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**: LUMA's Response to Hearing Examiner's List of Legal and Practical Questions

LUMA'S RESPONSE TO HEARING EXAMINER'S LIST OF LEGAL AND PRACTICAL QUESTIONS

TO THE HONORABLE PUERTO RICO ENERGY BUREAU'S HEARING EXAMINER, SCOTT HEMPLING:

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 Relevant Background

1. A virtual conference was held on March 7, 2025 in this proceeding. During said conference, participants exchanged thoughts regarding alternative procedures by which the Honorable Puerto Rico Energy Bureau ("Energy Bureau") would establish a new revenue requirement and a new rate design. Following a series of undertakings in light of legal and practical considerations raised during the March 7th Virtual Conference, on March 10, 2025, the Hearing Examiner, Mr. Scott Hempling ("Hearing Examiner"), issued an order titled *Hearing Examiner's List of Legal and Practical Questions to Consider* ("March 10th Order").

2. The March 10th Order seeks participants' insight as to: i) the viability and legality, under Act 57-2014[1], of establishing two provisional rates within a single proceeding, or alternatively the adjustment of the incremental charge rider after the revenue requirement phase, with only one reconciliation upon conclusion of the entire rate case; ii) the legal requirements for issuing the formal determination of completeness that triggers the 180-day period within which the Energy Bureau must issue a final order on rates; iii) the possibility of issuing two separate "Final Orders", at the end of each Phase, without the "Final Order" on revenue requirements triggering appeal rights under Puerto Rico administrative law; iv) the possibility of keeping the provisional rate in effect through the entire time needed to conduct evidentiary procedures on both the revenue requirement and the rate design, pursuant to "just cause" language contained in Act

[1] *Puerto Rico Energy Transformation and RELIEF Act*, Act 57-2014, P.R. Laws Ann. Tit. 22 §§ 1051- 1056, 22 LPRA §§ 1051-1056 (2024), as amended.

83-1941[2]; and lastly, v) a practical question pertaining to addressing the possibility of the Energy Bureau setting permanent rates that are lower than the provisional rates.

3. The Hearing Examiner stated that "[p]articipants should feel free to address any or all of the questions." *See* March 10th Order at 1.

4. LUMA hereby submits input on several of the questions contained in the March 10th Order. In *Exhibit 1* to this Motion, LUMA addresses the practical question (question 5).

II. LUMA's Response

1. Provisional rate structure

5. Section 6.25(e) of Act 57-2014, known as the *Puerto Rico Energy Transformation and RELIEF Act* ("Act 57-2014") reads as follows:

> Within thirty (30) days after the filing of the rate modification request, the Energy Bureau may make, motu proprio, or at the request of a requesting certified company, **a preliminary evaluation to determine whether a temporary rate should be established.** The Energy Bureau shall exercise its discretion in establishing the temporary rate, unless the requestor contests the establishment of the temporary rate or the amount thereof, in which case the Energy Bureau shall decide whether it shall revise the amount of the temporary rate or desist from establishing the same. If the Energy Bureau establishes a temporary rate, such rate shall take effect sixty (60) days after the date of approval of the temporary rate, unless the Energy Bureau determines, at the request of the requestor, that the temporary rate should take effect earlier, but never within less than thirty (30) days after the approval of the temporary rate. Said temporary rate **shall remain in effect during the period of time needed by the Energy Bureau to evaluate the rate modification request** proposed by the requestor and **up to the date on which the new bill is implemented, which shall not exceed sixty (60) days after the approval thereof**.

22 LPRA § 1054x (2024)[3] (emphasis added).

6. The above cited provision mustn't be divorced from the subsequent subsection (f) of Section 6.25 of Act 57-2014 which states the following:

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[2] *Puerto Rico Electric Power Authority Act*, Act No. 83 of May 12, 1941, P.R. Laws Ann. Tit. 22 §§ 191-218, 22 LPRA §§ 191-218 (2024), as amended, ("Act 83").

