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

IN RE: PUERTO RICO ELECTRIC POWER AUTHORITY RATE REVIEW	**CASE NO.:** NEPR-AP-2023-0003 **SUBJECT:** Independent Consumer Protection Office's Comments on LUMA and Genera's Request for Provisional Rate Adjustment

INDEPENDENT CONSUMER PROTECTION OFFICE'S COMMENTS ON LUMA AND GENERA'S REQUEST FOR PROVISIONAL RATE ADJUSTMENT

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Independent Consumer Protection Office of the Public Service Regulatory Board (hereinafter, "OIPC" for its Spanish acronym), by and through the undersigned attorneys, and respectfully STATES and PRAYS as follows:

1. On June 30, 2023, the Energy Bureau of the Puerto Rico Public Service Regulatory Board (hereinafter, "Energy Bureau or PREB") issued a *Resolution and Order* initiating the instant case under number NEPR-AP-2023-0003/*Puerto Rico Electric Power Authority Rate Review*, in accordance with the provisions of Act 57-2014, as amended, known as the "*Puerto Rico Energy Transformation and RELIEF Act*".

2. The statute provides, in Article 6.42 (c), that, among the powers and duties of the OIPC, is to "defend and advocate for the interests of customers in all matters brought before the Energy Bureau, the Telecommunications Bureau, the Transport and other Public Services Bureau or being addressed by the Energy Public Policy Program of the Department of Economic Development with regard to electric power rates and

charges, the quality of the electric power service, services provided by electric power service companies to their customers, resource planning, public policy, and any other matter of interest for customers.".

3. Furthermore, Section (g) establishes that the OIPC has the duty and the powers to "request and advocate for just and reasonable rates for the consumers represented by the Office".

4. Likewise, Section (h) grants OIPC the authority to "participate or appear as intervenor in any action brought before a government agency of the Government of Puerto Rico or the Federal Government with jurisdiction, in connection with rates, bills, public policy, and any other issue that may affect electric power, telecommunications, and transport services' consumers and/or customers".

5. Consistent with our ministerial duty and the authority granted by Act 57-2014, on April 4, 2025, the OIPC filed a document titled "*Moción Notificando Intervención de la Oficina Independiente de Protección al Consumidor*", notifying this Energy Bureau of our intention to participate in the present proceeding in defense and representation of Puerto Rico's electric service consumers.

6. On July 3rd, 2025, LUMA filed a *Motion Submitting Rate Review Petition*, requesting that the Energy Bureau approve a temporary or provisional rate increase pursuant to Section 6.25 (e) of the *Puerto Rico Energy Transformation and RELIEF Act*, Act 57-2014, as amended ("Act 57-2014"), to be collected in the interim period (commencing

on September 1, 2025) while the Energy Bureau is adjudicating the utility revenue requirement.[1]

7. On that same date, this Energy Bureau granted OIPC's intervention stating that under the intervention criteria, the OIPC clearly satisfies all relevant factors: it has a legitimate interest that may be adversely affected by this tariff review, its statutory mandate to represent consumer interests cannot be adequately protected through other legal means, and its specialized expertise in consumer protection contributes valuable perspectives not otherwise available. The OIPC's intervention is not merely appropriate but legally mandated under the governing statute.

8. On July 7th, 2025, the PREB issued an Order setting deadlines relating to provisional rates granting intervenors until July 10th, 2025, to submit requests of information to LUMA relating to its request for provisional rates, and until July 11th, 2025, for objections to, statements of support for, or comments about LUMA's request for provisional rates.

9. After several procedural developments, on July 14th, 2025, the PREB issued an Order granting intervenors until July 25th, 2025, to submit any final comments on the provisional rate.

10. On July 15, 2025, Genera file a document titled *Motion to Submit Supplemental Direct Testimony of María Sánchez Brás on Behalf of Genera*.

[1] See, LUMA's *Motion Submitting Rate Review Petition* dated July 3rd, 2025, at page 3.

I. INTRODUCTION:

11. On April 21st, 2025, the PREB issued a *Resolution and Order* ruling that the provisional rates should only propose investment increases that LUMA view as high priority and non-controversial.

