

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

**NEPR**

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IN RE: TEMPORARY REVIEW OF THE  
PERMANENT RATES OF THE PUERTO  
RICO ELECTRIC POWER AUTHORITY

**CASE NO. NEPR-AP-2025-0002**

**SUBJECT: Urgent Motion for Reconsideration and  
Renewed Request for Temporary Rate Adjustment**

**URGENT REQUEST FOR RECONSIDERATION OF DENIAL OF REQUEST FOR A  
TEMPORARY RATE ADJUSTMENT AND RENEWED REQUEST FOR APPROVAL  
OF A TEMPORARY RATE ADJUSTMENT**

**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 that the United States Department of Energy (“US DOE”), the Governor of Puerto Rico, and this Puerto Rico Energy Bureau (“Energy Bureau”) have declared that an electric energy emergency exists in Puerto Rico:

“An **emergency exists** in Puerto Rico due to a shortage of electric energy, a shortage of facilities for the transmission of electric energy, and other causes . . . Recent investments in the Puerto Rico grid have provided insignificant improvement towards augmenting reliability and security of the grid”

United States Department of Energy, Order No. 202-25-2 (May 16, 2025) (emphasis added).<sup>1</sup>

“I hereby declare a modification and expansion of the **state of emergency concerning Puerto Rico’s electric system**, including—but not limited to—the transmission and distribution system, as well as the generation system and the auxiliary infrastructure required to operate Puerto Rico’s electric system in a

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<sup>1</sup> The DOE emergency order further states that “The Puerto Rican electrical grid remains in a fragile state due to decades of deferred maintenance, insufficient investment and the bankruptcy of the system owner and operator. Further, the devastating effects of Hurricanes Irma and Maria (both Category 5) in 2017, Fiona (category 2) in 2022, and earthquakes in 2020, have significantly contributed to the grid’s deterioration.” Available at <https://www.energy.gov/sites/default/files/2025-05/EXEC-2025-006064%20-%20PR%20202c%20Emergency%20Measures%20Transmission%20signed%20by%20Secretary%20Wright%205-16-25.pdf#:~:text=Pursuant%20to%20the%20authority%20vested%20in%20the%20Secretary,meet%20the%20emergency%20and%20serve%20the%20public%20interest.>

reliable and affordable manner and in compliance with applicable laws, including environmental regulations.”

Executive Order No. EO-2025-016, *To modify and expand the state of Puerto Rico’s energy emergency align priorities with the national state of energy emergency and authorize necessary repairs for the System and increase generation capacity*, (April 2, 2025) (translation from Spanish) (emphasis added).<sup>2</sup>

“There is a compelling and urgent case that **Puerto Rico is in a state of energy emergency**. The island’s electricity grid cannot reliably meet demand under normal operating conditions, let alone in the face of unexpected events such as additional generator failures, heat waves, or hurricanes. This chronic insufficiency of generation capacity, coupled with rapidly increasing peak electricity demand, creates a situation where **energy service interruptions are not just likely-they are expected and unavoidable without immediate action**.”

Puerto Rico Energy Bureau, Resolution and Order of March 28, 2025, Case No. NEPR-MI-2024-0005, *In re: Electric System Priority Stabilization Plan* (emphasis added).<sup>3</sup>

In light of this emergency, LUMA requests the following:

## **I. Introduction**

1. Puerto Rico’s electric power system (“System”) suffers from financial and operational emergency scenarios that currently threaten service reliability and safety, and place LUMA, as the Operator of a continually rapidly deteriorating Transmission and Distribution System (“T&D System”), in a current and continued emergency state, unable to fund critical maintenance and repairs, stabilize the grid, and deploy its expertise to deliver safe, efficient and reliable electric power services. Fiscal Year 2026 (“FY2026”) begins in less than one month. The emergency scenario that the US DOE, the Governor of Puerto Rico and this Energy Bureau have declared exist, will only worsen. Meanwhile, rates have not been adjusted to fund critical investments and provide relief to a worsening financial and operational emergency.

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<sup>2</sup> Available at <https://docs.pr.gov/files/Estado/OrdenesEjecutivas/2025/OE-2025-016%20ENG.pdf>.

<sup>3</sup> Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2025/04/20250328-MI20240005-Resolution-and-Order.pdf>.

2. As a prudent Operator, LUMA recently submitted a substantiated and well-founded request for approval of a temporary rate adjustment. *See Motion Submitting Temporary Rate Adjustment*, filed on May 22, 2025 in this case (“LUMA’s Temporary Rate Petition” and/or “Temporary Rate Petition”). The Temporary Rate Petition established, with information and documents, including pre-filed sworn testimonies, a record that demonstrates that immediate rate relief is urgently needed, prior to July 1, 2025, when FY2026 begins. This relief is required to ensure that rates cover the costs of operating the utility, including necessary and unavoidable expenses for critical initiatives and projects to: stabilize the fast-paced degradation of the T&D System, avert current and impending equipment failures or infrastructure damage that require immediate and substantial capital expenditure to prevent service disruption or safety hazards, and meet regulatory mandates that impose significant financial obligations and concern critical activities.

3. The Temporary Rate Petition submitted to the Energy Bureau included the supporting testimonies of Mr. Alejandro Figueroa-Ramírez, LUMA’s Chief Regulatory Office (“Mr. Figueroa”), and Mr. Andrew Smith (“Mr. Smith”), LUMA’s Chief Financial Officer, as well as a supporting narrative sponsored, under oath, by Mr. Smith. *See Exhibits 1.0, 2.0 and 2.1 of LUMA’s Temporary Rate Petition* (hereinafter, “*Exhibit 1.0, Exhibit 2.0, Exhibit 2.1*”). Therein, LUMA established the existence of a sudden funding insufficiency that requires immediate attention: rates are insufficient to fund the T&D Budget for FY2026 that, per the orders of the Energy Bureau in Case No. NEPR-AP-2023-0003, will apply at least during the first quarter of FY2026 (the “Default Budget”). The Temporary Rate Petition established that this funding insufficiency demands immediate attention because current rates do not cover two components of the Default Budget: inflation, as required by Section 7.3 (d) of the Puerto Rico Transmission

and Distribution System Operation and Maintenance Agreement of June 20, 2020 (“T&D OMA”), and the \$44 million that in FY2025 were funded through external sources and thus, is also not funded by current rates. *See Exhibit 1.0*, Testimony of A. Figueroa lines (“1l”) 171-237); *Exhibit 2.02*, Section 1.0 and 1.1.

4. With the Temporary Rate Petition, LUMA also submitted information and testimonies showing the existence of a threat that LUMA, as Operator of the T&D System, will be unable to undertake the operation, maintenance and capital investments needed to meet its public service obligations to customers if rate relief is not approved urgently to ensure that revenues are commensurate with the immediate needs of the T&D System. LUMA’s Temporary Rate Petition describes in detail the immediate funding needs for the different operational components, along with a detailed overview of the activities and/or projects that are impacted and the risks should current funding levels remain unchanged. LUMA amply met the sufficiency threshold of Section 6.25(d) of Act No. 57-2014, as amended, known as the *Puerto Rico Energy Transformation and RELIEF Act* (“Act 57-2014”), PR Laws Ann. Tit. 22 §§ 1051-1056, 22 LPRA §§ 1051-1056 (2025).

5. This Honorable Energy Bureau, however, summarily denied LUMA’s Temporary Rate Petition. *See* Order of May 29, 2025 (“May 29<sup>th</sup> Order”).

6. As a threshold matter, the Energy Bureau adopted and applied an unauthorized and incorrect heightened standard for an emergency rate adjustment that is not supported by the clear text of Act 57-2014 and is inconsistent with the Puerto Rico Supreme Court precedent of *Meléndez Ortiz v. Valdejully*, 20 P.R. Offic. Trans. 1, 120 DPR 1 (1987). This legal error demands reconsideration.

7. The Energy Bureau also incurred legal error by failing to address the request for a temporary rate adjustment to fund the FY2026 Default Budget, thereby allowing an untenable and unlawful scenario whereby rates are insufficient to fund the T&D Default Budget for FY2026, which Default Budget per Section 7.3(d) of the T&D OMA, must be automatically adjusted for inflation. In denying the Temporary Rate Petition without further consideration or processes, the Energy Bureau created a further funding insufficiency for the FY2026 T&D Default Budget as the Energy Bureau did not provide a rate-based funding source to cover \$44 million of T&D costs that in FY2025 were funded outside of rates. Because it is unlawful to maintain a budget that is not funded through rates, LUMA requests that this Energy Bureau correct this legal error immediately, without need to conduct further processes. LUMA requests that the Energy Bureau issue an order to immediately adjust rates to fund these rate deficiencies *vis-à-vis* the budget level funding deficiencies.

8. As will also be discussed in this Motion, the Energy Bureau must also reconsider the denial of the outage event rider, that was proposed to collect revenues to fund the Outage Event Reserve Account established in the T&D OMA. As the Temporary Rate Petition establishes, this reserve is a critical enabler of the utility's ability to respond to major outage events in furtherance of customer's interests; a fundamental lesson learned in the aftermath of Hurricane María. This denial needlessly jeopardizes the already precarious financial stability of the utility and is contrary to settled Energy Bureau practice of creating reserve funds to cover expense. For example, the Energy Bureau recently authorized the funding of costs associated with a potential bonus payment to Genera if an amendment to the Puerto Rico Legacy Generation Assets Operation and Maintenance Agreement ("LGA OMA") is approved. *See Resolution and Order* with the title *Determination of the Factors of the Quarterly Adjustment Clauses for the*

*period from April 1, 2025 to June 30, 2025 entered by the Energy Bureau on March 28, 2025, In Re: Puerto Rico Electric Power Authority Permanent Rate, Case No. NEPR-MI-2020-0001, p. 3 (the “Genera Bonus Reserve Order”).*

9. The Temporary Rate Petition met the requirement that the filing be **“accompanied by all the documentation and information available that, in the judgment of the electric power company requesting it, warrants the temporary rate adjustment.”** See Article 6.25(d) of Act 57-2014, PR Laws Ann. Tit. 22 §§ 1054x(d), 22 LPRA §§ 1054x(d) (2025). LUMA’s filing provides evidence, that, grounded on its judgement, clearly established that the funding needs stated therein constitute an emergency or temporary event that justified a temporary rate adjustment due to a financial crises and/or operational threats to electricity service. The Energy Bureau’s decision to reject this request is not duly grounded and thus, the Energy Bureau erred in rejecting said request. Instead, the Energy Bureau should have granted preliminary approval and issued requests for information and/or held hearings within thirty days as provided for in the law, to determine whether the costs are just, reasonable, and no more than necessary to address the emergency.

10. LUMA hereby renews its requests for approval of the Temporary Rate Petition and requests that the Energy Bureau urgently convene a technical conference to answer the questions that the Energy Bureau and its consultants may have on the incremental costs included in the Temporary Rate Petition. LUMA is also able to supplement the Petition with information that the Energy Bureau may considered necessary to grant preliminary approval of the Temporary Rate Petition.

11. At the technical conference, LUMA’s witnesses will provide the Energy Bureau additional or supplemental data and explanations that the Energy may require to further support

what is clearly established in the Temporary Rate Petition: a multi-pronged financial and operational emergency, caused in part due to the clear and unlawful insufficiency of current rates, that demands immediate action before FY2026 begins to fund critical and unavoidable costs, continue critical projects to help stabilize the grid, and avoid unnecessary delays in the continuation of critical projects and commencement of necessary investments.

**II. Discussion in support of urgent request to reconsider denial of temporary rate petition and renewed request for a temporary rate adjustment.**

***A. The Energy Bureau erred in adopting a legal standard that is not supported by Act 57-2014 or Puerto Rico Supreme Court Precedent.***

12. In pertinent part, Act No. 57-2014, provides that at the request of an electric power company, the Energy Bureau may authorize an electric power service rate adjustment due to emergency *or* temporary events.

13. Section 6.25(d) of Act 57-2014 reads as follows:

At the request of an electric power company, the Bureau may authorize an electric power service rate adjustment due to emergency or temporary events. **Such request must be accompanied by all the documentation and information available that, in the judgment of the electric power company requesting it, warrants the temporary rate adjustment.** The Bureau's preliminary determination authorizing or rejecting the proposed temporary rate adjustment **shall be duly grounded** [(“*debidamente fundamentada*”)], and issued and published not later than ten (10) days after the adjustment has been requested. If a temporary rate adjustment is approved, the Energy Bureau shall direct the requesting electric power company to issue a public notice informing the change and explaining, in general terms, the reasons that led to such temporary rate adjustment. If it is determined that a temporary rate adjustment is warranted, the Bureau shall hold public hearings within a term that shall not exceed thirty (30) days from the effective date of the temporary rate adjustment, where the requesting company and the general public shall have the opportunity to present evidence or expert testimony and documentary evidence supporting their respective positions. The Bureau shall issue a final determination as to whether a temporary rate adjustment is warranted within a term not to exceed sixty (60) days after the hearing process ends. If it is determined that the temporary rate adjustment is warranted, the Bureau shall fix the duration and amount thereof. If the temporary rate adjustment is rejected, the Bureau

shall determine whether the rates shall be adjusted for consumers to offset any difference resulting from the period in which the preliminary temporary rate adjustment was in effect. Failure to hold the public hearings shall render the temporary rate adjustment void. The effective term of temporary rate adjustment shall not exceed one hundred eighty (180) days as of the authorization thereof by the Bureau. The temporary rate adjustment herein established herein shall not be considered as a temporary rate.

PR Laws Ann. Tit. 22 § 1054x(d), 22 LPRA § 1054x(d) (2025) (emphasis ours).

14. The only requirements that stem from Section 6.25(d) of Act 57-2014 are that the request be accompanied by *all available documentation* and information that, *in the judgment of the requesting company*, warrants the adjustment, and that the Energy Bureau’s preliminary determination be “duly grounded.” *Id.* Thus, Act 57-2014 grants the utility discretion regarding the types of documents and information to be submitted. The only sufficiency standard for an emergency rate petition is that the utility justify its petition.

15. Section 6.25(d) of Act 57-2014 also prescribes a sequence of procedural safeguards as precursors to a final determination regarding a temporary rate adjustment request, including public notice, hearings, and a final determination, all within specified timeframes. Act 57-2014, however, does not define “emergency or temporary events.”

16. In the May 29<sup>th</sup> Order, this Energy Bureau outlined an “Applicable Legal Standard” that, as will be discussed, runs counter to the plain language of Section 6.25(d). The Energy Bureau adopted a “two-stage analysis” pursuant to which: (1) the applicant must first establish, through “competent and verifiable evidence,” that a “precipitating circumstance” qualifies as an “emergency or temporary event,” pursuant to extra-statutory criteria, and (2) the applicant must then demonstrate that the proposed charge is just, reasonable, “**no more than necessary to address the emergency**”, and/or that it is “**narrowly tailored**” to the emergency – language that is nowhere to be found in Act 57-2014 or controlling caselaw. *See* May 29<sup>th</sup> Order, pp. 2, 3, 6. In



another portion of the Order, the Energy Bureau ruled that the petition shall “show[] that . . . [the] proposed charge is necessary, narrowly tailored, and reasonable . . . .” *Id.*, p. 6.