[3] The Spanish-language provision reads as follows:

> (e) Tarifa provisional.— El Negociado de Energía, motu proprio o a petición de una compañía certificada solicitante, podrá hacer una evaluación preliminar de una solicitud de revisión tarifaria para determinar si establece una tarifa provisional, dentro de treinta (30) días de radicada una solicitud de modificación de tarifa. El Negociado de Energía tendrá discreción para establecer la tarifa provisional, salvo que el solicitante objete el establecimiento de la tarifa provisional o el monto de la misma, en cuyo caso el Negociado de Energía determinará si procede o no revisar la cantidad de la tarifa provisional o no establecerla. Si el Negociado de Energía establece una tarifa provisional, la misma entrará en vigor a partir de los sesenta (60) días de la fecha de aprobación de la tarifa provisional, a menos que el Negociado de Energía determine, a petición del solicitante, que entre en vigor antes, pero nunca será un periodo menor de treinta (30) días desde la aprobación de la tarifa provisional. **Dicha tarifa provisional permanecerá vigente durante el período de tiempo que necesite el Negociado de Energía para evaluar el cambio en tarifa propuesto** por el solicitante y hasta la fecha en que la nueva factura esté implementada, **cuyo periodo no excederá de sesenta (60) días de su aprobación.**
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> 22 LPRA §1054x (2024) (emphasis added).

> Upon concluding the public hearing process, the Energy Bureau shall issue its final determination with regards to the rate review request and establish the electricity rate it deems just and reasonable. Such a determination shall be duly grounded and comply with all the safeguards of the due process of law applicable to the final determinations of administrative agencies. The Bureau shall publish and notify its determination on its webpage, together with the authorized rate duly itemized pursuant to the transparent bill requirements. The newly approved rate shall take effect sixty (60) days after the effective date of the Bureau's order. The Energy Bureau may extend or reduce such term at the request of the rate change requestor, but it shall never be less than thirty (30) days after the effective date of the Bureau's order. **Upon issuing a final order after the rate review process, the Energy Bureau shall direct the requesting company to adjust customers' bills so as to credit or charge any discrepancy between the temporary rate established by the Bureau and the permanent rate approved by the Energy Bureau**.

Id. (emphasis added).[4]

7. Regarding statutory interpretation, the Puerto Rico Civil Code of 2020 provides that when the letter of the law is clear and free from all ambiguity, its text must not be disregarded under the pretext of fulfilling its spirit. 31 LPRA § 5341 (2024); *see also Asociación de Farmacias de la Comunidad de PR v. Caribe Specialty et als*, 179 DPR 923, 939-40 (2010) (*discussing* the fundamental principle in statutory interpretation that laws must be construed as a whole to determine the meaning of each of its sections and that the different sections must be interpreted, one in relation to the other, always trying to honor legislative intent, and *holding* that courts shall harmonize, as far as possible, all the provisions of a statute to obtain a more sensible, logical and reasonable result). Further, to ascertain the true meaning of a statute when its provisions are ambiguous, its reason and spirit must be considered by paying attention to the objectives of the legislator, and to the cause or motive for enacting the law. 31 LPRA § 5342 (2024); *see also Gotay Lanuza v. Sec'y of the Treasury*, 122 DPR 850, 858 (1988) (*following* the fundamental principle of statutory construction that "the language of the law must be given a meaning that validates the lawmaker's intent upon approving the same."). Finally, when a statute does not contemplate a

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[4] The Spanish-language provision reads as follows:

> (f) Determinación final del Negociado.— Luego de concluido el proceso de vistas públicas, el Negociado de Energía emitirá su determinación final en torno a la solicitud de revisión tarifaria y estableciendo la tarifa por servicio eléctrico que haya determinado como justa y razonable. Dicha determinación deberá estar debidamente fundamentada y deberá cumplir con todas las salvaguardas del debido proceso de ley aplicables a las determinaciones finales de agencias administrativas. El Negociado publicará y notificará su determinación en su portal de Internet, junto con la tarifa autorizada, debidamente desglosada conforme a los requisitos de la factura transparente. La nueva tarifa aprobada entrará en vigor sesenta (60) días a partir de la fecha de vigencia de la orden del Negociado. El Negociado de Energía podrá extender o reducir dicho término a petición del solicitante del cambio de tarifa, pero el mismo nunca podrá ser menor a treinta (30) días de la fecha de vigencia de la orden del Negociado. **Al emitir una orden final luego del proceso de revisión de tarifa, el Negociado de Energía ordenará a la compañía solicitante a ajustar la factura de sus clientes de forma que se acredite o cobre cualquier diferencia entre la tarifa provisional establecida por el Negociado y la tarifa permanente aprobada por el Negociado de Energía**