12. Specifically, the PREB stated that "to help avoid a situation in which LUMA spends, during the period covered by the rate case proceeding, an amount exceeding the permanent revenue requirement that the Energy Bureau ultimately adopts, the FY 2025 budget amendment should propose only those spending increases that LUMA views as high priority and that LUMA expects would be noncontroversial. With this limitation in place, the Energy Bureau can approve the budget amendment and authorize the provisional rate necessary to finance that budget amendment, while lowering the risk that the three companies will spend amounts that exceed what the Energy Bureau ultimately approves. We stress that though the spending will be consistent with the budget, the rate is still a provisional rate. By approving that provisional rate, the Energy Bureau makes no promise about the permanent rate."

13. To ensure that the provisional rate is just and reasonable, the Energy Bureau required parties that the proposed spending increases be limited to those deemed high priority and non-controversial.

14. OIPC is aware of the current state of Puerto Rico's electric system and the consequences this has for all consumers. It would be unreasonable to expect the utility to improve service quality without making the necessary investments to do so.

15. Although the ideal scenario would be for consumers to experience no increase in electricity costs, we know this is unrealistic. As a result of this process, consumers will see an increase in their bills.

16. However, it is our duty to ensure that this increase is as minimal as possible and that the provisional rate ultimately approved by the Energy Bureau is just and reasonable.

17. After reviewing the petitions filed by LUMA and Genera, along with the corresponding testimonies and documentary evidence, OIPC submits the following comments.

II. OIPC'S COMMENTS ON LUMA'S REQUEST:

18. Through the Rate Review Petition, LUMA requests for a Provisional Rate Adjustment. LUMA estimates an urgent need for $398.6 million in incremental funding to cover operational expenditures beyond the Fiscal Year 2026 Temporary Default Budget.

19. As explained in their request, the specific LUMA departments that have high-priority expenses to be funded through provisional rates are Customer Experience, T&D Operations, Capital Programs and Grid Transformation, Information Technology and Operational Technology, Fleet, Real State, Property and Facilities Management Services and Development, and Finance.

20. LUMA also requests, as a separate item, the replenishment and recovery of the accumulated balance of the Outage Event Reserve Account. LUMA claimed that this request is based on actual costs it was forced to cover due to PREPA's failure to fulfill its

funding obligations. LUMA states that because the necessary funds were not available in such account, it had to redirect money from its Operating Account to respond to outage events.

21. LUMA states that replenishing and collecting the accumulated balance of the Outage Event Reserve Account is a high priority and non-controversial funding needs. The Outage Event Account is contractually established under the OMA with a balance set at $30 million.

22. LUMA alleges that it has incurred an accumulated underfunding of $209 million, which, when combined with the $30 million required to restore the Outage Event Reserve Account to its contractual balance, results in a total request of $239 million to be collected over 2 fiscal years, FY2026 and FY2027.

23. The OIPC does not oppose LUMA's request to replenish the Outage Event Reserve Account with the contractually required amount of $30 million. We agree that this expending increase to be addressed through a provisional rate is high priority and non-controversial. This reserve plays a critical role in ensuring operational readiness and rapid response during outage events, and its restoration is appropriate and justified under the terms of the T&D OMA. Moreover, this replenishment will address the root cause of the liquidity issue prospectively and sustainably raised by LUMA.

24. However, OIPC does oppose the recovery of the $209 million that LUMA redirected from its Operating Account to respond to past outage events. It is difficult to conceive this request as a high priority, and even less as non-controversial, since it involves the recovery of funds that were budgeted and already spent in prior years.

25. Even though the injection of $209 million would surely help LUMA's liquidity, it is unnecessary and even more unjustified considering the replenishment of the $30 million Outage Reserve Account and the proper funding through the new revenue requirements proposed by LUMA, of the once deferred activities that were postponed funding past outage related expenses.

26. For the reasons stated above, the Energy Bureau should exclude this expenditure from the provisional rate, as it does not meet the standard of a high priority and non-controversial spending increase.

27. In other matters, as part of the Provisional Revenue Requirement, LUMA proposes to include $129 million for bad debt expense. In response to ROI # PC-of-LUMA-PROV-38, Mr. Shannon stated that this amount was calculated by applying the 2.97% bad debt percentage established in the January 10, 2017, Rate Order, to the total projected revenue.