17. In delineating the concept of an “emergency or temporary event” under Section 6.25(d), the Energy Bureau imposed, *sua sponte*, a set of “threshold requirements” for temporary rate relief. To wit: (1) “**imminence**,” (2) “**severity**,” and (3) “**urgency**.” *Id.*, p. 3. To those ends, according to this Energy Bureau, the averred event must pose a “substantial threat to the utility’s core functions,” be “demonstrably imminent,” and “demand expeditious regulatory response that cannot be adequately addressed through standard rate review processes.” *Id.* The Energy Bureau further interpreted that an “**urgent threat of service degradation or financial collapse**” is required, *id.*, p. 2, and that Section 6.25(d) only allows emergency or temporary rates “**when a discrete event poses an imminent threat to reliability and solvency**.” *Id.*, p. 6. The Energy Bureau also required that the emergency event be “sudden.” *Id.*

18. The emergency standard that the Energy Bureau outlined in the May 29<sup>th</sup> Order is not found in the text of Section 6.25(d), nor is it compelled by the statutory structure of Act 57-2014. Rather, it represents an administrative gloss that unduly restricts the statutory authority granted to both the utility and the Energy Bureau. In short, the Energy Bureau’s application of Section 6.25(d) defeats the very purpose of such mechanism: to serve as a tool available to the utility to obtain, subject to reasonable checks and balances, adjustments in rates to address situations that are not otherwise addressable through a permanent rate review under Section 6.25(c) of Act 57-2014.

19. Section 6.25(d)’s operative language is broad and unqualified: it authorizes a temporary rate adjustment “due to emergency *or* temporary events.” The Legislature could have, but did not, define these terms to require a showing of “imminence,” “severity,” or “urgency.”

Instead, the statute entrusts the initial judgment to the requesting company, which must submit all available documentation it deems relevant, and then to the Energy Bureau, **to make a “duly grounded” preliminary determination.**

20. Interestingly, through the formulation and application of a “two-step analysis”, the Energy Bureau employed differing terminologies,<sup>4</sup> depriving LUMA of proper regulatory guidance on what costs may be approved to address an emergency or temporary event. Despite adopting at the outset of its order a “two-step analysis” of its own creation that separates the determination of the existence of an emergency from the analysis of whether the proposed costs are justified as necessary, the Energy Bureau did not apply said two-step analysis when it grounded its holding that LUMA’s Temporary Rate Petition did not establish the existence of a temporary or emergency event, on a determination that LUMA did not show that the costs are necessary or justified. *See* May 29<sup>th</sup> Order, p. 4.

21. A similar shortcoming in the Energy Bureau’s reasoning can be found in its continued characterization of a temporary rate modification as an “extraordinary relief” to be granted only when “the sort of sudden”, “extraordinary event requiring immediate attention occurs”. *See* May 29<sup>th</sup> Order, pp. 1, 5, 6. The Energy Bureau’s adoption of this nomenclature imposes an unduly restrictive threshold that is not supported by the statutory text. Such a standard would prevent utilities from seeking necessary interim rate relief in situations where, for example, a combination of inflation, regulatory changes, or financial shortfalls creates an urgent need for additional revenue to maintain service reliability, but do not constitute a singular, extraordinary

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<sup>4</sup> *See* May 29<sup>th</sup> Order, p. 2 (The Energy Bureau states provides that an applicant “must demonstrate that the proposed charge is *just, reasonable, and no more than necessary to address the emergency*”); *cf.*, p. 3 (The Energy Bureau references that the temporary charge should be “*narrowly tailored to the emergency*”); *cf.*, p. 6 (The Energy Bureau states that the utility must prove with competent evidence that the “proposed charge *is strictly limited* to resolving the threat”) (emphasis added).

event. This restrictive approach undermines the statute’s purpose of protecting both the utility’s ability to provide essential services and the public’s interest in reliable and adequate utility service. **It also risks creating regulatory paralysis, where utilities are forced to wait for a full-blown crisis before seeking relief**, rather than addressing emerging problems proactively through the expedited procedures provided by Section 6.25(d).

22. Plainly put, the Energy Bureau’s imposition of extra-statutory sufficiency requirements for preliminary approval of a temporary rate adjustment, is inconsistent with the principle that administrative agencies are bound by the pellucid language of their enabling statutes and may not add prerequisites absent clear legislative authorization. *See Ayala Hernández v. Consejo*, 190 DPR 547, 560 (2014) (“administrative agencies must arrive at their decisions without departing from the enabling law even when they pursue an apparent legitimate purpose. In other words, neither necessity nor convenience can substitute for law as a source of quasi-legislative or quasi-adjudicative power. [...] Moreover, we have ruled that any doubt as to the existence of quasi-legislative or quasi-adjudicative power must be resolved against its exercise. In other words, administrative agencies may not act beyond what was delegated to them, so that any administrative action that does not obey the power conferred upon it by legislation must be classified as ultra vires, and therefore, null and void.”) (translation ours).

23. The May 29<sup>th</sup> Order relies on the Puerto Rico Supreme Court precedent of *Meléndez Ortiz v. Valdejully*, 20 P.R. Offic. Trans. 1, 120 DPR 1 (1987), for the proposition that an “emergency” and/or “temporary event” should be interpreted to require three threshold requirements: “imminence,” “severity,” and “urgency.” Although the Energy Bureau adequately summarized the *Meléndez* decision when introducing the applicable legal standard, it nevertheless

proceeded to develop a heightened standard of urgent and imminent threats, which is foreign to the guidance set out in *Meléndez*.

24. The *Meléndez* decision posits that the concept of “emergency” is synonymous with “urgency,” and “hurry.” See *Meléndez*, 20 P.R. Offic. Trans. 1., at p. 22. The Puerto Rico Supreme Court, however, expressly rejected a narrow or restrictive construction of “emergency,” holding that the term should be interpreted with “*greater latitude*” in the context of public corporations, such as the one on which behalf LUMA acts as agent for purposes of the T&D System, and that it encompasses not only unforeseen natural disasters but also *financial or operational crises that require immediate action*. *Id.*, at pp. 20, 22. The Court emphasized that the determination of an emergency should be based on whether the crisis is “real and genuine.” *Id.*, at p. 22. The Puerto Rico Supreme Court further cautioned against judicial constructions that would “needlessly handcuff” public corporations or frustrate the legislative purpose of ensuring the continued provision of essential public services to avoid harms to the People of Puerto Rico. *Id.*, at p. 18.

25. A reading of the *Meléndez* decision also reveals that the Court did not circumscribe emergency events to the existence of the three threshold requirements that the Energy Bureau adopted in the May 29<sup>th</sup> Order “imminence,” “severity,” and “urgency.” Nor did the Court require that emergency events be “sudden” events. In fact, the *Meléndez* decision decries the concept of suddenness when ruling specifically that emergency events are not only those that are unforeseen.

26. The Puerto Rico Supreme Court found that types of potential circumstances that may justify granting emergency rate relief include “present or clearly imminent threats,”<sup>5</sup> adopting

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<sup>5</sup> See *Meléndez*, 20 P.R. Offic. Trans. 1, at p. 22 (“The term “emergency,” then, is not necessarily restricted to an unforeseen circumstance, but it comprises an event or a combination and accumulation of circumstances that require immediate action. “Emergency” (emergencia) is synonymous with “urgency” (urgencia), “necessity” (necesidad), “hurry” (prisa). Two of the requirements cited in the Justice Secretary’s opinion are applicable to the case at bar, to wit: 1) a present or clearly imminent threat that the Agency will

an imminence requirement construed as requiring haste. The Court, however, did not adopt a “severity” requirement nor did it mandate, as the Energy Bureau did in the May 29<sup>th</sup> Order, that a utility show severity through demonstrable evidence of a “substantial threat to the utility’s core functions, with potential consequences that would materially impair service, reliability, safety, or the utility’s ability to meet its legal and contractual obligations.” *See* May 29<sup>th</sup> Order, at p. 3.

27. The Energy Bureau’s *sua sponte* adoption of “threshold requirements” that are not rooted in Act 57-2014 nor supported by the *Meléndez* decision—a precedent that the Energy Bureau admits applies—, unlawfully narrows the statutory emergency or temporary event standard, and undermines the flexibility that both the Legislature and the Supreme Court have recognized as essential in the context of emergency or temporary rate relief. The incorrect and arbitrary result is to substitute the Energy Bureau’s own policy preferences for the judgment of the Legislature, in contravention of settled principles of statutory interpretation. *See San Gerónimo Caribe Project v. Registradora*, 189 DPR 849, 866 (2013) (“There is no need to resort to the subterfuge of looking beyond the law to fulfill its legislative purpose when the text of the law is clear.”) (translation ours).

28. Pursuant to hornbook law on statutory interpretation, rather than adopting sufficiency requirements unsupported by the plain language of the law, the Energy Bureau had an obligation to look no further than the sister provisions of Section 6.25 of Act 57-2014. *See Marie Valera (Hernández) v. Registradora*, 2025 TSPR 20 (“The various sections of a statute must be interpreted together and not in an isolated or fractional manner.”) (translation ours). Specifically,

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be unable to continue meeting its public service obligations; and 2) a present or clearly imminent threat that the Agency will be unable to obtain the necessary funds to finance the construction of necessary new or replacement plants.”) (internal citations omitted).

Section 6.25(c) persuasively provides an illustrative evidentiary standard duly grounded in law, and applicable to rate modification requests filed with the Energy Bureau. Therein, the Legislature enacted threshold sufficiency requirements for rate modification requests, providing that a rate modification request shall state: i) the grounds for the modification; ii) the effect of such modification on the revenues and expenditures of the requestor; iii) and any other information requested by the Energy Bureau through regulations or resolution. PR Laws Ann. Tit. 22 § 1054x(c), 22 LPRA § 1054x(c) (2025). If that proviso of Section 6.25(c) is applied to LUMA's Temporary Rate Petition, and as will be discussed in detail below, LUMA undoubtedly complied as it clearly stated the grounds for the requested temporary modification and the effect of such modification on rates, by way of its prefiled testimonies and accompanying exhibits.

29. After adopting an erroneous and unauthorized sufficiency standard for a preliminary determination regarding an emergency or temporary rate modification petition, this Energy Bureau concluded that LUMA failed to prove both the existence of an emergency or temporary event and the need to address the averred emergency through just and reasonable costs. The Energy Bureau, however, failed to apply the “duly grounded” requirement stemming from Section 6.25 Act 57-2014 or construe that standard in light of another *in pari materia* provision of said Act: Section 6.25(c).

30. Although Section 6.25(d) of Act 57-2014 indeed provides the Energy Bureau with discretion to issue a preliminary determination on a request for an emergency or temporary rate adjustment, said discretion must be exercised within the bounds of the statute. The Energy Bureau is not authorized to rewrite the statutory standard or to impose additional hurdles that the Legislature did not see fit to include. The statute's procedural safeguards – public notice, hearings, and a final determination – ensure that all interested parties have an opportunity to be heard, and

that the Energy Bureau’s final decision is issued after an evidentiary process is conducted within thirty (30) days after a preliminary approval is issued. Thus, the imposition of extra-statutory “threshold requirements” is not only unauthorized, but also unnecessary to protect the public interest.

31. All in all, the legislative purpose underlying Section 6.25(d) is to provide a mechanism for timely and effective rate relief when “emergency or temporary events” arise. The Energy Bureau’s approach of layering on additional requirements not found in the statute, frustrates this purpose and risks depriving the electric system – and, by extension, the public – of the flexibility needed to respond to rapidly evolving circumstances. The Energy Bureau’s imposition of further elements by way of its May 29<sup>th</sup> Order is *ultra vires*, legally erroneous, and contrary to the public interest.

32. For the foregoing reasons, the applicable legal standard for temporary rate relief under Section 6.25(d), as outlined by the Energy Bureau in its May 29<sup>th</sup> Order, is unsupported by the statutory text, inconsistent with the legislative purpose, and contrary to the interpretive guidance of the Supreme Court of Puerto Rico. LUMA moves this Energy Bureau to reconsider its May 29<sup>th</sup> Order and henceforth apply the applicable standard as written and construed in applicable statutory law and judicial precedent, without embedding additional prerequisites that unduly restrict the statutory mechanism for emergency or temporary rate adjustments.

33. As expounded upon below, LUMA further posits that the Energy Bureau erred in holding that LUMA’s Temporary Rate Petition does not contain evidence of the existence of a temporary or emergency event and the necessity of the requested rate relief.

***B. The Energy Bureau erred in failing to address the request for a temporary rate adjustment to fund the FY 2026 Default Budget.***

34. The FY2026 Default Budget is not properly funded. This deficiency is not attributable to any actions or omissions by LUMA. Rather, the shortfall in funding is the result of two distinct factors:

**1. Application of the T&D OMA Default Budget Mechanism:** Pursuant to Section 7.3(d) of the T&D OMA, when a Default Budget is in effect, it is defined as the budget for the immediately preceding Contract Year, adjusted by the CPI factor. *See* T&D OMA, Sec. 7.3(d). Thus, any increase or decrease in the Default Budget is determined solely by the CPI adjustment, not by LUMA or any other party's discretion or request. In the absence of an approved budget for Fiscal Year 2026, the Energy Bureau reiterated the T&D OMA requirement and ordered that a Default Budget be implemented. *See* Resolution and Order of April 21, 2025, Case No. NEPR-AP-2023-0003 ("April 21<sup>st</sup> Order"), pp. 5–6. As a result, the FY2026 Default Budget reflects an adjustment over the prior year's budget solely due to the application of the CPI adjustment, not as a result of any new funding requests by LUMA.

**2. Lack of P3 Authority Contributions:** The FY2025 Budgets and thus LUMA's T&D Budget for FY2025, were partially funded by contributions allocated by the Puerto Rico Public-Private Partnerships Authority ("P3 Authority"). These contributions, which were available for FY2025, have not been provided for the FY2026 Default Budget, resulting in a funding deficiency of \$44 million for the FY2026 T&D Budget. As a result, the FY2026 Default Budget for the T&D System



reflects a funding insufficiency of \$44 million solely due to the lack of external sources funding, not as a result of any new funding requests by LUMA.

35. As a fundamental principle established by the *Puerto Rico Electric Power Authority Act*, Act 83-1941, P.R. Laws Ann. Tit. 22 §§ 191-218, 22 LPRA §§ 191-218 (2025), and Act 57-2014, the revenues necessary to fund the budget must be derived from base rates. Thus, LUMA requested that the Energy Bureau enter an order to, at a minimum, set rates to fund FY2026 Default Budget deficiencies. Nonetheless, in the May 29<sup>th</sup> Order, the Energy Bureau denied the entire petition without any discussion regarding the requests to fund the deficiencies automatically created by the lack of approval of a Budget for FY2026 and thus, the implementation of a Default Budget for FY2026. This erroneous omission by the Energy Bureau also renders the May 29<sup>th</sup> Order unlawful because the order cannot be considered “duly grounded” as Section 6.25(d) of Act 57-2014 requires. *See Colón Cortés v. Pesquera*, 50 P.R. Offic. Trans. 59, 150 DPR 724 (2010) (*defining* the duly grounded requirement that applies to final decisions by administrative agencies as requiring that the decision is based on conclusions sufficiently defined to place the courts in a position to determine whether the proven facts provide reasonable grounds for the decision); *Mun. de San Juan v. JCA*, 149 DPR 263, 286 (1999) (*defining* a grounded determination as one backed by evidence “a reasonable mind can accept as adequate to support a conclusion” (translation ours) (*citing Hilton Hotels v. Junta de Salario Mínimo*, 74 DPR 670, 687 (1953))).