22 LPRA §1054x (2024) (emphasis added).

specific matter, laws which refer to the same matter, or whose object is the same, shall be interpreted with reference to each other, in order that what is clear in one may be employed for the purpose of explaining what is doubtful in another. 31 LPRA § 5343 (2024); *see also Aponte Martínez v. Collazo et als,* 125 DPR 610, 624 (1990).

8. Subsections (e) and (f) of Section 6.25 of Act 57-2014, construed together and harmoniously, reveal that the Legislative Assembly endowed the Energy Bureau with authority and discretion to approve a provisional rate that, by its nature, is temporary. The provisional rate is an available rate-setting mechanism under Act 57-2014 in circumstances where an electric power company has filed a petition to review rates. In that context, the Energy Bureau makes "a preliminary evaluation to determine whether a temporary rate should be established," and if a temporary rate is approved, it remains in effect while the Energy Bureau considers the rate modification request that gave rise to the possibility of implementing provisional rates. *See* Act 57-2014, Section 6.25(e). That one provisional rate, in turn, is subject to reconciliation per subsection (f) of Section 6.25, after the Energy Bureau issues an order adjudicating the rate review petition. Given its preliminary nature and considering the fact that the temporary rate arises out of a preliminary evaluation of a petition to review rates, it is respectfully submitted that the better reading of Section 6.25 of Act 57-2014 is that (1) the statute endows the Energy Bureau with discretion to adopt **one provisional rate in connection with a single petition for rate reviews**; and (2) that an interpretation that the Energy Bureau may approve two provisional rates in connection with a single rate modification request, is at odds with the text and intent of Act 57-2014.

9. It is important to remember that the Energy Bureau's rate review is made up of two parts: the revenue requirement and the rate design. *See* Final Rate Order of 2017, Case No. CEPR, AP-2015-0001, dated January 10, 2017 (*approving* revised permanent rates for the Puerto Rico Electric Power Authority ("PREPA") with determinations on the utility's revenue requirement (costs) and the revenue structure). Even if the Energy Bureau deals with each part separately, the rate review itself does not end until new permanent rates go into effect. It is **one** rate process.

10. In light of the plain text of Section 6.25(e) of Act 57-2014, read in conjunction with subsection (f) of said provision, LUMA believes that the alternative most in line with the text of the law and the nature of the provisional rate is the second alternative raised by the Hearing Examiner: an adjustment of the incremental charge rider for the provisional rate after the

conclusion of the revenue requirement phase. This alternative seems consistent with the law, given that said adjustment would be made to a temporary rate that was approved in the context of a singular rate review petition and a single rate review proceeding. The fact that the provisional rate is identified separately on the bills by way of a rider, allows for the corresponding operational adjustment, representing ease of implementation and the advantage of not confusing customers with consecutive credits and surcharges. LUMA respectfully submits that this interpretation allows accommodating the interests that were discussed at the March 7th Virtual Conference, including the Energy Bureau's intention to address the captioned proceeding in a bifurcated manner.

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

11. Article 6.25(c) of Act 57-2014, specifically provides the following:

> Every rate modification request previously approved by the Energy Bureau shall be filed with the Energy Bureau. The request shall state the grounds for the modification, the effect of such modification on the revenues and expenditures of the requestor, and any other information requested by the Energy Bureau through regulations or resolution. The Energy Bureau may initiate, motu proprio, or at the request of the Independent Consumer Protection Office or any other interested party, the rate review process when it is in the best interest of customers. Any modification to a rate proposed, whether to increase or decrease the same, shall undergo a discovery and a public hearing process to be held by the Energy Bureau to determine whether the proposed change is just and reasonable and consistent with sound fiscal and operational practices that provide for a reliable and adequate service, at the lowest reasonable cost. The Energy Bureau shall provide an opportunity to allow the participation of ICPO, the Energy Public Policy Program, the citizens, and interested parties in the process. **The review and the order issuance processes shall not exceed one hundred eighty (180) days from the Energy Bureau's determination by resolution that the rate review request is complete; provided, however, that the Energy Bureau may extend the review process for an additional term that shall not exceed sixty (60) days**.

