two possible ways to refund overcollections:

1. **Use future customer bill credits** (i.e., charge customers less going forward until any overpayment is balanced), or

2. **Underspend** relative to the new budget so that any leftover funds can be returned to customers.

However, Genera's budgetary and operational environment under the **Legacy Generation Assets Operation and Maintenance Agreement ("LGA OMA")** complicates these options. Once a fiscal year begins, it will result extremely difficult for Genera to simply reorganize large portions of its spending to create an immediate surplus, because stable funding levels are crucial for reliably and safely maintaining power generation assets. Below, we discuss how Genera's commitments and budgeting constraints affect these standard approaches, and explore alternative tools that can reduce or avoid shortfalls when provisional rates exceed final approved levels.

(a) The Core Dilemma with Overcollection

If the Energy Bureau, upon completing its rate review, finalizes a rate lower than the provisional rate, **Act 57-2014, Section 6.25(f)** requires a reconciliation. Customers must be refunded for the amount paid above the final "just and reasonable" level. By that time, Genera, PREPA, and other stakeholders will likely have used some of the provisional revenues for various operational necessities—fuel, labor, maintenance, and more. The proposed solutions to address this overcollection are:

1. **Future Customer Bill Credits**. Utilizing future bill credits is a straightforward way to return overcollections. Under this approach, the overpaid amount is credited back to customers over time. Genera acknowledges that while this method is simple in principle, it relies on subsequent revenues; if the newly approved permanent rates are lower, quickly building up enough surplus to issue credits may be difficult. Still, Genera does not oppose bill credits when they are feasible and compatible with maintaining stable operations.

2. **Underspending (Cutbacks)**. An operator might also try to reduce operational spending below the final approved budget to free up money for refunds. Yet for Genera, which manages critical generation assets, significant reductions to vital work can risk

reliability, safety, regulatory compliance, and performance. Because Genera plans key projects well in advance, abrupt funding cuts can disrupt day-to-day functions and conflict with budget commitments made at the beginning of the fiscal cycle.

(b) Genera's Budget Constraints and Operational Realities and Other Measures to Reduce or Avoid Overcollections

Under the LGA OMA, Genera's annual budget is carefully structured to align with system needs and regulatory requirements. At the start of each fiscal year, Genera finalizes its allocations for critical generation tasks, environmental compliance, staffing, and other core responsibilities. Attempting major budget modifications in the middle of this cycle—such as drastic cutbacks to produce refunds—can:

- Disrupt essential generation tasks;
- Delay or compromise safety and environmental initiatives;
- Undermine operational planning intended to secure reliable power generation.

While normal rate regulation recognizes that overcollections may require refunds, Genera's need for steady, predictable budgets makes large-scale changes during an ongoing cycle impractical. A more viable approach is to address any over-collection in future fiscal years, allowing Genera to incorporate prior mismatches into revised forecasts and budgets more systematically.

To mitigate the risk of overcollections without destabilizing Genera's operational budget, Genera proposes **prospective fiscal year budget adjustments** as a more balanced option:

- **Prospective Fiscal Year Budget Adjustments**. When an overcollection arises, rather than making immediate, disruptive cuts, Genera can adjust its financial planning for the next fiscal year. This process entails a thorough review of actual collections and final rates from the Energy Bureau. If provisional rates produced surplus revenue, Genera can

factor that into the budget for the subsequent cycle. This approach might involve reducing certain expenditures, depending on strategic priorities and regulatory mandates. By smoothing out the financial discrepancy over a longer horizon, Genera avoids abrupt budgetary shifts that could compromise reliability and efficiency. It also gives Genera the flexibility to fulfill existing commitments—like vendor agreements and maintenance operations—without risking shortfalls.

Incorporating overcollections into future fiscal planning enables a more balanced approach to financial management. It not only distributes the economic impact over multiple fiscal cycles but also aligns with broader strategic considerations, thereby facilitating operational excellence and compliance with regulatory expectations.

This method of **prospective fiscal year budget adjustments** offers a practical means for Genera to handle provisional rate overcollections. It ensures funds are available for refunds while upholding operational stability and financial well-being. This approach complies with regulatory demands and reinforces Genera's commitment to transparency and responsible fiscal practices—ultimately fostering trust among consumers and regulators alike.

(c) Conclusion

If provisional rates end up exceeding final rates, **Act 57-2014** mandates that customers be refunded the difference. While two primary solutions—(1) future bill credits and (2) underspending—are often cited, each is complicated by Genera's budgeting and operational realities:

- **Bill credits** can be simple but depend on ongoing revenues, which may be limited if the final rate is lower.

- **Underspending** can endanger system reliability and clash with Genera's core obligations.

In light of these constraints, Genera does not reject the alternative of post hoc customer credits; rather, it underscores the need for any refund mechanism to preserve adequate funding for crucial generation services. **Proactive measures**, such as targeted reserve accounts and **prospective fiscal year budget adjustments**, can limit the scale of overcollections and diminish the strain on whichever refund pathway is ultimately chosen. By combining these strategies with conventional approaches, the Energy Bureau can protect customers in accordance with the law, without forcing Genera into sudden or destabilizing budget overhauls.

WHEREFORE, Genera respectfully requests that the Energy Bureau **take notice** of the above for all purposes and **deem** Genera to be in compliance with the March 10th Order.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 13th day of March 2025.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this motion was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System and that we will send an electronic copy of this motion to mvalle@gmlex.net; arivera@gmlex.net; jmartinez@gmlex.net, jgonzalez@gmlex.net; Yahaira.delarosa@us.dlapiper.com; margarita.mercado@us.dlapiper.com; carolyn.clarkin@us.dlapiper.com; andrea.chambers@us.dlapiper.com; jfr@sbgblaw.com; alopez@sbgblaw.com; regulatory@genera-pr.com; legal@genera-pr.com; hrivera@jrsp.pr.gov; contratistas@jrsp.pr.gov; victorluisgonzalez@yahoo.com; agraitfe@agraitlawpr.com; Cfl@mcvpr.com; nancy@emmanuelli.law; jrinconlopez@guidehouse.com; Josh.Llamas@fticonsulting.com; Anu.Sen@fticonsulting.com; Ellen.Smith@fticonsulting.com; Intisarul.Islam@weil.com; kara.smith@weil.com; rafael.ortiz.mendoza@gmail.com; rolando@emmanuelli.law; jan.albinolopez@us.dlapiper.com; varoon.sachdev@whitecase.com; epo@amgprlaw.com; loliver@amgprlaw.com; acasellas@amgprlaw.com; matt.barr@weil.com; Robert.berezin@weil.com; Gabriel.morgan@weil.com; corey.brady@weil.com; lramos@ramoscruzlegal.com; tlauria@whitecase.com; gkurtz@whitecase.com; ccolumbres@whitecase.com; isaac.glassman@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; riverac@reichardescalera.com; susheelkirpalani@quinnemanuel.com; erickay@quinnemanuel.com; dmonserrate@msglawpr.com; fgierbolini@msglawpr.com; rschell@msglawpr.com; eric.brunstad@dechert.com; Stephen.zide@dechert.com;

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In San Juan, Puerto Rico, this 13th day of March 2025.

/s/ Alejandro López Rodríguez
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