36. On June 26, 2024, the Energy Bureau approved the FY2025 Budget, which amounted to \$1,315,852. The FY2025 Budget was allocated as follows:

**Table 1. Budget Funding FY2024 and FY2025**

<i>(\$ millions)</i>	<b>FY2024</b>	<b>FY2025</b>
Total Base Rate Revenue	1,112	1,151
Other Income	59	90
Additional funding	130	75 <sup>6</sup>
<b>Total</b>	<b>1,301</b>	<b>1,316</b>
GridCo Opex and Capex	663	692
GenCo Opex and Capex	324	300
HydroCo Opex and Capex	14	14
HoldCo Opex and Capex	26	34
Other	274	275
Total Non-Federally Funded T&D and Generation Expenditures	<b>1,301</b>	<b>1,316</b>

*See Exhibit 1.0, testimony A. Figueroa, l 185.*

37. Per the April 21<sup>st</sup> Order, as amended by an Order issued by the Hearing Examiner on April 25, 2025 in Case No. NEPR-AP-2023-0003, the formal rate review filing is due July 3, 2025 at which time a request for provisional rates may be filed through an amendment to the FY2025 Budget to include high priority and non-controversial costs. In the April 21<sup>st</sup> Order, the Energy Bureau determined that the Default Budget, as defined in Section 7.3(d) of the T&D OMA, will remain in effect until a new budget is approved. *See* April 21 Order, p. 7, Sec. V(7) (“If and until the Energy Bureau authorizes provisional rates, LUMA, Genera, and PREPA shall continue to operate under the most recently approved budget.”). The April 21 Order further provides that

the Energy Bureau will not be finally approving a FY26 budget until well into the fiscal year, absent a budget amendment LUMA and Genera would operate under their existing FY 2025 budgets. (See T&D OMA sec. 7.3(d), providing that if there is not a final budget in place by July 1 of the Contract Year, the default budget is the budget “or the immediately preceding Contract Year,” adjusted for inflation.[]

*See* April 21<sup>st</sup> Order, pp. 5-6.

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<sup>6</sup> This sum corresponds to the funds allocated by the P3 Authority.

38. Meanwhile, although the Energy Bureau correctly determined that the FY2026 Budget will be the Default Budget, it did not address how the difference between the FY2025 Budget and the FY2026 Default Budget will be funded.<sup>7</sup> The CPI adjustment alone results in an adjustment of \$23.8 million between the two budgets. In addition, the absence of the P3 Authority's contribution, which funded a portion of the FY2025 Budget, creates a further deficiency of \$44 million in the FY2026 Default Budget. Thus, the total funding deficiency for the FY2026 Budget is \$67.8 million, comprised of the \$23.8 million CPI adjustment and the \$44 million shortfall from the loss of P3 Authority funding.<sup>8</sup>

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<sup>7</sup> The Default T&D Budget is the FY2025 Budget plus the T&D OMA CPI Factor:

$$FY2026 \text{ System Budget} = FY2025 \text{ System Budget} + T\&D \text{ OMA CPI Factor}$$

<sup>8</sup> It bears noting that there is no contractual requirement to adjust the GenCo, HoldCo and HydroCo budgets for inflation. The only budget that, when approved by default, is adjusted for inflation, is the budget allocated to the T&D System Operator in accordance with the T&D OMA and the Puerto Rico Prepa-Genco-Hydroco Operating Agreement ("PGHOA"). That is why, the portion of LUMA's request for a temporary rate adjustment to fund the Default Budget did not and could not allocate any CPI adjustment to the GenCo, HoldCo and HydroCo Budgets.

With respect to the GenCo Default Budget, Section 7.3(g) of the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement dated January 24, 2023 by and among PREPA, the P3 Authority and Genera (the "LGA OMA"), provides that in the event any GenCo Budget for a given year has not been finalized in accordance with Section 7.3 of the PGHOA by July 1 of such Contract Year, the applicable approved [GenCo] Budget for the immediately preceding Contract Year shall remain in effect until such time as the applicable budget for such year is so finalized; provided that any such Default Budget shall be compliant with the then applicable Rate Order. *See* LGA OMA, Section 7.3(g), p. 89. In turn, in its definition of the GenCo Budget, the PGHOA provides that in the event the amounts allocated to GenCo for a given Fiscal Year have not been finalized in accordance with Section 3.1(d)(iii) of the PGHOA, the applicable approved Genco Budget for the immediately preceding Fiscal Year (as the same may have been amended) shall remain in effect as a default budget until such time as the applicable Genco Budget for such Fiscal Year is so finalized; provided, further, that any such default budget *shall be compliant with the then-applicable Rate Order*. *See* PGHOA, at p. 4. Thus, the GenCo default budget is expressly limited to the approved budget for the immediately preceding Fiscal Year, as may have been amended, and is further constrained by the revenue limitations established in the then-applicable Rate Order.

Similarly, the Hydroco Budget, which is a component of the Generation Budget, is defined in the PGHOA as the budget of the non-fuel expenditures required to operate and maintain the Hydropower Assets and to provide the Hydroco Decommissioning Services for such Fiscal Year, as such budget may be

39. The CPI adjustment for the T&D FY2026 Default Budget was calculated by applying the CPI Factor as defined in the T&D OMA, which requires using the ratio of the CPI Value for the calendar year immediately prior to the adjustment (2024, with a CPI-U of 318.983) to the CPI Value for the year two years prior (2023, with a CPI-U of 308.381), resulting in a CPI Factor of 1.03438, or a 3.438% increase. *See Exhibit 2.0*, Testimony of A. Smith, ll 77-88. This inflation factor was applied to the PREB-approved FY2025 budget, increasing the total from \$692.661 million to \$716.475 million, yielding an incremental funding requirement of \$23.8 million attributable to the CPI adjustment. *See Exhibit 2.1*, Testimony of A. Smith, Section 1.1, Table 1-1.

40. In the May 29<sup>th</sup> Order, the Energy Bureau also failed to address the fact that the FY2025 Budget included a one-time source of revenue provided by the P3 Authority in the amount of \$74.741 million, of which \$44.111 million was directly allocated to LUMA.<sup>9</sup> This represents a second, objective and quantifiable insufficiency in the FY2026 Budget.

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amended or adjusted from time to time with the approval of PREB; provided that in the event the amounts above for a given Fiscal Year have not been finalized in accordance with the budget development process set forth in the PGHOA by July 1 of such Fiscal Year, the applicable approved Hydroco Budget for the immediately preceding Fiscal Year, shall remain in effect as a default budget until such time as the applicable Hydroco Budget for such Fiscal Year is so finalized. *See PGHOA*, p. 6. Furthermore, any such default budget shall be compliant with the then-applicable Rate Order and to the extent it is not so compliant, such default budget shall be reduced so as to be compliant with the then-applicable Rate Order. *See PGHOA*, at p. 6.

Finally, the PGHOA does contemplate budgets for PREPA and its subsidiaries, which are referred to as the “Other PREPA Budgets.” *See id.*, at Sec. 3.1(b)(i). Thus, the PGHOA does not provide for adjustments of the Other PREPA Budgets if the Other PREPA Budgets remain the same as the prior year’s budget. Thus, for purposes of the Default Budget analysis, LUMA did not and could not allocate any CPI adjustment to the Other PREPA Budgets.

<sup>9</sup> *See Exhibit 1*, Appendix B: P3A Budget Allocation letter of the *Motion for Approval of T&D Budgets and Submission of GenCO Budgets for FY2025 and Budget Allocations for the Electric Power System* submitted on May 25, 2024 in the matter of *In Re: Review of LUMA’s Initial Budgets*, Case no. NEPR-MI-2021-0004.

41. The refusal by the Energy Bureau to authorize rates that allow LUMA to eliminate a budgetary insufficiency, violates both the letter and the spirit of Puerto Rico’s statutory scheme and contravenes the firmly established “just and reasonable” standard embedded in federal constitutional doctrine and persuasive state precedent. Puerto Rico law imposes an affirmative, non-discretionary duty on the Energy Bureau to ensure that electric rates are “just and reasonable and consistent with sound fiscal and operational practices that provide for a reliable and adequate service at the lowest reasonable cost.” P.R. Laws Ann. Tit. 22 § 1054x(a), 22 LPRA § 1054x(a) (2025). Furthermore, the Energy Bureau must approve rates that “allows electric power service companies to recover all operating and maintenance costs, capital investments, financing costs, statutory costs, as well as any other cost lawfully incurred in the provision of electric power services.” P.R. Laws Ann. Tit. 22 § 1054x(b)(9), 22 LPRA § 1054x(b)(9) (2025).

42. The baseline embedded in the “just and reasonable” standard is national in scope and binds the Energy Bureau through Puerto Rico’s own statutory adoption of that identical criterion. Courts have long articulated that the “just and reasonable” standard demands a balancing of interests to ensure that utility may cover operating expenses (and earn a reasonable return for investor-owned utilities unlike the Puerto Rico Electric Power Authority (“PREPA”)) while guarding consumers against excessive charges. *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1502 (D.C. Cir. 1984); *see also* S. Hempling, *Regulating Public Utility Performance: the Law of Market Structure, Pricing and Jurisdiction*, Ch. 6, 257 (2nd ed. 2021).

43. The United States Supreme Court has opined that “[t]he return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. *Bluefield Water Works &*

*Improvement Co. v. Public Serv. Comm'n*, 262 U.S. 679, 693 (1923). It has also been held that “[e]very utility shall be entitled to such just and reasonable rates as will enable it at all times to fully perform its duties to the public and will, under honest, efficient and economical management, earn a fair net return on the reasonable value of its property devoted to the public service.” *Ala. Pub. Serv. Comm'n v. S. Bell Tel. & Tel. Co.*, 106 So. 2d 163, 165 (1958) (emphasis added) (internal citations omitted).

44. The Supreme Court of Colorado has held that rates “must also consider the reasonableness and fairness of rates so far as the public utility is concerned. It must have adequate revenues for operating expenses and to cover the capital costs of doing business. The revenues must be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.” *Pub. Serv. Co. v. Pub. Utils. Com.*, 644 P.2d 933, 939 (Colo. 1982) (internal citations omitted).

45. The Energy Bureau’s unexplained and unprincipled refusal to allow LUMA to collect rates sufficient to meet basic budgetary needs breaches sections 6.25(a) and 6.25(b)(9) of Act 57-2014. To comply with its legal obligations, the Energy Bureau must authorize rates that fully recover LUMA’s prudent costs, including the identified insufficiency of the Default Budget, thereby aligning Puerto Rico’s regulatory framework with well-settled statutory standards for “just and reasonable” rates.

46. The Energy Bureau’s May 29<sup>th</sup> Order also frustrates the statutory goal of providing service “at the lowest reasonable cost.” P.R. Laws Ann. Tit. 22 § 1054x(a), 22 LPRA § 1054x(a) (2025). Reliable service at reasonable cost cannot be achieved if the utility is financially starved.

47. Since the FY2026 T&D Default Budget is higher than the FY2025 T&D Budget, the Energy Bureau has the ministerial duty to ensure that revenues are set to the amount required

to fund it. The Energy Bureau's failure to approve a temporary rate adjustment to ensure that the FY2026 T&D Default Budget is properly funded, is in error and justifies that the Energy Bureau reconsider the May 29<sup>th</sup> Order.

48. A legal mechanism is in place to approve the necessary funding in an urgent and timely manner when it is not feasible to conduct a full rate review process, and to ensure that the FY2026 T&D System Budget is duly funded with appropriate revenue sources by its effective date of July 1, 2025, thereby meeting legal requirements. That is Section 6.25(d) of Act 57-2014, which authorizes the Energy Bureau to approve a "service rate adjustment due to emergency or temporary events," provided that the request is "accompanied by all the documentation and information available that, in the judgment of the electric power company requesting it, warrants the temporary rate adjustment." P.R. Laws Ann. Tit. 22 § 1054x(d), 22 LPRA § 1054x(d) (2025).

49. LUMA respectfully submits that it filed a duly grounded and substantiated request that fully justifies the Energy Bureau's approval to collect additional revenues necessary to address the unavoidable insufficiency resulting from the implementation of the FY2026 Default Budget, as well as the failure of the P3 Authority to provide additional revenues for the upcoming fiscal year, as it has done in the preceding two years. *See Exhibit 1.00*, Testimony of A. Figueroa, ll 201–207.

50. As detailed in the testimony of Mr. Figueroa, the Energy Bureau must identify and secure funding to bridge the gap created by these two unavoidable insufficiencies, as such funding is essential to "operate, maintain, repair and restore the electric system." *See Exhibit 1.00*, Testimony of A. Figueroa, ll 201–207. The necessity of implementing a temporary rate adjustment to begin collecting revenues to adequately fund the FY2026 Default Budget is immediate and compelling. Mr. Figueroa explains that "[p]rior to the Energy Bureau's April 21st Order, LUMA's

expectation was that new provisional rates would become effective July 1, 2025, and remain in effect until final permanent rates were established by the Energy Bureau.” *See Exhibit 1.00*, Testimony of A. Figueroa, ll 256–274. However, as a result of the revised provisional rate timeline established by the April 21<sup>st</sup> Order, provisional rates, if approved, may not become effective until as early as September 1, 2025, or as late as October 1, 2025. *Id.* Thus, a temporary rate adjustment is required to bridge the gap between July 1, 2025—the commencement of the fiscal year and the effective date of the FY2026 Default Budget—and the date on which a provisional rate approved by the Energy Bureau would take effect. *Id.*

51. Moreover, Mr. Figueroa testified that “implementing a temporary rate beginning June 1, 2025, will help to align cash inflows with expected cash outflows based on the FY2026 Budget to ensure that enough cash is collected over the ordinary collection cycle so as to enable timely payment of budgeted expenditures as the invoices and payment obligations associated with those expenditures become due.” *See Exhibit 1.00*, Testimony of A. Figueroa, ll 266–270. Thus, LUMA demonstrated that failure to approve the necessary revenues to bridge the gap created by these automatic adjustments will result in a financial crisis and, consequently, operational threats to the electric system. *Id.* at 272–274.

52. LUMA also clearly substantiated and stands ready to confirm in a technical conference and during the thirty-day period prescribed by Section 6.25(d) of Act 57-2014, that the immediate collection of the requested funds is essential to prevent a deterioration in service quality and to avert increased future costs. *See Exhibit 2.00*, Testimony of A. Smith, ll 54–63. Mr. Smith’s testimony expressly states that the purpose of the temporary rate adjustment, including the funds necessary for the automatic adjustments to the budget, is to ensure that such funds are incorporated into the FY2026 T&D Budget and that LUMA should have commenced collection as of June 1,



2025. *Id.* This timing is critical to enable the advancement of vital investments in the T&D System, to address work previously deferred in response to the system’s emergency needs, and to support ongoing investment in the system to avoid either a decline in service or an increase in future costs that could have been avoided had the temporary rate adjustment been implemented. *Id.*

53. LUMA respectfully submits that the pre-filed testimonies that were submitted to support and sponsor the Temporary Rate Petition, in conjunction with the comprehensive documentation submitted to the Energy Bureau, fully satisfy the sufficiency threshold established by Section 6.25(d) of Act 57-2014 for the Energy Bureau to preliminarily approve a temporary rate adjustment to properly fund the T&D FY2026 Default Budget.