22 LPRA § 1054x (2024) (emphasis added).

12. Article 6.25(c) of Act 57-2014 requires that the Energy Bureau issue a formal determination of completeness and provides that said event is what triggers the statutory time limit to consider a rate review petition. The Energy Bureau has not issued interpretative guidance on the legal requirements for its issuance of the completeness determination, nor does Act 57-2014 include explicit requirements.

13. In light of the lack of interpretative guidance, LUMA proposes that the Hearing Examiner may review the events of Case No. CEPR-AP-2015-0001, *In re: Review of Rates of Puerto Rico Electric Power Authority*. In said proceeding, on June 13, 2016, the Energy Bureau issued a *Resolution and Order* whereby it deemed PREPA's Petition for Approval of Permanent Rates and Temporary Rates as incomplete, after identifying certain information as missing, with reference to the filing requirements contained in its *New Regulation on Rate Filing Requirements*

for the Puerto Rico Electric Power Authority's First Rate Case, Regulation No. 8720 ("Regulation 8720").[5] Later, after PREPA filed motions with information and documents to correct the deficiencies identified by the Energy Bureau in the June 13, 2016 *Resolution and Order*, the Energy Bureau issued an *Order and Resolution*, dated July 15, 2016, where it determined that PREPA's rate review petition was "complete for purposes of Regulation 8720."[6] Said completeness determination triggered the 180-day time limit to conduct and conclude PREPA's first rate case. The July 15th Order, however, did not include additional discussion on the legal requirements or standards for the completeness determination.

14. Another example of a determination of completeness can be found in Case No. NEPR-MI-2021-0004, *In Re: LUMA Initial Budgets and Related Terms of Service*. Even though, for that process, Act 57-2014 did not require a completeness determination, the Energy Bureau issued two separate determinations stating that LUMA's initial budget proposal was incomplete and ordered LUMA to provide certain supplemental information and modify its petition accordingly.[7] By way of a *Resolution* dated April 26, 2021, the Energy Bureau deemed LUMA's filing to be complete, as clarified and supplemented, therefore paving way to proceed with the corresponding process to review and approve the proposed initial budgets.

15. We have not identified a "prohibition" for the Hearing Examiner's proposal that the Energy Bureau issue a completeness determination after all the pre-filed testimony is filed in the rate design phase of this proceeding.

3. Final determinations, appeals, and phased orders

16. The Supreme Court of Puerto Rico has ruled that determinations by administrative agencies are subject to judicial review by the Puerto Rico Court of Appeals. *See* Art. 4.006 of Act No. 201-2003, known as the *Judiciary Act of the Commonwealth of Puerto Rico of 2003* ("Act 201-2003"), P.R. Laws Ann. Tit. 4 § 24y, 4 LPRA § 24y (2024); *Tosado v. A.E.E.*, 165 DPR 377, 383 (2005); *López Rosas v. C.E.E.*, 161 DPR 527, 541 (2004). Article 4.006 of Act 201-2003 provides that the Court of Appeal may review "**final decisions**, orders and resolutions of

[5] *See* https://energia.pr.gov/wp-content/uploads/sites/7/2016/06/13-junio-2016-Resolution-and-Order-Determination-of-Filing-Completeness-1.pdf

[6] *See* https://energia.pr.gov/wp-content/uploads/sites/7/2016/07/15-julio-2016-Orden-and-Resolution-Completeness-Determination-of-the-PREPA-Petition-for-Rate-Review-1.pdf

[7] *See* Resolution and Orders, dated April 5 and April 20, 2021, issued in Case No. NEPR-MI-2021-0004. *Available* at https://energia.pr.gov/wp-content/uploads/sites/7/2021/04/20210405-MI20210004-Resolution-and-Order.pdf and https://energia.pr.gov/wp-content/uploads/sites/7/2021/04/20210420-MI20210004-Resolution-and-Order.pdf.

administrative bodies or agencies". P.R. Laws Ann. Tit. 4 § 24y, 4 LPRA § 24y (2024) (emphasis added).