28. Without entering the merits of whether LUMA has done enough or what more may be required to effectively improve collections, it is important to note that LUMA did not provide any analysis of aged accounts receivable balances to support the proposed amount. Instead, it relied exclusively on the 2.97% factor from the 2017 Rate Order, without demonstrating if this figure reflects current operating conditions or recent collection performance.

29. Moreover, this approach is inconsistent with historical practices. In previous years, specifically in the FY2024 and FY2025 budgets, the Energy Bureau approved bad debt expenses of $59 million, as presented by LUMA using a methodology

of a bad debt percentage of 1.5%.[2] This discrepancy raises serious concerns regarding the appropriateness of applying a higher factor, nearly double the recent precedent, without updated, data driven justification.

30. It is also worth highlighting that LUMA has access to actual collection and bad debt data since the implementation of the 2017 rates, which would allow it to assess whether the 2.97% factor remains appropriate. However, no such analysis has been presented to support this proposal.

31. For the reasons stated above, OIPC respectfully requests the Energy Bureau to reject the use of the 2.97% factor and to exclude the $129 million bad debt expenditure as calculated by LUMA. Instead, the Bureau should authorize no more than 1.5% of total projected revenues for bad debt expense, consistent with recent regulatory precedent and in the absence of sufficient justification for any upward deviation.

III. OIPC'S COMMENTS ON GENERA'S REQUEST:

32. Through the Rate Review Petition, supplemented by the *Motion to Submit Supplemental Direct Testimony of María Sánchez Brás on Behalf of Genera*, filed on July 15, 2025, Genera seeks to recover its FY26 revenue requirement, adjusted for inflation, as well as funding for high-priority non-controversial additions.

33. Genera states that during the provisional rate period it requires the $288 million previously approved by the Energy Bureau as part of the FY26 Temporary

[2] *See*, Exhibit 1 of LUMA's *Request for Approval of T&D Budgets and Submissions of GenCo Budgets for FY2025 and Budget Allocations for the Electric Power System*, dated May 25, 2024, in Case NEPR-MI-2021-0004/ *Review of LUMA's Initial Budget* at page 28, footnote 5.

Default GenCo Budget, in addition to the following: (1) $22 million disallowed by the Energy Bureau from Genera's proposed budget; (2) $67 million representing the 10% federal cost-share obligation; (3) $17 million to fund expenditures associated with temporary generation resources; (4) $25 million designated for the Generation Maintenance Reserve ("GMR"); (5) $30 million for the replenishment of the Outage Reserve Account and; (6) $28 million in Necessary Maintenance and Expenses ("NME").

34. With respect to temporary generation resources, Genera is proposing to collect $17 million through the Provisional Rate to fund expenditures associated with these resources, which it describes as essential for maintaining system reliability and meeting generation demand during periods of heightened operational risk or reduced baseline capacity.

35. OIPC requested that Genera provide a detailed breakdown of all expense categories included in the $17 million.[3] In response, Genera reported the following breakdown: (1) $59,694.94 for oil Services; (2) $3,171,612.20 for water services; and, (3) $13,832,289.94 for professional services for the total amount of $17,063,597.08.

36. OIPC acknowledges the importance of temporary generation for maintaining the stability of the electric system. However, Genera did not provide the supporting documentation previously required by the Energy Bureau regarding the professional services expenses, nor did it demonstrate that this constitutes a high priority and non-controversial spending increase.

[3] *See*, ROI # OIPC-of-Genera- PROV-28.

37. In case NEPR-MI-2024-0001/*LUMA's Initial Budget*, the PREB "warns Genera that it must be prepared, however, to provide in the next annual budget examination or full rate proceeding, whichever occur first, a full accounting of all staff working in connection with the legacy generating units and TM2500 units, and of professional services employed to ensure that all employee expenses are fully justified.[4]

38. The absence of the required supporting documentation from Genera prevents the Energy Bureau from determining whether this expenditure qualifies as a high priority and non-controversial spending increase. Therefore, this item should not be included as part of the provisional rate.