54. In the Temporary Rate Petition LUMA presented specific and verifiable documentation and information, including pre-filed testimonies, of the specific factors that created the automatic funding insufficiency. The underfunding of the Default Budget will jeopardize LUMA’s capability of maintaining financial stability and thus impacts the deployment of needed and critical maintenance and capital improvement investments that have historically been delayed or deferred due to insufficient funding. Immediate rate relief is the only viable remedy. Under these facts, the well-established right of LUMA to collect “just and reasonable” rates, the requirements of Section 6.25(d) and the standard established by *Meléndez* are satisfied. The Energy Bureau should therefore grant the requested emergency or temporary rate adjustment to fund the revenue deficiency that has been automatically created for the FY2026 Default Budget.

***C. The Energy Bureau erred denying on its face, the request for approval of the Outage Events Rider.***

55. In the May 29<sup>th</sup> Order, the Energy Bureau also denied without further consideration, LUMA’s request to collect revenues through a rider to fund the Outage Event Reserve Account established in the T&D OMA, which reserve are a critical enabler of the utility’s ability to respond

to major outage events in furtherance of customer's interests. This denial is particularly erroneous and frankly, unreasonable and inequitable, given the uncontested information and sworn testimony that LUMA submitted with the Temporary Rate Petition, establishing, among other things, that **“[t]he need for the Outage Reserve Account funding is particularly acute as Puerto Rico approaches storm season.”** *See Exhibit 2.0*, Testimony of Mr. Smith, ll, 117-118 (emphasis added).

56. The Outage Event Reserve Account is an essential mechanism that LUMA, and any prudent utility, must maintain to ensure immediate access to funds in the event of an Outage Event, as defined in the T&D OMA. *See T&D OMA*, Section 7.5(d), p. 94. In the absence of a fully funded Outage Event Reserve Account, LUMA would be forced to draw from the Operational Account, which is designated for the day-to-day reconstruction and operation of the T&D System and is already at critically low levels. *See Exhibit 1.0*, Testimony of A. Figueroa, ll 337-341. This approach is unsustainable and exposes the system to significant risk.

57. The May 29<sup>th</sup> Order contemplates that, in the event of an emergency such as a natural disaster, LUMA could seek a temporary rate adjustment after the emergency has occurred. *See May 29<sup>th</sup> Order*, p. 6. However, requiring LUMA to divert resources to prepare and submit such a request during a crisis imposes an unnecessary administrative burden at the precise moment when all efforts should be focused on system restoration and public safety. This is particularly unwarranted given the contractually binding obligation to keep the Outage Event Reserve Account fully replenished at all times. *See T&D OMA*, Section 7.5(d), p. 94.

58. Denying LUMA's request to fund the Outage Event Reserve Account now would needlessly jeopardize the already precarious financial stability of PREPA. There is no rational basis to withhold approval of this well-founded request, especially when proactive funding of the

Outage Event Reserve Account is, unquestionably, in the best interest of customers. If the account is not funded in advance, the resulting situation will, by definition, no longer be an emergency but a preventable failure. Accordingly, the Energy Bureau should grant LUMA's request to fund the Outage Event Reserve Account without delay.

59. As Mr. Figueroa explains thoroughly in his testimony, the Outage Event Account is contractually established under the T&D OMA<sup>10</sup> with a minimum balance set at \$30 million. *See* T&D OMA, Section 7.5(d), p. 94, *see also Exhibit 1.0*, Testimony of A. Figueroa ll 310-311. This account is intended to ensure that funds are available to address costs incurred in response to outage events, which can be caused by smaller events, such as periods of heavy rain, wind, and/or lightning, or extreme events such as hurricanes.

60. Per Section 7.5(d) of the T&D OMA, LUMA shall "draw funds from time to time to pay for costs in connection with an Outage Event ("Outage Event Costs") incurred by [LUMA]." *See* T&D OMA, Section 7.5(d)(i), p. 94. Thus, "[n]o later than ten (10) Business Days prior to the Service Commencement Date, [PREPA] [was required] to fund the Outage Event Reserve Account with an amount equal to US\$30,000,000." *See* T&D OMA, Section 7.5(d)(ii), p. 94. More importantly, the T&D OMA established PREPA's obligation to replenish the account by stating that "[p]romptly following a withdrawal, [PREPA] shall replenish the Outage Event Reserve Account so as to maintain an amount equal to US\$30,000,000." *Id.*

61. The Outage Event Reserve Account is meant to provide the money necessary to fund outage response initiatives, without compromising the funding that would otherwise be available for normal operations. Despite the fact that it is solely responsible for funding the Outage

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<sup>10</sup> *See* T&D OMA, Section 7.5(d), p. 94.

Event Reserve Account, PREPA has not replenished the Outage Event Reserve Account since November of calendar year 2023. *See Exhibit 1.0*, Testimony of A. Figueroa, ll 319-321.

62. Due to the urgent need for proper funding in the Outage Event Reserve Account, LUMA requested, and herein reiterates and renews, a petition for a temporary rate adjustment to collect the \$30 million in funding of the Outage Event Reserve Account through the Rider Outage Events commencing in July 2025. *See Exhibit 1.1*, Testimony of A. Figueroa, ll 356-364. Those funds are urgently required in the next months to place LUMA in a position to respond to Outage Events, including those associated with emergencies such as storms and hurricanes. The funding will ensure that LUMA can maximize the deployment of resources to restore operations and service, and protect lives, public health, safety, and property in case of an emergency.

63. LUMA respectfully submits that the testimony and documentation submitted with the Temporary Rate Petition fully satisfy the threshold sufficiency standard set forth in Section 6.25(d) of Act 57-2014. The record before the Energy Bureau demonstrates, through sworn testimony and supporting exhibits, that the circumstances described by LUMA constitute an emergency or temporary event within the meaning of the statute.

64. Moreover, LUMA notes that there is a well-established pattern in which the Energy Bureau authorizes the creation of reserve funds to cover expenses or to ensure compliance with contractual obligations where PREPA or another regulated entity is a party. It is significant that, in these instances, the Energy Bureau **has not imposed a burden on petitioners as stringent as requiring a demonstration of an emergency or temporary event to justify the establishment of such reserves.**

65. On February 27, 2025, PREPA and Genera requested preliminary approval of an amendment to the LGA OMA. *See Resolution and Order, In Re: Request for Certification Genera*

*PR, LLC*, Case No.: NEPR-CT-2023-0001, February 28, 2025<sup>11</sup>. The LGA OMA amendment proposes to recognize a bonus to Genera of \$110 million, of which \$15.42 million corresponds to incentives already generated in fiscal year 2024. *Id.*, p. 2. In exchange, Genera would be recognized for a payment of \$110 million, of which \$15.42 million corresponds to incentives already generated in fiscal year 2024. *Id.*, p. 2. This payment would be made in eleven monthly installments of \$10 million, beginning in March 2025, subject to the final approval of the PREPA and P3 Authority boards. *Id.* On February 28, 2025, the Energy Bureau granted *preliminary approval* to the amendment, on the condition that PREPA and Genera should, among other things, detail the origin and budgetary effect of the payment of \$110 million. *Id.*, p. 3.

66. On March 21, 2025, PREPA submitted a letter to the Energy Bureau proposing to recover the costs associated with the aforementioned payment of \$110 million from the consumer through the FCA Clause, beginning in March 2025, with quarterly reconciliation. *See Resolution and Order* with the subject *Determination of the Factors of the Quarterly Adjustment Clauses for the period from April 1, 2025 to June 30, 2025* entered by the Energy Bureau on March 28, 2025 in the matter of *In Re: Puerto Rico Electric Power Authority Permanent Rate*, Case No. NEP-MI-2020-0001, p. 3 (the “Genera Bonus Reserve Order”).<sup>12</sup> The Genera Bonus Reserve Order lacks any additional information whether PREPA or Genera submitted information to meet any legal or regulatory threshold to justify the adjustment of the FCA to collect a reserve. Although the contract had not been finalized at that moment, and thus there was no contractual or legally binding requirement for PREPA to make any portion of the \$110 million proposed payment, the Energy

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<sup>11</sup>Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2025/02/20250228-CT20230001-Resolution-and-Order.pdf>.

<sup>12</sup>Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2025/03/20250328-MI20200001-Resolucion-y-Orden.pdf>.

Bureau determined “to create a **reserve** through the FCA Clause to withhold the portion of the payment associated with the aforementioned amendment for the period in question.” *Id.*, p. 4 (emphasis added)(translation provided). As established in the order, the reserve would be for the sum of \$40 million and corresponds to the March period as of June 2025, at a rate of \$10 million per month. *Id.* The Energy Bureau warned that this sum may not be disbursed until the Energy Bureau evaluates the proposed amendment and issues the amended certificate of compliance with public energy policy and the Fiscal Oversight Board gives its approval. *Id.* The total amount to be collected from the proposed amendment is \$110 million, leaving \$70 million to be recovered through the FCA Clause, which will be included in the next quarterly reconciliations. *Id.* The Energy Bureau then ordered LUMA to include in its next proposals of factors the corresponding reserve item associated with the aforementioned amendment, at a rate of \$10 million per month, until the remaining \$70 million is recovered. *Id.*

67. The Genera Bonus Reserve Order is silent regarding what was the threshold that PREPA or Genera met to justify that a potential financial obligation to benefit Genera, be collected through a rider to create a reserve. A review of said Order reveals that the reserve is to enable PREPA to make a disbursement in the event that the amendment to the LGA OMA is approved, and thus, enable PREPA to meet a contractual obligation.<sup>13</sup> Moreover, there is no indication in the Genera Bonus Reserve Order that the Energy Bureau applied the heightened and stringent emergency standard that it applied in the May 29<sup>th</sup> Order to LUMA’s request for a temporary rate adjustment to fund the T&D OMA Outage Event Reserve Account.

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<sup>13</sup> The March 29 Order provides that out of the \$110 million, only \$15.4 million corresponds to incentives already generated in fiscal year 2024. Thus, \$94.6 million is a potential, not firm, contractual obligation subject to the LGA OMA being amended.

68. Further, the Genera Bonus Reserve Order expressly acknowledges that the establishment of a reserve in this context is not unprecedented. The Energy Bureau specifically stated, “[i]t should be noted that this is not the first time that a reservation has been implemented.” Genera Bonus Reserve Order, p. 4. This observation underscores the Energy Bureau’s established practice of utilizing reserves as a regulatory tool to address evolving contractual and financial obligations within the energy sector and regulated entities, like PREPA. The Order further elaborates that, by *Resolution and Order* issued on December 21, 2023, the Energy Bureau had previously created a reserve to address the third amendment to the contract between the PREPA and AES Puerto Rico, L.P (the “AES Reserve Order”). *Id.* The referenced amendment was executed to address increased operating costs incurred by AES as a direct result of changes in local environmental laws. *Id.* In that instance, although it had not yet approved the amendment to the AES contract, the Energy Bureau determined that the creation of a reserve was warranted to ensure that PREPA could meet its revised contractual obligations arising from the amendment. AES Reserve Order, p. 3. (“Notwithstanding the foregoing, the Energy Bureau DETERMINES appropriate to create a reserve through the PPCA Clause that SHALL BE used to cover the impact, if any, to consumers that may be caused by PREPA’s request for approval of the 3rd Amendment to the PPOA between PREPA and AES.” (translation provided)).

69. The aforementioned prior actions of this Energy Bureau reveal a settled regulatory approach: reserves are implemented when there is a clear, identifiable need to address new or modified contractual obligations, particularly those arising from external legal or regulatory changes. The Energy Bureau’s rationale in both the Genera Bonus Reserve Order and the AES Reserve Order reflects its commitment to prudent fiscal management and regulatory oversight, ensuring that reserves are established only when justified by concrete, documented changes or

firmly established, in contractual or statutory requirements. It is equally, if not more imperative, to establish a reserve designed to appropriately address system outages after major events or hurricanes which reserve funds ultimately benefits customers.

70. It is important to emphasize that in approving the AES Reserve and the General Bonus Reserve this Energy Bureau did not follow ratemaking proceedings. Rather, both reserves were established through standard regulatory non-adjudicative processes, without any finding or determination that an emergency or temporary circumstance justified their creation or impact on customers. This distinction is critical, as it demonstrates that the reserves in question were not intended as extraordinary measures, but rather as components of the ordinary regulatory framework.

71. Although there is a clear and established contractual obligation to replenish the Outage Event Reserve Account pursuant to the mechanism set forth in Section 7.4 of the T&D OMA, LUMA nonetheless submitted an application supported by sworn testimony and documents and justified a request to replenish the Outage Event Reserve Account in accordance with the requirements of Section 6.25(d) of Act 57-2014. The application to LUMA's request of a different and more stringent standard to evaluate a request to fund a reserve, is an incorrect and arbitrary ruling that cannot be maintained. *See Asoc. Fcias. Com. v. Depto. De Salud*, 156 DPR 105, 137 (2002) (*holding* that an agency ruling cannot produce contradictory results for fundamentally identical situations).

72. It is crucial that the Outage Event Reserve Account be funded properly. It is common practice in utility rate making to incorporate similar riders. *See Exhibit 1.0*, Testimony of A. Figueroa, ll 325-323. Due to the island's climate and geographic location, major storms can be expected frequently. *Id.*, ll 326-327 Further, due to the weakened state of the T&D System, the



T&D OMA contemplates a reserve account so that LUMA has funding available to pay for the costs to respond to these events. *Id.*, ll 328-330. **LUMA’s priority is to respond to storm-related outages and restore electricity as safely and urgently as possible.** *Id.*, ll 330-331 (emphasis added). Costs accumulate, and once the outage event occurs, LUMA must be able to draw down the outage reserve account to cover those costs, and the reserve account would then be replenished for the next event. *Id.*, ll 331-334. Failure to fund the Outage Event Reserve Account could leave the utility at risk during the next outage event. *Id.*, ll 336-37. This situation creates vulnerabilities since it requires LUMA to otherwise use funds allocated for ordinary operation and maintenance expenditures to be redirected to storm response, the opposite of what is intended to be prevented through the Outage Event Reserve Account. *Id.*, ll 337-341.

73. The sworn testimonies that LUMA submitted in support of the temporary rate adjustment request demonstrate that a temporary rate adjustment to fund the Outage Account is needed. Specifically, LUMA’s evidence establishes that failure to replenish the Outage Event Reserve Account would further exacerbate the ongoing financial crisis and render the system unnecessarily vulnerable to external shocks. The contractual requirement, coupled with the evidence submitted by LUMA, underscores the necessity of immediate action to ensure the system’s financial stability and operational resilience. Wherefore, LUMA urgently requests that the Energy Bureau authorize LUMA to collect \$30 million through the Outage Event Reserve Rider as requested in the Temporary Rate Petition to duly fund the Outage Event Reserve Account and be prepared to cover Outage Event Costs.