17. Relatedly, Section 4.1 of Act No. 38-2017, known as the *Government of Puerto Rico Uniform Administrative Procedure Act* ("LPAU"), PR Laws Ann. Tit. 3 § 9671, 3 LPRA § 9671 (2024), governing judicial review of administrative decisions, states that these "shall apply to **final order**s, decisions, and adjudication orders issued by agencies or administrative officials, which are reviewable by the Court of Appeals through a Petition for Review." Conversely, "**an interlocutory order or decision of an agency, including those issued in proceedings conducted in stages, shall not be directly reviewable**. The interlocutory disposition of an agency may be subject to an assignment of error in the petition for review of the agency's final order or decision."[8] PR Laws Ann. Tit. 3 § 9672, 3 LPRA § 9672 (2024) (emphasis added).

18. A final resolution or order is the determination of the administrative agency that terminates proceedings, adjudicates all of the pending controversies and has a substantial effect on the parties. *Comisionado de Seguros v. Universal*, 167 DPR 21, 28-29 (2006); *see also Exam. Tec. Méd. v. Elías et al*., 144 DPR 483, 488-489 (1997); Section 1.3 of LPAU, 3 LPRA § 9603 (2024) (defining the term "adjudication" as "an agency's decision determining the rights, duties, or privileges of a party."); Section 3.14 of LPAU, PR Laws Ann. Tit. 3 § 9674, 3 LPRA § 9654 (2024) (regarding final orders and resolutions).

19. Judicial review of administrative decisions is limited to those instances that meet two requirements, namely: (1) that they are final orders or resolutions and (2) that the party requesting review has exhausted all remedies provided by the administrative agency. *Fuentes Bonilla v. ELA*, 200 DPR 364, 380-81 (2018).

20. For an administrative determination to be considered final: "[f]irst, the action must mark the consummation of the agency's decision-making process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." *See AAA v. UIA*, 200 DPR 903, 913 (2018) (*citing U.S. Army Corps of Engineers v. Hawkes Co., Inc*., 578 U.S. 590, 597 (2016); *Bennett v. Spear*, 520 U.S. 154, 177-178 (1997)).

[8] LPAU defines "Interlocutory Order" as "any agency action in an adjudicative proceeding disposing a purely procedural matter". Section 1.3 of LPAU, PR Laws Ann. Tit. 3 § 9603, 3 LPRA § 9603 (2024). Moreover, the LPAU defines "Partial Order or Decision" as "any agency action that determines a right or duty, which disposes a single aspect rather than the whole matter.". *Id*. It is important to note that the LPAU provides that a party aggrieved by a **partial or final order or decision** has the right to file a motion for reconsideration of such order or decision within twenty (20) days after the date of entry of the order or decision. PR Laws Ann. Tit. 3 § 9655, 3 LPRA § 9655 (2024).

21. The doctrine of exhaustion of administrative remedies is a long settled and essentially practical rule of judicial restraint that is deeply rooted in Puerto Rico and in the United States. *Rivera v. ELA*, 121 DPR 582, 593-94 (1988); Section 4.3 of LPAU, PR Laws Ann. Tit. 3 § 9673, 3 LPRA § 9673 (2024) (codifying requirements to exhaust administrative remedies). Under this doctrine, the courts discretionally abstain from reviewing action by a governmental agency until the aggrieved party exhausts all available administrative remedies and the decision, therefore, reflects the final position of the agency. *Id.* (*citing ELA v. 12,974.78 Metros Cuadrados*, 90 DPR 506 (1964).