IV. CONCLUSION

39. Considering the foregoing, the OIPC respectfully requests that, when analyzing and evaluating the provisional rate proposals submitted by LUMA and Genera, this Honorable Energy Bureau ensure strict adherence to the standard it has established considering only high priority and non-controversial spending increases. As detailed above:

a. Any retroactive recovery of funds previously redirected by LUMA from its Operating Account already budgeted and spent in prior fiscal years should be excluded, as it cannot reasonably be considered high priority or non-controversial under the applicable framework.

[4] *See*, PREB's *Resolution and Order* in Case NEPR-MI-2024-0001/ LUMA's Initial Budget, dated November 27, 2024, at page 3.

b. LUMA's proposal to apply a 2.97% bad debt factor lacks current empirical support and is inconsistent with past practice. Therefore, the Bureau should authorize no more than 1.5% of total projected revenues for bad debt expense, in line with recent precedent.

c. Finally, Genera's request to recover $17 million for temporary generation resources is not sufficiently supported by documentation, particularly regarding professional services, and thus fails to meet the required standard.

40. For these reasons, the Energy Bureau should exclude the above-mentioned items from the provisional rate to ensure that it remains just and reasonable, and in compliance with the standards set forth in this proceeding.

WHEREFORE, it is respectfully requested that this Honorable Bureau take notice of the aforementioned for the purpose of the evaluation and determination of the provisional rate.

RESPECTFULLY submitted today, July 25, 2025.

I HEREBY CERTIFY that on this date a copy of this motion has been electronically filed with the Clerk of the Puerto Rico Energy Bureau and that I have emailed a copy of this motion to the following email addresses: Scott Hempling, shempling@scotthemplinglaw.com; and to the attorneys of the parties of record. To wit, to the Puerto Rico Electric Power Authority, through: Mirelis Valle-Cancel, mvalle@gmlex.net; Juan González, jgonzalez@gmlex.net; Alexis G. Rivera Medina, arivera@gmlex.net; and Juan Martínez, jmartinez@gmlex.net; and to Genera PR, LLC, through: Jorge Fernández-Reboredo, jfr@sbgblaw.com; Gabriela Castrodad, gcastrodad@sbgblaw.com; José J. Díaz Alonso, jdiaz@sbgblaw.com; Stephen Romero Valle, sromero@sbgblaw.com; Giuliano Vilanova-Feliberti, gvilanova@vvlawpr.com; Maraliz Vázquez-Marrero, mvazquez@vvlawpr.com; ratecase@genera-pr.com; regulatory@genera-pr.com; and legal@genera-pr.com; Co-counsel for Instituto de Competitividad y Sustentabilidad Económica, jpouroman@outlook.com; agraitfe@agraitlawpr.com; Co-counsel for National Public Finance Guarantee Corporation, epo@amgprlaw.com; loliver@amgprlaw.com; acasellas@amgprlaw.com; matt.barr@weil.com; robert.berezin@weil.com; Gabriel.morgan@weil.com; Corey.Brady@weil.com; Co-counsel for GoldenTree Asset Management LP, lramos@ramoscruzlegal.com; tlauria@whitecase.com; gkurtz@whitecase.com; ccolumbres@whitecase.com; iglassman@whitecase.com; tmacwright@whitecase.com; jcunningham@whitecase.com; mshepherd@whitecase.com; jgreen@whitecase.com; Co-counsel for Assured Guaranty, Inc., hburgos@cabprlaw.com; dperez@cabprlaw.com; mmcgill@gibsondunn.com; lshelfer@gibsondunn.com; howard.hawkins@cwt.com; mark.ellenberg@cwt.com; casey.servais@cwt.com; bill.natbony@cwt.com; thomas.curtin@cwt.com; Co-counsel for Syncora Guarantee, Inc., escalera@reichardescalera.com; arizmendis@reichardescalera.com; riverac@reichardescalera.com; susheelkirpalani@quinnemanuel.com; erickay@quinnemanuel.com; Co-Counsel for the PREPA Ad Hoc Group, dmonserrate@msglawpr.com; fgierbolini@msglawpr.com; rschell@msglawpr.com; eric.brunstad@dechert.com; Stephen.zide@dechert.com; david.herman@dechert.com;

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