***D. The Energy Bureau erred in holding that the Temporary Rate Petition does not contain evidence of the existence of a temporary or emergency event.***

74. In the May 29<sup>th</sup> Order, the Energy Bureau stated that a temporary rate adjustment request must establish “that the precipitating circumstance qualifies as an *emergency or temporary*

*event*. This Energy Bureau indicated that “three broad classes of circumstance satisfy this standard,” referring to when an event will be deemed an emergency or temporary under Section 6.25(d) of Act 57-2014. These categories created by the Energy Bureau are: financial crises, operational threats, and external shocks. *See* May 29<sup>th</sup> Order, pp. 2-3.

75. The Energy Bureau defined financial crises as “qualifying events when they threaten the utility's ability to continue essential operations.” Financial crises amount to “severe cash flow shortfalls that directly jeopardize service reliability or safety, as well as the sudden loss of expected funding sources that are essential for maintaining normal operations.” *Id.*, p. 2. In turn, the Energy Bureau defined operational threats as events that “imminently endanger system reliability, safety, or the utility’s capacity to fulfill its public service obligations. These threats include equipment failures or infrastructure damage that require immediate and substantial capital expenditure to prevent service disruption or safety hazards.” *See* May 29<sup>th</sup> Order, p. 2. Moreover, per this Energy Bureau, operational threats can encompass “regulatory or legal mandates that impose unexpected and significant financial obligations with immediate compliance requirements.” *Id.*

76. As explained above, the Energy Bureau erred in limiting the availability of a temporary rate petition to circumstances of sudden “discrete occurrences that imminently threaten service reliability or financial solvency,” and imposing a severity requirement that requires a substantial threat with material consequences. Furthermore, the Energy Bureau erred in requiring at the temporary review petition stage, that the applicant utility submit competent and verifiable evidence to prove that an event qualifies as an emergency or temporary event. *See* May 29<sup>th</sup> Order, pp. 3, 6. The statutory threshold sufficiency standard requires documentation and information that, in the discretion of the applicant utility, justifies the emergency or temporary rate. The erroneous

evidentiary standard that the Energy Bureau applied to deny LUMA's Temporary Rate Petition precipitated the also erroneous conclusion of lack of evidence of emergency or temporary events to justify a temporary rate adjustment. LUMA hereby shows that the Energy Bureau erred in holding that LUMA did not establish that an emergency or temporary event exists.

77. The Energy Bureau referenced several of the "factors" that are discussed in the Temporary Rate Petition and justify the temporary rate petition: "(1) ordinary inflation; (ii) the fact that new revenues from the provisional rates that LUMA will propose on July 3, 2025 will not start flowing until September, 2025, (iii) the outdated nature of base rates last set in 2017, (iv) PREPA's inability while in bankruptcy to obtain external financing, and (iv) the general 'fragile' condition of the transmission distribution system." *Id.* p. 4. Incorrectly, however, the Energy Bureau reasoned that LUMA did not establish the existence of an emergency or temporary event because the temporary rate petition did not "tie these factors to a discrete occurrence that imminently threatens service reliability or financial solvency."

78. Even applying the Energy Bureau's definitions of "qualifying events," there is no doubt that the petition established with duly substantiated information, documents, and testimony, that there is both a multi-pronged financial crisis and an operational urgent scenario that threaten LUMA's ability to provide safe, efficient and reliable services to customers and cannot wait for the full-blown evidentiary proceedings of a permanent rate case.

79. As forewarned in the introduction of this Motion, both the Puerto Rico Governor's Executive Order (OE-2025-016)<sup>14</sup> and the US DOE's Order No. 202-25-2<sup>15</sup> provide unequivocal, official recognition that Puerto Rico is facing a severe emergency in its electric service.

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<sup>14</sup> Available at <https://docs.pr.gov/files/Estado/OrdenesEjecutivas/2025/OE-2025-016%20ENG.pdf>.

<sup>15</sup> Available at <https://www.energy.gov/sites/default/files/2025-05/EXEC-2025->

80. The Executive Order issued by Governor Jeniffer A. González Colón explicitly declares a “modification and expansion of the state of emergency over Puerto Rico’s energy system,” citing decades of infrastructure deterioration, repeated natural disasters, and a critical shortfall in generation capacity. The order details the dire state of the grid, noting that the majority of infrastructure has exceeded its intended lifespan by over thirty years and that recent events – including hurricanes and earthquakes – have left the system fragile and prone to frequent failures. The Governor’s order authorizes extraordinary measures, such as exempting key energy operators from standard permitting and regulatory requirements, to expedite repairs, reconstruction, and modernization of the grid. This sweeping action is a direct acknowledgment of the urgent and exceptional circumstances affecting the island’s electric service.

81. Similarly, the US DOE Order No. 202-25-2, issued under federal emergency authority, reinforces this recognition at the national level. The order describes the Puerto Rican grid as “fragile,” plagued by frequent blackouts, poor power quality, and a lack of basic maintenance such as vegetation management. It references recent island-wide blackouts and highlights the direct impact on all sectors of society, including critical infrastructure and public safety. The DOE order mandates immediate vegetation clearing along transmission corridors as an emergency measure to prevent further outages.

82. Both documents, through their language, scope, and the extraordinary powers invoked, serve as clear and authoritative proof that there is an officially recognized emergency in Puerto Rico’s electric system.

### **1. Existence of a Financial Emergency.**

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[006064%20-%20PR%20202c%20Emergency%20Measures%20Transmission%20signed%20by%20Secretary%20Wright%205-16-25.pdf#:~:text=Pursuant%20to%20the%20authority%20vested%20in%20the%20Secretary,meet%20the%20emergency%20and%20serve%20the%20public%20interest.](#)

83. Per this Energy Bureau's May 29<sup>th</sup> Order, scenarios of "financial crises," encompass: (i) situations involving imminent insolvency; (ii) inability to meet critical contractual obligations that are fundamental to the utility's operations or legal commitments; (iii) severe cash-flow shortfalls that directly jeopardize service reliability or safety; (iv) sudden loss of expected funding sources that are essential for maintaining normal operations; and (v) inability to access capital markets due to extraordinary circumstances may constitute a financial crisis warranting emergency rate relief." May 29<sup>th</sup> Order p. 2.

84. LUMA's Temporary Rate Petition, as well as the records of this Energy Bureau and publicly available information, show that each of the aforementioned five (5) financial emergency scenarios that the Energy Bureau identified in the May 29<sup>th</sup> Order are met in this case.

85. First, as the Energy Bureau acknowledged in the May 29<sup>th</sup> Order, LUMA's petition established that PREPA is a bankrupt utility that also lacks access to external financing. *See* May 29<sup>th</sup> Order, p. 4. Thus, insolvency is a current, ongoing and pervasive emergency scenario for PREPA. That ongoing emergency that threatens the utility's operations is compounded by a current liquidity emergency as to which this Energy Bureau is privy *via* PREPA's own admissions in public filings with the Energy Bureau and an ongoing investigation that at this stage remains confidential and pending a final determination by the Energy Bureau.

86. As this Energy Bureau is well aware, for months, PREPA has lacked funds to pay pensions of its retirees. On November 14, 2024, PREPA filed a motion in Case No. NEPR-MI-2021-0004, requesting a funding solution to meet its obligations towards its pensioners, and stated that without such a solution, PREPA will lack the resources needed to meet its pension obligations, leaving thousands of retirees and their families-many in vulnerable stages of life-in financial

uncertainty.” *See* PREPA’s Pensions November 14<sup>th</sup> Motion p. 3.<sup>16</sup> In a Resolution and Order dated December 26, 2024, the Energy Bureau approved PREPA’s use of federal funds reimbursements to cover pension payments temporarily, noted concern with PREPA’s use of non-recurring reimbursement funds to cover ongoing pension benefit obligations and, more importantly, ruled that PREPA’s practices “reveal[] a **structural deficiency** in the system’s ability to meet these recurring expenses.” *See* December 26<sup>th</sup> Order, Case No. NEPR-MI-2021-0004, p. 3 (emphasis added).<sup>17</sup>

87. As the public records of the Financial Oversight & Management Board for Puerto Rico (“FOMB”), the FOMB approved a bailout to PREPA of \$50 million to cover pensions costs until May 2025.<sup>18</sup>

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<sup>16</sup>Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2024/11/20241115-MI20210004-PREPA-retirement-system.pdf>.

<sup>17</sup>Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2024/12/20241226-MI20210004-Resolution-and-Order.pdf>.

<sup>18</sup> The FOMB has undertaken a series of decisive actions throughout FY 2025 to address PREPA’s acute pension funding crisis. The Board authorized a \$25 million loan from the Commonwealth in April 2025, specifically earmarked for pension payments for that month. *See* FOMB, Letter to Hon. Jenniffer A. González Colón, Governor of P.R., Certification of PREPA’s Second Revised FY2025 Budget (Apr. 15, 2025) available at [https://drive.google.com/file/d/1WSkLI\\_S5wwjnUBPvKV3TXIxKy5MCM-LT/view](https://drive.google.com/file/d/1WSkLI_S5wwjnUBPvKV3TXIxKy5MCM-LT/view) (last accessed on June 6, 2025)). This was followed by a second \$50 million loan in May 2025, for which PREPA was authorized to use \$25 million to cover May 2025 pension contributions. ( *See* FOMB, Letter to Hon. Jenniffer A. González Colón, Governor of P.R., Certification of PREPA’s Third Revised FY2025 Budget (May 28, 2025) available at [https://drive.google.com/file/d/1urD5qfUIpvmb3S6glYlbyDjn\\_35UeRW/view](https://drive.google.com/file/d/1urD5qfUIpvmb3S6glYlbyDjn_35UeRW/view) (last accessed on June 6, 2025)).

In addition to these emergency measures, the Government of Puerto Rico had previously executed a \$300 million loan agreement in December 2023 to fund PREPA’s pension obligations from December 2023 through December 2024, with \$156.8 million remaining available as of May 2025. (*See* FOMB, Letter to the Honorable Pedro R. Pierluisi, Governor of Puerto Rico, regarding Certification of FY2024 PREPA Budget by Oversight Board (December 12, 2023) available at <https://drive.google.com/file/d/1yZzpofzbqWLzaG82GcvVV0FFIYWCLBF/view> (last accessed June 6, 2025)).

The FOMB has issued clear recommendations to address both immediate and structural funding

88. Moreover, in a public filing dated May 2, 2025, before the United States District Court for the District of Puerto Rico in the PREPA Title III Bankruptcy matter, PREPA’s fiscal agent, the Puerto Rico Fiscal Agency and Financial Advisory Authority (AAFAF, for its Spanish acronym), referenced PREPA’s financial crisis that had lead PREPA to breach contractual funding obligations towards LUMA, stating that “PREPA has consistently suffered liquidity constraints, requiring Commonwealth funding and loans to help it meet the requirements under the Operation and Maintenance Agreements (“OMAs”) with LUMA and Genera PR. If necessary, evidence will demonstrate that as of April 25, 2025, PREPA had approximately \$1.2 billion in total cash, predominately in accounts required to be funded under the OMAs. Due to liquidity constraints, PREPA was unable to fully meet a \$726 million service account funding request from LUMA and Genera in April 2025, providing only \$264 million of the required amount.” *See bankruptcy cases pending before the United States District Court for the District of Puerto Rico: In re: The Financial Oversight and Management Board for Puerto Rico, as representative of the Commonwealth of Puerto Rico et al., Debtors.*, 17 BK 3283-LTS and *In re: The Financial Oversight and Management Board for Puerto Rico, as representative of the Puerto Rico Electric Power Authority, Debtor*, 17 BK 4780-LTS.

89. Current system information confirms the pervasiveness of PREPA’s liquidity and cash insufficiency concerns that compound the utility’s ongoing financial emergency. *See Exhibit I* of this Motion.

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needs with the mechanisms available under Section 6.25(d) of Act 57-2014, a mechanism specifically designed to address emergency or temporary situations. Regarding pensions, for the short term, PREPA was directed to file a petition for a temporary rate adjustment with PREB: “PREPA must use this mechanism to ensure it has sufficient funds to make pension payments in the short term” (*See* FOMB, Letter to Orlando C. Rivera Berríos, Director, Office of Management and Budget, and others, regarding PREPA Employee Retirement System Urgent Bridge Funding (March 25, 2025) available at [https://drive.google.com/file/d/1SmGSf2Z84MyrbPjYkY\\_4DFHwCDxxsdcp/view](https://drive.google.com/file/d/1SmGSf2Z84MyrbPjYkY_4DFHwCDxxsdcp/view) (last accessed on June 6, 2025)).

90. Second, public records of this Energy Bureau show that financial limitations have led to current unavailability of funds to meet PREB’s mandates on critical activities. One such example is found in fire mitigation activities that are costs included in the Temporary Rate Request for incremental costs.

91. On May 25, 2024, LUMA filed its *Request for Approval of T&D Budgets and Submission of GenCo Budgets for FY2025 and Budget Allocations for the Electric Power System*, in Case No. NEPR-MI-2021-0004, *In Re: LUMA Initial Budgets and Related Terms of Service*.<sup>19</sup> Therein, LUMA explained that, for FY2025, it had prioritized certain activities in order to develop a budget consistent with the 2017 Rate Order, the Puerto Rico Public–Private Partnerships Authority’s Budget Allocation Determination and the FY2024 budget approved by the Energy Bureau, while also executing initiatives that benefit customers and address their needs. However, to operate within existing financial constraints, LUMA explained that a number of activities, totaling \$ 65 million, had to be excluded or postponed. *See also Motion Submitting Responses to Requests for Information in Connection with FY2025 T&D Budgets and Request for Confidential Treatment*.<sup>20</sup> As an example, LUMA was forced to defer its Fire Mitigation activities entirely.

92. Nonetheless, in reviewing LUMA’s proposed FY2025 Budget, the Energy Bureau noted with concern that LUMA had listed fire mitigation amongst the activities to be deferred, due to budget constraints, and further characterized this deferral as unacceptable. *See Resolution and Order*, dated June 26, 2024, p. 4.<sup>21</sup> Accordingly, the Energy Bureau opted to restore the fire

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<sup>19</sup> Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2024/05/20240525-MI20210004-Motion-FY2025-TD-GenCo-and-System.pdf>.

<sup>20</sup> Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2024/06/20240620-MI20210004-LUMA-Responses-to-RFI.pdf>.

<sup>21</sup> Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2024/06/20240626-MI20210004-Resolution-and-Order.pdf>.



mitigation budget in its entirety and cautioned that it would not accept the deferral of critical safety initiatives such as fire mitigation. *Id.*, pp. 4-5.

93. The issue of fire mitigation stands as a clear example of the Energy Bureau's recognition of the urgent and non-negotiable needs of Puerto Rico's electric system. In its FY2025 budget proposal, LUMA, faced with significant financial constraints and the need to prioritize within a limited budget envelope, made the difficult decision to defer several activities, including its entire fire mitigation program. This decision was not made lightly; rather, it reflected the challenge of balancing compliance with an outdated rate regime, the P3A's Budget Allocation Determination, and the FY2024 approved budget, all while striving to execute initiatives that directly benefit customers.

94. The restoration of the fire mitigation budget by the Energy Bureau not only underscores the critical nature of such safety initiatives but also highlights that an urgent scenario that requires immediate attention exists when essential activities are excluded from the annual budget due to financial constraints.