22. The referenced doctrine seeks to fulfill several objectives, amongst which are: i) to allow the agency to develop the complete context of the matter before its consideration; and ii) to ensure that the agency can adopt the corresponding measures in accordance with the public policy formulated by the entity, and to avoid disruptions caused by the inopportune interventions of the courts at different interlocutory stages. *UIA*, 200 DPR at 914 (*citing* various cases). On the other hand, the doctrine facilitates judicial review, as it ensures that courts have more accurate information regarding the matter in dispute and allows them to make a more informed decision. *Id.*

23. Lastly, and pertaining to the Hearing Examiner's request on "triggering of an appeal period," it is important to note that the duty of notifying the parties of an administrative determination in an adequate and complete manner is not a mere requirement. *Río Const. Corp. v. Mun. de Caguas*, 155 DPR 394, 405-406 (2001). Courts have understood the adequate notice guarantee to be a core element of due process, as it affords the parties the opportunity to actually learn of the decision rendered, while granting those whose rights will be affected a greater opportunity to decide whether to exercise the remedies granted by law. *Asoc. Vec. Altamesa Este v. Mun. San Juan*, 140 DPR 24, 34 (1996). Plainly put, an inadequate notice compromises a party's ability to contest an administrative determination and debilitates due process guarantees. *Río Const. Corp*., 155 DPR, at 406; *Mun. De Caguas v. AT&T*, 154 DPR 401, 413-14 (2001).

24. In alignment with the above, Section 3.14 of LPAU, amongst other things, states that the final orders or decisions of administrative agencies must be notified to the involved parties. *Comisión Ciudadanos v. G.P. Real Prop*., 173 DPR 998, 1014 (2008). Moreover, Section 3.14 of LPAU specifies that such notice must warn of the right of the parties to request reconsideration before the agency or to seek judicial review before the Court of Appeals, with mention of the

jurisdictional terms that the parties have to exercise said rights. Said provision, in pertinent part, reads as follows:

> The order or decision shall notify the right to request reconsideration by the agency or to file a petition for review as a matter of law before the Court of Appeals, as well as the parties to be served with notice of said petition for review, and the pertinent time limits therefor. The aforementioned time limits shall start to run once these requirements have been met.

PR Laws Ann. Tit. 3 § 9654, 3 LPRA § 9654 (2024).

25. Accordingly, the jurisdictional time constraints for seeking judicial review of an administrative determination cannot be enforced against a party who has not been adequately notified of such determination in accordance with the law. *Horizon v. Jta. Revisora, RA Holdings*, 191 DPR 228, 235-236 (2014); *IM Winner, Inc. v. Mun. de Guayanilla*, 151 DPR 30, 38 (2000).

26. LUMA has outlined above the relevant applicable law in Puerto Rico regarding the finality of administrative decisions in a good-faith effort to allow the Energy Bureau to consider what we consider as applicable law. It would be incumbent on the Energy Bureau and reviewing courts to determine if an order on the revenue requirement would be final as to trigger judicial review processes.

4. Duration limitation for provisional rates

27. Section 6(A) of PREPA's enabling Act, Act Number 83 of May 2, 1941 ("Act 83") is a valid and binding statute in connection with the Energy Bureau's authority to review and approve rates for PREPA.

28. Our review of the legislative histories of Section 6(A) of Act 83 and Article 6.25 of Act 57-2014 reveals that their respective provisions on duration of provisional rates, which the Hearing Examiner identified as being potentially inconsistent, were originally adopted in 2016 through the enactment of Act Number 4 of February 16, 2016, known as the *Act to Revitalize the Puerto Rico Electric Power Authority* ("Act 4-2016").

29. Article 9 of Act 4-2016 amended Section 6(A) of Act 83 to, among other things, include in its subsection "e" the language that the Hearing Examiner highlighted in the March 10th Order: that provisional rates for PREPA shall remain in effect during the time period needed for the Energy Bureau to evaluate the correspondent rate modification request proposed by PREPA and issue a final order "**and** up to the date when the new bill is implemented, which shall not exceed sixty (60) days**, unless the [Energy Bureau] extends such term <u>for just cause</u>**." *See Exhibit 2,* Act 4-2016, at 24-29. In turn, Article 18 of Act 4-2016 amended Article 6.25 of Act 57-

2014 regarding rate review process by any electric power service company, to include, among others, the language that the Hearing Examiner has contrasted with Article 6(A) of Act 83, whereby the Legislative Assembly did not expressly state that the provisional rates may be extended for a period longer than sixty (60) days after the permanent rates are approved and the new customer bill is implemented. *See id.*, at 42-45. Thereafter, Act 17-2019, known as the *Puerto Rico Energy Public Policy Act*, amended Section 6.25 of Act 57-2014, and maintained the relevant language pursuant to which, as the Hearing Examiner has pointed out, after the Energy Bureau issues a final decision on a rate modification request, provisional rates are to remain in effect "during the period of time needed by the Energy Bureau to evaluate the rate modification request proposed by the requestor and up to the date on which the new bill is implemented, which shall not exceed sixty (60) days after the approval thereof." *See Exhibit 3,* Act 17-2019, Article 5.20 at 96-100.