95. Furthermore, when a critical program like fire mitigation is deferred due to financial constraints, its subsequent reinstatement by regulatory mandate creates an unbudgeted expenditure that disrupts the carefully balanced fiscal plan for the year. This is proof of a financial emergency rooted in the fact that current rates **do not compensate the utility for all of its necessary and critical costs**. It also illustrates the clear harm to the utility and customers, of operating in a dire financial scenario that requires adjustments to reallocate scarce and insufficient funds, rather than ensuring that the utility may collect revenue sufficient to meet regulatory and legal mandates and fund critical activities. Re-prioritization of spending activities due to rate and revenues insufficiency, have a cascading effect on the overall financial management of the electric system,

which situation is undoubtedly a financial emergency that unavoidably results in a negative impact to customers.

96. As seen in the FY2025 budget process, LUMA’s initial exclusion of fire mitigation was a direct response to the need to remain within strict budgetary limits that arise from the uncontested insufficiency of rates that **do not compensate the utility as Act 57 and settled ratemaking principles demand**. However, the Energy Bureau’s intervention to restore the funding – while necessary from a system safety perspective – meant that LUMA had to adjust its financial planning on short notice given that the Energy Bureau did not provide a financing mechanism to cover a regulatory requirement. This situation illustrates an urgent financial and operational scenario that handcuffs LUMA from prudently operating the T&D System and precludes it from responding to evolving system vulnerabilities to the detriment of customer’s interests.

97. Another example of the current financial emergency that threatens operations, are unbudgeted and unfunded storm recovery costs such as those related to recovery efforts from Tropical Storm Ernesto that affected Puerto Rico in August, 2024. LUMA’s quarterly reports for Q1, Q2 and Q3 of FY2025<sup>22</sup> provide a clear, data-driven illustration of how major, unplanned events – such as Tropical Storm Ernesto – significantly disrupt an established fiscal year budget and expose the utility to unacceptable and unreasonable risks of not being able to respond to an emergency event due to lack of cash resources to restore service.

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<sup>22</sup> Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2024/11/20241114-MI20210004-Motion-to-Submit-Quarterly-Report-for-the-First-Quarter-of-Fiscal-Year-2025.pdf>; <https://energia.pr.gov/wp-content/uploads/sites/7/2025/02/Motion-to-Submit-Quarterly-Report-for-the-Second-Quarter-of-Fiscal-Year-2025.pdf>; <https://energia.pr.gov/wp-content/uploads/sites/7/2025/05/20250515-MI20210004-Public-Motion-to-Subm-Quarterly-Report.pdf>.

98. LUMA's financial reports, submitted to the Energy Bureau and that are available on the Energy Bureau's public docket, consistently attribute unfavorable variances in labor expenditures to the need for rapid mobilization of a large workforce to address the widespread damage caused by Tropical Storm Ernesto. Another area of budget overrun was in professional and technical outsourced services. The reports detail how the urgent need for specialized restoration work, engineering assessments, and third-party support in the aftermath of Ernesto led to higher-than-budgeted expenditures. The emergency response also required significant, unplanned spending on transportation, per diem, and materials. The need to rapidly move crews and equipment across the island, coupled with the replacement of thousands of damaged poles, conductors, and other critical infrastructure, resulted in transportation and material costs that exceeded original projections. Vegetation management, a key component of both immediate restoration and long-term system resilience, also saw higher-than-expected expenditures. The quarterly reports highlight that, following Tropical Storm Ernesto, LUMA had to accelerate and expand its vegetation clearing efforts to mitigate future risks and restore access to damaged areas.

99. Given that the Outage Event Reserve Account had not been replenished by PREPA, LUMA did not have access to cash urgently needed for restoration efforts and had to reallocate spending to fund storm recovery, all in detriment of other critical activities. The cumulative effect of these non-budgeted expenditures was a significant disruption to LUMA's ability to fund operational costs in FY2025. The need to respond to Tropical Storm Ernesto forced the reallocation of funds from other planned initiatives, delayed or deferred non-critical projects, and, in some cases, resulted in budget overruns.

100. The FY2025 quarterly reports make it clear that non-budgeted expenditures arising from emergency events like Tropical Storm Ernesto materially affect budgets and place severe

strains on limited cash resources at a time when cash is urgently needed to incur urgent and non-budgeted expenditures. Those expenditures are not only unavoidable but essential to the restoration of service and the protection of public safety. While LUMA's original FY2025 Budget was constructed to reflect prudent financial management and regulatory requirements, the reality of operating a critical infrastructure system in a hurricane and tropical storm-prone region necessitates a degree of flexibility and contingencies that can accommodate such shocks, without jeopardizing the utility's overall financial health. The confluence of these factors clearly show that LUMA operates the T&D System in a current state of financial emergency.

101. This example of non-budgeted expenses incurred in connection with Tropical Storm Ernesto, is clear and convincing proof of the urgent need to adjust rates to fund the contractually mandated Outage Event Reserve Account, as LUMA proposed in the Temporary Rate Petition. There is no principled nor reasonable justification to demand that the utility show that it will have \$0 in cash in the future, to justify funding a reserve account that is earmarked precisely to address an emergency caused by a category of emergency that is, by its nature, sudden, and that the Energy Bureau labeled as "external shocks" in the May 29<sup>th</sup> Order. Even if, potentially, once a hurricane hits the utility could request an emergency rate adjustment, the adjustment would be billed to and paid by customers at a future time. It defies logic to fail to take regulatory action to protect the System and customer's interests and propose that an after-the-fact emergency rate adjustment would ensure sufficient liquidity to restore services immediately after an emergency event such as a hurricane.

102. Finally, LUMA's Temporary Rate Petition clearly meets another of the Energy Bureau's emergency events: sudden loss of expected funding sources that are essential for maintaining normal operations. This Energy Bureau, however, ignored the evidence submitted in

*Exhibit 2.01* and the supporting testimonies of Mr. Figueroa and Mr. Smith, *see Exhibits 1.0 and 2.0*, whereby LUMA established that current rates are insufficient to fund the Default Budget that per the orders of the Energy Bureau in Case No. NEPR-AP-2023-0004, will apply at least during the first quarter of FY2026. LUMA established that said rate insufficiency arises out recent and sudden reduction in the funding that was expected to be available for the FY2026 T&D Default Budget to maintain normal operations.

103. As was explained above, the Energy Bureau ruled that LUMA shall operate under a Default Budget during the first quarter of FY2026, meanwhile current rates do not cover two components of the Default Budget: CPI Adjustment, as required by Section 7.3 (d) of the T&D OMA and \$44 million that in FY2025 were funded through external sources and thus, are also not funded by current rates. *See Exhibit 1.0*, Testimony of A. Figueroa, ll 171-237; *Exhibit 2.02*, Section 1.0 and 1.1). The May 29<sup>th</sup> Order ignored this funding shortfall which is undoubtedly a temporary emergency event that arose unexpectedly given the Energy Bureau's April 21<sup>st</sup> determination of April 21, 2025 in Case No. NEPR-AP-2023-0003. It is arbitrary and erroneous for the Energy Bureau to remove this uncontested and proven fact and scenario of funding insufficiency, from its analysis of the existence of a temporary or emergency event.

## **2. Existence of an operational emergency that demands immediate attention.**

104. The Energy Bureau's determination that the Temporary Rate Petition did not establish an operational emergency that imminently endangers system reliability and the utility's capacity to fulfill its public service obligations is also incorrect.

105. As a threshold matter, the Energy Bureau erred in holding that LUMA's Temporary Rate Petition only established that the T&D System is "fragile." *See* May 29<sup>th</sup> Order p. 4. The Energy Bureau's reference to the term "fragile" misrepresents and seriously belittles the

information that LUMA submitted for the record on the state of the T&D System, which state is known by the Energy Bureau as the records of several Energy Bureau proceedings show, including the process whereby the Energy Bureau approved LUMA's System Remediation Plan, Case No. NEPR-MI-2020-0019, *In re Review of the Puerto Rico Electric Power Authority's System Remediation Plan*, and Case No. NEPR-MI-2024-0005, *In re: Electric System Priority Stabilization Plan*.

106. As established in the pre-filed testimony of Mr. Figueroa, *Exhibit 1.0*, [t]he T&D System was in such poor condition when LUMA took over, . . . that sustained levels of proactive maintenance, coupled with significant capital investments, as well as investments in supporting functions across the organization, are still required to revert the rate of degradation and begin to deliver improvements in quality of service to our customers." *Exhibit 1.0*, Testimony of A. Figueroa, ll 156-61. Mr. Figueroa also provided an example to illustrate that the T&D System is deteriorating more rapidly than can be addressed with current funding levels, stating that "at the beginning of FY2025, there were 53 transmission circuit breakers out of service. Throughout the year, LUMA has replaced and repaired 39 of them. Despite these efforts, the number of transmission circuit breakers out of service currently stands at 57. This means that more transmission breakers failed throughout the fiscal year than LUMA could reasonably put back in service given total available funding levels, and this is despite internal efforts to maximize application of those limited funds on critical stabilization assets, including transmission breakers and transformers." *Id.*, ll 162-170. Nowhere in the May 29<sup>th</sup> Order did this Energy Bureau even reference this information.

107. Mr. Figueroa also explained, but this Energy Bureau ignored, that "the T&D System remains fragile and is currently degrading at a faster pace than the improvements that are

being made on a daily basis.” *Id.*, ll 149-151. He also illustrated the causes of the urgent operational scenario rooted in the fact that “years before LUMA took over as Operator, the T&D System suffered from chronic underinvestment, resulting in a system lacking meaningful capital investment and on which maintenance was performed simply to ‘catch up.’” *Id.*, ll 151-154.

108. *Exhibit 2.01* of the Temporary Rate Petition also includes detailed explanations on the emergency state of the T&D System showing that significant investments are urgently needed to avert threats to LUMA’s ability to operate and deliver safe, reliable and efficient electric power services. LUMA showed that it is operating amid many urgent threats caused by historical and current insufficient funding to operate, maintain and repair a failing T&D System plagued by years of lack of maintenance and significant underinvestment.

109. On page 6 of *Exhibit 2.01*, the T&D Operations Department established a present and imminently continual urgent operational scenario whereby the Department can only perform limited preventative maintenance, “addressing only those deficiencies and abnormalities that pose the most significant risks with respect to safety and system reliability.” The Exhibit references the risks of operating a “well-documented fragile and historically poorly maintained T&D System,” with funding constraints, and explained that absent a rate adjustment, critical substation maintenance would maintain the *status quo* of a degrading T&D System that operates on a repair on failure regime. *See Exhibit 2.01*, p. 6. The Department illustrated the existence of a present and imminent danger to reliability and threat to LUMA’s capacity to fulfill its public service obligations. For example, the Operations Department established that “approximately half of the existing substation equipment remains outside of acceptable maintenance intervals and combining this situation with the known fragile state of the system, a high risk of more large-scale events will continue to persist.” *Id.* p. 7.

110. On page 8, *Exhibit 2.01* further establishes the existence of current and imminent threats to system operations and reliability by explaining that there is a current backlog of critical deficiencies. *Id.* p. 9. The document also includes, as an example, “the June 12, 2024, partial island outage event [whereby] [a] misconfigured system resulting from multiple transmission line segment failures, reduced LUMA’s ability to stabilize the system [and] resulted in high loading of remaining segments which, due to the degraded condition of the system, could not operate with the increased loading.” *Id.* The Energy Bureau, however, did not ground its May 29<sup>th</sup> Order in consideration of this information.

111. Also on page 9, *Exhibit 2.01* documents existing issues “with transformers, breakers and protection equipment[], [and explained that] [a] subset of these items will **pose a high risk of future events occurring** that could impact large groups of customers and divert LUMA’s resources from performing more proactive / planned maintenance. This will cause the T&D System to fall further out of its designed configuration and limit any contingencies to absorb system disturbances without incurring unplanned outages.” Moreover, the information submitted by LUMA establishes that “the current lack of T&D System contingencies has surpassed unacceptable levels and requires urgent attention, as further delays in repairing and replacing failed equipment will only increase LUMA’s and its customers’ exposure to more frequent and larger outages during the upcoming storm season.” *Id.*, p. 10.

112. Moving forward to page 11, *Exhibit 2.01* establishes that the T&D System suffers from thermal and voltage issues and situations where overhead primary wire is on unsound and non-standard structures in violation of the National Electric Safety Code (“NESC”). There are “fifty (50) out of service transmission line segments that are core to system stabilization, as they represent essential facilities to reduce the risk of larger transmission-caused outages.” *Id.*, p. 11.



113. From the IT/OT perspective, an operational emergency was established, showing that LUMA operates with “end-of-life infrastructure and end-user tools, which are vital for operational continuity and outage response,” and that there are “end-of-life IT/OT infrastructure—hardware, software, and systems that underpin grid control, enterprise applications, and secure communication.” *Id.*, at 13, *see also id.*, p. 14. The documentation submitted also shows that IT/OT “assets are either no longer supported by vendors or have exceeded their operational lifecycle, posing significant reliability and cybersecurity risks.” *Id.* LUMA also outlined risks to private and financial information of customers. *Id.*

114. From the perspective of facilities, *Exhibit 2.01* establishes that there are myriad critical facilities in current disrepair, which scenario poses a current and also, imminent risk to safe operations and employee safety. *Id.*, pp. 17-18, Table 2-2. The list includes:

- a. Power generators in disrepair, posing current and imminent risks to employee safety and threatening operational continuity,
- b. Structural risks at the Luchetti building that currently threaten employee safety,
- c. Unusable buildings that must be demolished,
- d. Facilities that do not comply with fire codes,
- e. Damaged structures and safety issues that jeopardize the continuity of critical operations and are expected to lead to unexpected shutdowns or major incidents.

115. The aforementioned information clearly meets the emergency standard of Act 57 and renders erroneous and arbitrary, the determination that the Temporary Rate Petition did not meet the threshold sufficiency standard of an emergency event.

116. Moreover, it is arbitrary and unreasonable to deny the existence of an operational emergency for purposes of LUMA's proposed emergency rate adjustment, meanwhile the Energy Bureau recently explicitly recognized the existence of an emergency situation affecting the island's electric service, in Case No. NEPR-MI-2024-0005, *In re: Electric System Priority Stabilization Plan*. By way of a Resolution and Order issued on March 28, 2025 in said docket,<sup>23</sup> whereby the Energy Bureau required Electric System Priority Stabilization Plan, Puerto Rico's electric grid was described as "significantly strained," with high rates of forced outages and an inability to meet peak demand, which "underscores its fragility and justifies the emergency measures established in the Priority Stabilization Plan." *Id.*, p. 2.

117. Specifically, the Energy Bureau concluded that Puerto Rico is in a "state of energy emergency," with the grid unable to reliably meet electricity demand under normal conditions, let alone in the face of additional generator failures, heat waves, or hurricanes. *Id.*, p. 4. The Energy Bureau emphasized that, without immediate action, interruptions in electricity service are not only likely but unavoidable, making the case for urgent and decisive intervention to stabilize the system.

118. The projects proposed by LUMA under the Priority Stabilization Plan were evaluated and prioritized based on a clear criterion of urgency established by the Energy Bureau. *Id.*, p. 5. The Energy Bureau specifically highlighted the need for "immediate remedial actions" to prevent catastrophic events, such as widespread load shedding and blackouts, which have become increasingly common due to the fragility of the existing generation fleet.

119. In the lead up to the establishment of the Priority Stabilization Plan, LUMA informed the Energy Bureau that the inclusion of initiatives outlined in said plan would have a significant impact on its approved and future budgets. *See LUMA's Motion Submitting Responses*

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<sup>23</sup>Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2025/04/20250328-MI20240005-Resolution-and-Order.pdf>.

to Energy Bureau’s Requirement of Information in Compliance with Resolution and Order of December 5, 2024, p. 30.<sup>24</sup> While some of the projects and activities were already anticipated in the FY2025 Budget, LUMA identified that the full scope of work required by the stabilization plan represents an incremental investment of approximately \$55.8 million for FY2025 alone. LUMA’s preliminary estimate was that the activities for the Plan and thus, compliance with the Energy Bureau’s mandate to address the emergency would require incremental investments of \$37.7 million for the FY2026 budget. Approximately \$35 million that are needed for the System Stabilization Plan, remain unfunded.

120. The Energy Bureau’s subsequent approval of LUMA’s proposed investments for the Priority Stabilization Plan clearly establishes that work to stabilize electric power services undoubtedly conform an operational emergency that requires immediate attention and also meets the operational emergency standard that the Energy Bureau outlined in the May 29<sup>th</sup> Order. It also provides another example of the existing and impending financial emergency whereby LUMA is unable to fund PREB mandates involving critical activities, due to funding constraints.

***E. The Temporary Rate Petition Included Sufficient Evidence to Grant Preliminary Approval of Temporary and Emergency Funding Needs.***

121. The Energy Bureau rejected LUMA’s Temporary Rate Petition finding that LUMA did not show that the “elements of its proposed spending are necessary due to emergency or temporary events.” *See* May 29<sup>th</sup> Order, p. 5. The Energy Bureau also ruled that the Temporary Rate Petition did not “show[] that . . . [the] proposed charge is necessary, narrowly tailored, and reasonable, [and] that the statutory text for expedited relief is not satisfied.” *Id.*, p. 6. Further, the Energy Bureau also stated that the two-pronged that came to life in the May 29<sup>th</sup> Order, demands

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<sup>24</sup> Available at <https://energja.pr.gov/wp-content/uploads/sites/7/2024/12/20241223-MI20240005-Motion-Subm-Responses-to-Energy-Bureau-Req-of-Inf-in-CompL-with-Resol-and-Order-of-Dec-5th-2024.pdf>.

a demonstration that the charge is just, reasonable, and no more than necessary to address the emergency, with the burden of proof resting on the utility throughout the proceeding.” *Id.*, p. 2.

122. LUMA respectfully contends that the Temporary Rate Petition met the duly grounded requirement to establish that the funding needs stated therein constitute financial crises and/or operational threats under the Energy Bureau’s broad classes that satisfy the standard designed by this forum for Section 6.25(d) of Act 57-2014. As such, the Energy Bureau should have granted preliminary approval of LUMA’s Temporary Rate Petition and issued requests for information thereafter to determine whether the costs are just, reasonable, and no more than necessary to address the emergency.

123. As indicated in LUMA’s Temporary Rate Petition, LUMA will face material difficulties executing the work budgeted for the FY2026. For example, Mr. Figueroa provided direct testimony in support of LUMA’s Petition in which he expressed that “LUMA has identified additional urgent and critical investments which cannot wait and which, if delayed beyond July 1, 2025, carry a high risk of resulting in a degradation of service or future cost increases. These costs are identified and supported by my colleague Andrew Smith, *Exhibit 2.0*, and the accompanying *Exhibits 2.01* and *2.02* of his testimony.” *See Exhibit 1.0*, Testimony of A. Figueroa, ll 210-214.

124. In harmony with Mr. Figueroa’s testimony, Mr. Smith testified that the temporary rate adjustment was needed “in order to advance critical investment in the T&D System, address previously deferred work that was deferred to respond to the emergency needs of the system, and support investment in the system to avoid (a) a decline in service or (b) an increase in future costs that could have been avoided if additional cash was provided by a temporary rate adjustment, or both.” *See Exhibit 2.0*, Testimony of A. Smith, ll 61-65. He further testified on the amount needed and the impact on the operations if those amounts were not funded. *Id.*, ll 108-111.

125. In the forthcoming sections, LUMA describes in detail the urgent funding needs as included in LUMA's Temporary Rate Petition, for the different operational components for the Fiscal Year 2026, along with a detailed overview of the activities and/or projects impacted and the risks associated with the current underfunding in providing the O&M Services that constitute an emergency or temporary event to justify a temporary rate adjustment under Section 6.25(d) of Act 57-2014.

126. These funding needs qualify both as a financial crisis because of severe cash flow shortfalls that directly jeopardize service reliability or safety, as well as the sudden loss of expected funding sources that are essential for maintaining normal operations and as operational threats because there is a current and imminent danger to system reliability, safety, and LUMA's capacity to fulfill its public service obligations. The current and imminent threats include equipment failures or infrastructure damage that require immediate and substantial capital expenditure to prevent service disruption or safety hazards" or encompass regulatory or legal mandates that impose significant financial obligations with immediate compliance requirements.

**1. Funding needs brought by the financial crises.**

127. As established in LUMA's Temporary Rate Petition, payment processing fees related to the collection of payments from customers are expected to increase due to inflation, as many of the contracts between LUMA and the payment processing providers contain annual inflation escalators, and volume increases as more customers adopt electronic payment mechanisms. *See Exhibit 2.01*, p. 5. Moreover, as LUMA continues with increased collection efforts (including disconnections), an increase in payment frequency is expected in FY2026. Some of the payment processing contracts calculate fees based on transaction volume; therefore, as payment frequency increases, there will be a corresponding increase in payment processing costs.

Therefore, the Customer Experience Department's budget for FY2026 reflects a \$4.5 million increase compared to the FY2026 default budget. *Id.*

128. As is common knowledge, collecting revenue is a fundamental function of any electric service company, including LUMA. Thus, payment processing fees are unavoidable and cannot be paused or deferred. Non-payment from LUMA of those payment processing fees could result in interruptions to service, which would impact collections from the affected payment processing channel. Payment processing channels are a method or system used to facilitate electronic payments, including point-of-sale systems, web-based payment platforms, and processing payments via phone. LUMA has identified an imminent danger that may not be able to collect customer payments using the impacted payment processing channels. Ultimately, the inability to collect customer payments can entail "the sudden loss of expected funding sources that are essential for maintaining normal operations."

129. Reduced revenues will increase the financial crisis and lead to less cash to fund operations. There is no doubt that LUMA's potential inability to collect payments involves a current financial crisis that will worsen absent a rate adjustment, as defined by the Energy Bureau and qualifies as an "emergency" or "temporary" event for purposes of Section 6.25(d) of Act 57-2014.

## **2. Funding needed to avert operational threats.**

130. As discussed previously, the second broad class satisfies the standard designed by the Energy Bureau for Section 6.25(d) of Act 57-2014 is "Operational Threats." Under that broad category, the Energy Bureau further included circumstances that "imminently endanger system reliability, safety, or the utility's capacity to fulfill its public service obligations. These threats include equipment failures or infrastructure damage that require immediate and substantial capital

expenditure to prevent service disruption or safety hazards” or encompass “regulatory or legal mandates that impose unexpected and significant financial obligations with immediate compliance requirements.” LUMA respectfully submits that its Temporary Rate Petition included extensive examples of activities needed that fulfilled those two sub-classes, as will be discussed below.

**a. Equipment Failure**

131. In its Petition, LUMA offered sufficient examples of “Operational Threats” due to “equipment failures.” These threats require “immediate and substantial capital expenditure to prevent service disruption or safety hazards.” Furthermore, prompt attention to the issues discussed below will avoid imminent dangers and risks to reliability, safety and thus, allow the utility to fulfill its public service obligations.

132. LUMA respectfully and urgently requests the Energy Bureau to reconsider its May 29<sup>th</sup> Order.

**i. Substation Equipment**

133. Approximately half of the existing substation equipment remains outside of acceptable maintenance intervals and combining this situation with the known fragile state of the system, a high risk of more large-scale events will continue to persist. As LUMA explained, the requested funding is needed to avoid delays in the progression into a full maintenance program, which delays will mean that known risks to the integrity of the T&D System will take longer to address and does not represent a prudent approach to minimizing risks in the system and negative impacts on customers. *See Exhibit 2.01*, p. 6.

134. If current insufficient rates are maintained, LUMA will experience delays in expanding the scope and frequency of substation inspections and tests and limitations to address the ever-increasing backlog of corrective maintenance adequately that will place a pause on

reducing (1) less efficient reactive maintenance activities, (2) excessive levels of overtime, and (3) the preponderance of unplanned system outages be they routine or catastrophic, and (4) in some instances increase the likelihood of safety- or operability-related incidents. *See Exhibit 2.01*, pp. 6-7. All these risks carry with them incremental costs to LUMA and its customers. Unplanned outages that could have been avoided but for funding constraints carry with them real costs to be absorbed by all parties, and excessive levels of overtime related to reactive maintenance and outage restoration are incurred costs that divert funds that otherwise would have been applied towards proactive system hardening and stabilization activities. *See id.*

135. Incremental costs in FY2026 of \$21.0 million are required and critically necessary to add minimum necessary activities to stabilize and continue the transition towards future state for substations. Besides having the highest impact on system stabilization and near-term reliability improvement (i.e., substation-caused outages typically affect larger numbers of customers), an effective substation maintenance regimen is a key cornerstone to the system stabilization initiative aimed at reducing the risk of catastrophic, regional- or island wide-outages. *See id.*, p. 6.

136. Furthermore, funding for NFC initiatives is necessary to complete critical out-of-service substation installation and stabilization activities, including (1) replacement of transformers, load tap changers, breakers, protection and control, and batteries, (2) addressing overloads, and (3) making critical repairs to our worst performing substations. *See Exhibit 2.01*, p. 11. These activities form the core of LUMA's system stabilization initiatives. As these items are addressed, they represent the first line of defense against cascading outages, whether an external storm event or equipment/system malfunction causes them. Any delay in addressing these items places LUMA and its customers at risk of experiencing larger and longer outages than if these actions had been initiated sooner. *Id.*



137. In addition, the requested funding for substation reliability initiatives, is necessary to enable LUMA to take action to address a backlog not addressed in previous years, including issues with transformers, breakers, and protection equipment, as well as remediation of critical repairs identified during the necessary substation preventive maintenance activities. *See Exhibit 2.01*, p. 9. A subset of these items will pose a high risk of future events that could impact large groups of customers and divert LUMA’s resources from performing more proactive/planned maintenance. This will cause the T&D System to fall further out of its designed configuration and limit any contingencies to absorb system disturbances without incurring unplanned outages. *Id.* Any delays will leave the T&D System’s stability exposed and add to the current backlog, thus increasing the likelihood of failures that will lead to unplanned (potentially larger) outages, outages that could have been avoided if funds had been available to address the corrective maintenance backlog more aggressively and sooner. *Id.*, pp. 9-10.

138. The requested funding of \$2.0 million for System Operations, as explained in *Exhibit 2.01* of the Temporary Rate Petition, are necessary to support the urgent need for substation maintenance and repair work. *Id.*, p. 8.

**ii. Distribution Lines**

139. A portion of the emergency funding requested is needed to complete immediate and critical pole replacements and non-structural repairs, restore out-of-service distribution lines (currently numbering 114, a net increase of 16 since the start of FY2025), remediate overloads, thermal and voltage issues, and address situations where the overhead primary wire is on unsound and non-standard structures in violation of the National Electric Safety Code (“NESC”). *See Exhibit 2.01*, p. 11.

140. Delays in addressing these issues will allow voltage and thermal issues to persist unaddressed on the system, creating power quality issues for customers and limiting renewables support for the grid, resulting in avoidable unplanned interruptions that consume operational resources to respond, particularly with significantly higher volumes in adverse weather, and extend the timeframe for attaining system stabilization and addressing the known portions of the system that are vulnerable to failures and could potentially result in safety hazards for the public as well as LUMA employees. *Id.* LUMA proposed a \$44.2 million incremental required funding to cover this initiative. *Id.*

### **iii. Transmission Lines**

141. It is necessary to address the fifty (50) out-of-service transmission line segments that are core to system stabilization, as they represent essential facilities to reduce the risk of larger transmission-caused outages. Specific activities include restoring the first five of these transmission lines, making critical repairs to storm-damaged structures on fifteen (15) lines, completing repairs across the fifty-one (51) line segments identified initially in the stabilization plan, executing on critical findings and thermal overload identified during inspections and studies, and performing transmission wildfire mitigation hardening in response to the Energy Bureau's ordered study. *See Exhibit 2.01*, p. 11.

142. Delays in addressing these items pause system stabilization, extending the time for (1) widespread and extended outages during major storm events and, for that matter, (2) situations where seemingly minor weather events/system operability issues lead to larger outage events. Incremental required funding of \$30.8 million is necessary. *Id.*

**iv. T&D Fleet**

143. The Super Puma heavy lift helicopter, currently out-of-service pending a required 12-year inspection and overhaul, is scheduled to be returned to service in April 2026. *See Exhibit 2.01*, p. 8. LUMA has been able to source engines that could be purchased rather than wait for the existing engines to be rebuilt, thus allowing the availability of this helicopter prior to the peak of the upcoming storm season during Q1 FY2026. Additionally, one of the A-Star units must start its 12-year inspection and overhaul by July 2025, or it too will be grounded. Therefore, additional funding is needed without delay in relation to helicopter equipment leases and purchases aimed at accelerating helicopter 12-year overhauls. *Id.*, pp 8-9. Otherwise, the potential combination of not having these two helicopters in services will severely hamper LUMA's ability to gain timely access to certain parts of the electric system during major storm events. *Id.*, p. 9.

**v. Telecom Related to IT/OT Telecom Systems and Network**

144. LUMA must address critical fiber and core microwave repairs, complete the IP network stabilization (Megaplex), and transport network MPLS at the most critical sites. Driving the immediate need is the need to have enough fiber in service on two specific links to enable proper protection of interconnecting renewables projects slated for August 2025, to repair critical primary protection line differential channels to ensure adequate system reactions and to avoid cascading failures that could lead to island-wide impacts, whose remediation costs would be incremental. A \$3.5 million incremental increase is needed. *See Exhibit 2.01*, p. 12.

**vi. Vehicles and Heavy Equipment**

145. LUMA needs to exercise the Rental Purchase Option ("RPO") on 17 vehicles and heavy equipment already in LUMA's inventory and purchase 30 vehicles and heavy equipment, all tied directly to support the immediate projects in the Operations and Capital Grid departments.