30. We did not find any indication in the legislative history of Act 4-2016 to conclusively explain the intent behind the difference between Section 6(A) of Act 83 and Section 6.25 of Act 57-2014 regarding the duration of provisional rates. Moreover, given that Act 4-2016 simultaneously approved both the current text of Section 6(A) of Act 83 that includes the just cause provision, and the text of Article 6.25 of Act 57-2014 that does not include the just cause option, we understand that there is no principled justification to construe that the Legislative Assembly intended to remove the just cause option in connection with review by the Energy Bureau of PREPA's rates under Act 83.

31. To the extent that one may construe that there is a conflict between Act 83 and Act 57-214 regarding the Energy Bureau's ability to extend the duration of provisional rates for just cause, one interpretation may be that Act 83 prevails as a specific law regarding review of PREPA's rates. *See Saubi & Subirá v. Sepúlveda*, 25 DPR 242, 246 (1917) (*adopting* the "well established rule that general and specific provisions in apparent contradiction, whether in the same or different statutes, and without regard to priority of enactment, may subsist together, the specific qualifying and supplying exceptions to the general."); *see also Vega v. Sánchez*, 205 DPR 559, 579 (2020) (*affirming* rule that special or specific statutes prevail over general ones and that a general statute does not repeal a prior special statute unless the prior statute is repealed expressly).

32. Moreover, the Hearing Examiner may consider that under Puerto Rico law, a time period or term is only considered "jurisdictional," and not subject to extension for just cause, if

there is clear legislative intent to adopt a jurisdictional or fatal term. *See Cruz Parrilla v. Depto. Vivienda,* 184 DPR 393, 403-04 (2012) (*holding* that "due to the serious consequences of determining that a term is jurisdictional in nature, . . . the legislator's intention to impose that characteristic on the term must clearly emerge.") (citing cases) (translation provided); *Rosario Domínguez v. E.L.A.*, 198 DPR 197, 209 (2017) (same and *holding* that when the statute does not clearly state that a term is jurisdictional or fatal, courts shall construe that it is subject to extension).

33. We did not find any indication in the relevant legislative history to suggest that the Legislative Assembly intended that the extension of the term of sixty (60) days for implementing the permanent rates on the bills of Section 6.25(e) of Act 57-2014 is "jurisdictional and, thus, cannot be extended for just cause. That determination, however, requires interpretation by the Energy Bureau and, ultimately, the Commonwealth Court of Appeals and the Supreme Court of Puerto Rico.

34. It bears noting that just cause has been defined as that which is unrelated to a legal cause, and is based on reasonable grounds, on an honest reason and regulated by good faith. Rivera García, Ignacio, *Diccionario de Términos Jurídicos*, 142 (3rd ed. 2000) (translation provided).

35. Furthermore, Courts have repeatedly held that just cause may only be accredited by means of concrete and particular explanations, duly evidenced, that allow the courts to conclude that there was a reasonable excuse for the tardiness or delay. *Rivera Marcucci v. Ruiz*, 196 DPR 157, 171-172 (2016); *Soto Pino v. Uno Radio Group*, 189 DPR 84, 92-93 (2013).

36. The just cause requirement is not met with vagueness, excuses, or stereotyped arguments. *Soto Pino*, 189 DPR at 93 (*citing Febles v. Romar*, 159 DPR 714 (2003)); *Arraiga Rivera v. FSE*, 145 DPR 122, 132 (1998) (within the context of a procedural requirement that requires a petitioner to strictly comply with the obligation to notify a petition for certiorari to the court whose judgment is sought to be reviewed, *stating* that "courts may exempt a party from the requirement to faithfully observe a term of strict compliance, if two conditions are present: (1) that there is, indeed, just cause for the delay; (2) that the party shows the court in detail the reasonable grounds for the delay; that is, that the interested party adequately proves the mentioned just cause.").