*See Exhibit 2.01*, pp 15-16. These purchases amount to \$3.8 million. Also, \$2.6 million are needed to cover fleet leases costs. *Id.*, p. 15. Failure to fund the initiative will begin to have an adverse effect on personnel productivity (e.g., will limit the number of workgroups that can be deployed, thus extending response times or rendering individuals unavailable to perform work due to lack of vehicles and heavy equipment), will pose safety risks to both employees and the public at large (e.g., operating vehicles that have exceeded their useful life poses potential issues such as brake failures, difficulties in steering, and tire malfunction all of which can lead to accidents, poor suspension and handling which can affect responsiveness, increased exposure to contaminants, absence of modern safety features such as airbags and crumple zones, electronic failures to collision alerts and braking assistance, driver fatigue from excessive vibrations and noise), and will constrain LUMA's ability to improve reliability, thereby affecting customer satisfaction dramatically. *See Id.*

**vii. IT/OT Equipment**

146. Many devices have exceeded their lifecycle, causing inefficiencies and cybersecurity risks. *See Exhibit 2.01*, pp. 13-14. The requested funding is needed to replace end-of-life laptops, field tablets, and devices for front-line teams, update communication equipment like radios and hotspots, and enhance device management and cybersecurity. *Id.* This will improve communication, safety, and coordination during field deployment. It also ensures alignment of LUMA's cybersecurity framework and reduces the risk of data breaches via lost/stolen devices. In addition, these measures are critical for maintaining operations and aligning with NIST and NERC-CIP standards. *Id.*, p. 14. Otherwise, there is a risk of system outages, increased costs, and loss of public trust. These investments are urgent and necessary for grid modernization efforts. Thus, \$3.3 million in annualized incremental funding are required to ensure the reliability of

essential tools for outage response, customer service, grid monitoring, and daily operations. *See Exhibit 2.01*, p. 14.

147. Furthermore, LUMA plans to replace end-of-life servers, switches, and backup systems. Replacements are required to maintain core systems like outage management, SCADA support environments, and network security layers. *Id.* Without replacement, system performance degrades, increasing the risk of outages and data loss. LUMA will also renew core software licenses essential for analytics and asset tracking, which prevents disruptions in asset visibility, maintenance planning, and reporting needed for FEMA and the Energy Bureau compliance. *Id.* Therefore, \$2.0 million in annualized incremental funding supports replacing end-of-life IT/OT infrastructure—hardware, software, and systems that underpin grid control, enterprise applications, and secure communication. *Id.*

148. Obsolete IT/OT infrastructure heightens the possibility of critical system failures that manage and control the grid and protect the private and financial information of most households and businesses on the island. Such failures could lead to complete grid inoperability during outages or emergencies, leaving entire regions without timely restoration capabilities. Additionally, outdated systems and unsupported hardware could result in grid instability, increasing the likelihood of unplanned outages and prolonged service interruptions. This scenario would also expose LUMA to significant cybersecurity threats, compromising the integrity and security of the grid. *Id.*

149. The requested funding of \$7.2. million, as explained in *Exhibit 2.01* of the Temporary Rate Petition, are necessary these critical IT/OT initiatives. *Id.*, p .13 This will ensure that employees have the tools required to respond safely and efficiently to outages, reducing long-term costs and improving customer service.

**b. Infrastructure Damage**

150. LUMA respectfully submits that the cybersecurity and the physical facilities initiatives discussed below amount to “infrastructure damage that requires immediate and substantial capital expenditure to prevent service disruption or safety hazards” which “imminently endanger system reliability, safety, or the utility’s capacity to fulfill its public service obligations.” *Id.*, p. 13. As such, they qualify under the definition of Operational Threats designed by the Energy Bureau that would amount to an “emergency” or “temporary event” under Section 6.25(d) of Act 57-2014.

**i. IT/OT**

151. Cybersecurity initiatives have become even more imperative to protect LUMA’s critical infrastructure after experiencing an increase in cyber events in 2023 and 2024. *Id.* Enhancing defense capabilities, protecting infrastructure from disruptions, safeguarding customer data, and ensuring compliance with industry standards is imperative. Otherwise, LUMA risks ransomware attacks, unauthorized access, data breaches, and potential grid failures. *Id.* The initiatives focus on risk assessment, identifying external threats, data protection, internal firewalls, threat detection, and secure OT connectivity. In addition, failing to invest could lead to non-compliance with NIST and NERC-CIP standards. An amount of \$0.8 million in annualized incremental funding is required to ensure appropriate funding is available for cybersecurity initiatives. *Id.*

**ii. Physical Facilities**

152. LUMA’s Facilities Department developed a prioritized list of capital repairs, replacements, and additions for FY2026 with inputs rooted in feedback from Occupational Safety and the results of Job Site Inspections. *Id.*, p. 16. The initiatives were ranked by applying a ranking

methodology that factors for Risk, Facility Focus Rating, Procurement Viability, and Strategic Alignment. *Id.* Each factor or evaluation criteria had an assigned weight, allowing for a weighted score, where the higher the score, the higher the priority. These projects are considered critical for security and compliance reasons. *See id.*, pp. 16-18. For ease of reference, we include the list of projects with a description of the work that needs to be performed:

Initiative	Description
Power generator for several locations	86 power generators island wide, most of which are obsolete (require replacement or significant updates / retrofits to assure optimal performance, particularly during power outages. The 86 emergency generators have exceeded their useful life, causing frequent failures that threaten operational continuity, especially with the upcoming hurricane season. Power loss directly affects the grid reconstruction efforts and endangers employee safety and comfort. The lack of reliable backup power may lead to total shutdowns in critical areas. Preliminary planning efforts have begun, but full execution must occur in FY26 to mitigate critical risks.
HVAC retrofit or replacement	Retrofit or replace several HVAC units in different buildings, due to a lack of maintenance over the past 10+ years. Specific replacements include La Torre units (this is a critical property with a critical operation), Luchetti chillers and water pumps system replacement, JRV Chillers replacement and NEOS air recirculation handling unit (Fresh air). The Scada Data Center HVAC system retrofit project is an ongoing project and a priority for the Organization. Its completion is forecasted to be in Q1 FY26.
Critical Building Repairs (Safety)	Luchetti building has over 600 employees on different floors, who could be at risk according to a structural assessment conducted 6+ years ago. The facilities team will conduct a new structure assessment to identify the risk and create an updated plan. Other Safety issues contemplated in this project are (1) NEOM electrical improvements, (2) Luchetti elevator system modernization, (3) NEOS crown repair, (4) NEOM waterproofing, (5) La Torre and NEOM improvement due to SCADA new equipment and (6) Durotex roof retrofit. Roof sealing and fire alarm projects at NEOM have already started, but full completion and expansion to other buildings must occur in FY26. Urgent improvements are needed in the La Torre and NEOM buildings to support the energy load of the new equipment, including an electrical generator to ensure continuous operation. SCADA or DOC failure could cause massive blackouts or prevent proper network monitoring, compromising facility safety.
Caguas region's safety issues	Address properly, projects include: (1) major repairs to Carolina complex, (2) warehouses repairs (roofs, fire alarm and suppression systems repairs, ventilation, lighting, floor repairs, bathrooms), (3) asphalt of various parking areas and (4) demolition of unusable buildings. These conditions are incompatible with a safe and functional work environment. Improvement

	projects have already started in Carolina and Caguas and must continue as a priority in FY26.
Bayamon's region's safety issues	Replacement of the fire alarm system, the fire suppressor system and the grease trap of Cataño fleet shop. This shop does not comply with safety codes and represents a safety issue for our employees. Preliminary inspections and technical assessments have begun and must lead to full implementation in FY26.
Ponce's region safety issues	The Ponce region has several safety issues including (1) damaged fire suppression systems, (2) damaged trailers offices at various locations (3) stormwater issues, (4) damaged structures that require demolition, (5) parking areas in need of asphaltting (Ponce, Santa Isabel) and (6) warehouses. While some projects are already underway, failing to complete improvements in FY26 puts lives and regional operational stability at risk. It is critical to continue full execution of the upgrades initiated in FY25.
Arecibo's region's safety issues	Several safety issues require the following repairs (1) Arecibo warehouse, and (2) Operations Building. Failure to act could result in partial or total collapses with severe legal and human consequences. The projects have already started and are currently in the evaluation and design phase.
Mayaguez's region's safety issues	Several safety issues require the following (1) Fleet Shop reconditioning and (2) CX roof waterproofing. These conditions jeopardize the continuity of critical operations and may lead to unexpected shutdowns or major incidents. The projects have already been underway since FY25 and are currently in the design and specification development phase.

*See Id.*, pp. 16-18.

**c. Imminently Danger to System Reliability or Safety**

153. The Energy Bureau has also determined that an “Operational Threat” includes a situation that “imminently endangers system reliability, safety, or the utility's capacity to fulfill its public service obligations.” The occurrence of vegetation-caused outages, some of which would have been avoided had cyclic trimming commenced, directly impacts LUMA and its customers in terms of imminently endangering system reliability, creating incremental and potentially avoidable costs, and the added issue of any inconvenience experienced by customers during the service restoration process. *See Id.*, p. 7.



154. For those reasons, LUMA needs to immediately start a 3-4 year cyclic trimming program (industry norm for environments similar to Puerto Rico), apply herbicide treatment to the rights-of-way (“ROW”) addressed by the federally funded work (assuring LUMA maintains the benefits of this clearance effort), and perform vegetation management on those transmission facilities specified in Department of Energy (“DOE”) order No. 202-25-213 that do not qualify for federal funding (approximately 25 percent of the requirement). *Id.* The effects of any delay in starting a cyclic trimming process system-wide only compound over time, resulting in higher costs than will be experienced should LUMA start the process sooner. *Id.* LUMA requests an additional \$24.0 million in FY2026. *Id.* pp. 7-8.

155. The requested funding of \$2.0 million for System Operations, as explained in *Exhibit 2.01* of the Temporary Rate Petition, are necessary to support the urgent need of vegetation maintenance work. *Id.*, p . 8.

**d. Regulatory or Legal Mandates**

156. As discussed previously, the Energy Bureau has recognized that “regulatory or legal mandates that impose unexpected and significant financial obligations with immediate compliance requirements” are operational threats that qualify as an “emergency” or “temporary event” pursuant to Section 6.25(d) of Act 57-2014. In its Petition, LUMA discussed various examples of initiatives that were the consequence of regulatory mandates of the Energy Bureau that imposed an unexpected and significant financial obligation with immediate compliance requirements. These initiatives conform to an unexpected and significant financial obligation, inasmuch as LUMA has to comply within a certain period of time without having previously budgeted for those activities. Thus, LUMA respectfully submits that the Energy Bureau should

reconsider and determine that the initiatives discussed below qualify as an “emergency” or “temporary event” under Section 6.25(d) of Act 57-2014.

157. First, the Energy Bureau has required the furtherance of wildfire mitigation activities as stated in the proceeding *In Re: LUMA Initial Budgets and Related Terms of Service*, Case No. NEPR-MI-2021-0004. *See Exhibit 2.01*, p. 12. The wildfire studies have progressed in accordance with the Energy Bureau’s direction, and the initial outcomes of those studies need to be acted upon. The peak wildfire season historically begins in January in Puerto Rico, and in order for actions to be effective in this coming season, they need to be engineered and implemented immediately. Thus, \$11.7 million in incremental funding is required to support this initiative. *See id.*

158. Second, for supporting the tasks instructed in the proceeding *In Re: Plan Prioritario para la Estabilización de la Red Eléctrica*, Case No. NEPR-MI-2024-0005, LUMA is actively preparing for the interconnection and enablement of 4 x 25 MW of Battery Energy Storage Systems (“BESS”) to be complete within 18 months, thus enhancing system inertia, supporting voltage regulation, and providing quicker frequency response capability. *Id.* Driving the immediate need is the risk of losing the option of purchasing the land if funding is delayed. That would cause delays in the project schedule, particularly in the finalization of engineering, thus placing the overall 18-month schedule and the commensurate benefits to customers at risk. *Id.* Therefore, LUMA needs \$4.0 million in urgent and incremental funding to purchase land for the BESS during Q1 FY2026 (in Barceloneta, Manati, Aguadilla, and San Juan). *Id.*

159. Finally, the Energy Bureau has expressed a desire through the proceeding *In Re: Puerto Rico Electric Power Authority Rate Review*, Case No. NEPR-AP-2023-0003, for LUMA to modify the format in which it develops, tracks, and reports its financial information. LUMA’s

budget process commences late September to early October. Therefore, sufficient funding must be available to execute ahead of the budget process. For those reasons, LUMA needs \$0.5 million in funding to support anticipated additional reporting requirements from the Energy Bureau. *Id.*, p. 18.

### **III. Conclusion**

160. Public utility commissions have granted emergency rate relief in circumstances of financial emergencies similar to those that justify LUMA's request where LUMA demonstrated that current rates are not adequate to fund critical and unavoidable costs to operate the utility. *See TIMBERLINE FOUR SEASONS UTILITIES, INC. a public utility, Tucker County,; Rule 42T application to increase water rates and charges and petition for emergency interim rates*, 2007 W. Va. PUC LEXIS 2310 (July 25, 2007); *see also Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Long Island Lighting Company for Electric Service; Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Long Island Lighting Company for Electric Service*, 1989 N.Y. PUC LEXIS 8 (March 8, 1989) ("the company's impending inability to cover its cash outlays bespeaks a fundamental need for higher rates."); *In the Matter of the Application of PUNALU'U WATER AND SANITATION, LLC; For Approval of a Temporary Rate Increase*, 2025 Haw. PUC LEXIS 14 (May 8, 2025) (The Hawaii Public Utilities Commission granted temporary rate relief upon finding that "the current revenue requirement [was] insufficient to sustain operations and potentially jeopardizes continued provision of water and wastewater services to Applicant's ratepayers." The Commission explained that "the substantial losses incurred and the imminent threat to continued operations, while not sudden, do demonstrate financial need for temporary relief on an emergency basis.").

161. As explained above, LUMA's Temporary Rate Petition established through information and documents, including pre-filed testimonies, that it operates amid financial and operational scenarios that threaten operations, as well as the continuation of critical projects to stabilize the grid. A temporary emergency rate is needed to thwart the harms and threats of the emergency, avoid unacceptable delays in the commencement or continuation of critical initiatives, fund necessary investments, and avoid future increased costs.

162. LUMA requests that the Energy Bureau immediately approve the temporary rate adjustment. LUMA requests that the Energy Bureau convene an urgent technical conference to answer questions that the Energy Bureau and its consultants may have on the incremental costs included in the Temporary Rate Petition. LUMA stands available to supplement the Petition with information that the Energy Bureau may require.

163. Act 57-2014 gives the Energy Bureau the regulatory key to unlock urgently needed rate relief for a utility that years prior to 2021 when LUMA commenced operations, has been beseeched by critical underinvestment in maintenance and repairs, and handcuffed by a years-long bankruptcy and lack of external financing options to fund operations. The situation is an unsustainable emergency that places LUMA in the untenable position of having to operate an increasingly degrading and failing T&D grid, without any immediate prospect of raising sufficient revenues to finance operations. LUMA has and continues to be ready to deliver services to customers. Emergency or temporary rate relief is the only tool currently available to finance critically needed initiatives and projects at the dawn of FY2026. This Energy Bureau has the sole ratemaking authority to avoid all of the risks that LUMA, as a prudent operator, can no longer undertake given current insufficient funding levels.

**WHEREFORE**, LUMA respectfully requests that the honorable Bureau **take notice** of the aforementioned for all purposes, **reconsider** its denial of the Temporary Rate Petition, as requested in this Motion, **convene** a technical conference where LUMA may answer questions and submit supplemental information in support of the incremental costs included in the Temporary Rate Petition, and **approve** LUMA's temporary rate adjustment request that is hereby renewed.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 6<sup>th</sup> day of June, 2025.



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*Exhibit 1*

Excel spreadsheet to be submitted via email