37. Accordingly, the existence of just cause is evaluated on a case-by-case basis. *Rivera Marcucci*, 196 DPR at 172.

38. A determination on what may be considered just cause regarding the duration of provisional rates is a matter strictly confined to the Energy Bureau's discretion and subject to review and interpretation by the Commonwealth Court of Appeals and the Puerto Rico Supreme Court.

39. With the information currently available, we agree with the Hearing Examiner's proposal that provisional rates remain in effect through the entire time needed to conduct evidentiary procedures on both the revenue requirement and the rate design to issue a final determination on the petition for rate review as the provisional rates are to be in effect until the permanent rate is approved.

40. Lastly, we read the language of both Act 83-1941 and Act 57-2014 to signify that the referent for the word "which" is the phrase: "the date on which the new bill is implemented."

41. We also think that the 60-day period for implementation of the permanent rate on the bill may be extended for "just cause."

e. Practical question

42. LUMA is hereby submitting, as *Exhibit 1* to the present Motion, its responses to the practical question posed by this Hearing Examiner pertaining to the possibility of the Energy Bureau setting permanent rates that are lower than the provisional rates and how LUMA envisions addressing customers' overpayments.

WHEREFORE, LUMA respectfully requests the Energy Bureau **take notice** of the above; and **accept and consider** LUMA's responses to the March 10th Questions.

RESPECTFULLY SUBMITTED.

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

WE 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; Juan González, jgonzalez@gmlex.net; and Alexis G. Rivera Medina, arivera@gmlex.net; and to Genera PR, LLC, through: Jorge Fernández-Reboredo, jfr@sbgblaw.com; Alejandro López-Rodríguez, alopez@sbgblaw.com; regulatory@genera-pr.com; legal@genera-pr.com.

A courtesy copy of the present Motion will also be notified to the following: jmartinez@gmlex.net; 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; Corey.Brady@weil.com; Intisarul.Islam@weil.com; Josef.Trachtenberg@weil.com; rafael.ortiz.mendoza@gmail.com; rolando@emmanuelli.law; jorge@maxetaenergy.com; rafael@maxetaenergy.com; RSmithLA@aol.com; msdady@gmail.com; mcranston29@gmail.com; dawn.bisdorf@gmail.com; ahopkins@synapse-energy.com; clane@synapse-energy.com;

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Exhibit 1

Puerto Rico Electric Power Authority Rate Review

NEPR-AP-2023-0003

Response: RFI-LUMA-AP-2023-0003-20250310-PREB-05

SUBJECT

Practical Question

REQUEST

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?

RESPONSE

LUMA submits that, in the event permanent rates are set below the provisional rates, the money to refund customers for their overpayments during the interim period would come from (a) credits on future payments. If the revenue deficiency is collected through a $/kWh surcharge during the interim period, the reconciliation after permanent rates commence will occur in reverse, i.e., through a $/kWh credit, but based on the revenue allocation approved in Phase 2 respecting the authorized permanent rate design.

This reconciliation will functionally appear as reduced revenue for PREPA. However, both the provisional rate and the authorized revenue requirements will contain a net income component. If designed properly, PREPA will receive less net income than authorized while the reconciliation occurs. As a result, the refund to customers will only affect the net income component and have no impact on utility spending. To further smooth the potentially negative impact on the utility's revenue, and thus mitigate the potential for apparent underspending, the reconciliation will occur over a number of months so as to ensure the refunds to customers are paid only from the net income component. All of the above conforms with LUMA's proposed sequence described in its

March 5th *Motion in Compliance with Bench Orders issued during Prehearing Conference of February 21, 2025*.[1]

Based on the foregoing, the reconciliation should have virtually no impact on utility spending.

[1] Therein, LUMA proposed that the reconciliation be carried out by customer class based on the new (approved) revenue allocation, thereby reducing inter-class inequities.

Exhibit 2

Exhibit 3