

**COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY BUREAU**

**IN RE: PUERTO RICO ELECTRIC
POWER AUTHORITY RATE
REVIEW**

CASE NO.: NEPR-AP-2023-0003

SUBJECT: PREPA Bondholders' Preliminary
Response to Provisional Rate Request

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**PREPA BONDHOLDERS' PRELIMINARY
RESPONSE TO PROVISIONAL RATE REQUEST**

TO THE PUERTO RICO ENERGY BUREAU:

Petitioners National Public Finance Guarantee Corporation, GoldenTree Asset Management LP, Syncora Guarantee, Inc., Assured Guaranty Inc., and the PREPA Ad Hoc Group¹ (collectively, the “Bondholders”), by and through the undersigned counsel, hereby submit this Preliminary Response to the provisional rate request submitted by LUMA on behalf of itself, Genera, and PREPA. This filing is made in connection with the Hearing Examiner’s July 7th order setting an objection deadline of July 11th.² A Spanish summary of this filing is attached hereto as Appendix A, pursuant to the orders of May 9th and June 4th.

The Bondholders’ Response is preliminary in nature because the Rate Petition—comprising an over 200-page main document, dozens of witness testimonies, and gigabytes of schedules and exhibits, with many cross-references and references to documents submitted in other proceedings—was filed only a week ago, and the Bondholders have not had sufficient time to fully analyze it. LUMA also filed certain of the documents in the Rate Petition completely or partially under seal of confidentiality, and while the Bondholders are diligently collecting and submitting

¹ The members of the PREPA Ad Hoc Group are listed in the *Eighth Verified Statement of the PREPA Ad Hoc Group pursuant to Bankruptcy Rule 2019*, ECF No. 5671, filed in *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, Case No. 17-BK-04780-LTS (D.P.R. May 19, 2025).

² *Hearing Examiner’s Order Setting Deadlines Relating to Provisional Rates*, Case No. NEPR-AP-2023-0003, at p.1 (July 7, 2025).

NDA signatures to obtain access to such information, they have not yet obtained access.³ What's more, various of the ROI responses in the Rate Petition appear to be facially nonresponsive (see Appendix B for preliminary examples), which hampers the Bondholders' and other participants' review. The Bondholders therefore reserve their rights, and waive none, to supplement or modify this Preliminary Response to the provisional rate request, to seek additional information through discovery, and to respond to the Rate Petition more generally throughout the course of this proceeding or otherwise.

BACKGROUND

On July 3, 2025, LUMA submitted the Rate Petition on behalf of itself, Genera, and PREPA.⁴ The Rate Petition seeks a permanent base rate of **\$2.75 billion annually**⁵ (an **over 100% increase** in the base rate). This would increase the average residential customer's total monthly bill by \$39.02—and even more if LUMA's "optimal" budget were used.⁶ Meanwhile, the Rate Petition also seeks a **\$2.42 billion** provisional rate that would kick in sooner—continuing until the permanent rate—and would, if approved, increase the average residential customer's total monthly bill by \$30.04.⁷ The proposed provisional rate would translate to a new **7.8 c/kWh** charge.⁸

³ The Bondholders and other participants learned of the procedure for submitting NDA signatures via e-mail from the Hearing Examiner on July 3, 2025, in response to a query about obtaining confidential information.

⁴ See *Motion Submitting Rate Review Petition*, Case No. NEPR-AP-2023-0003 (July 7, 2025) (the "Rate Brief"), and accompanying exhibits, schedules, and testimonies in Sharefile productions linked to in same (collectively, the "Rate Petition").

⁵ See LUMA Ex. 1.04 – LUMA Executive Summary, at p.3. This amount does not include PREPA pension costs.

⁶ See *id.*

⁷ See *id.* This amount does not include PREPA pension costs.

⁸ LUMA Exhibit 20.00 – Sam Shannon Testimony, at Question 106. This amount does not include PREPA pension costs.

While the Bondholders anticipate submitting further responses to the Rate Petition (and reserve their rights to do so at the appropriate time), the subject of this filing, as determined by the Hearing Examiner’s July 7th order, is the provisional rate request.

PRELIMINARY RESPONSE

Based on their review to date, which remains ongoing, the Bondholders have identified several serious problems with the provisional rate request. **First**, the rate request does not recognize the utility’s outstanding debt, thus ignoring the legal requirement that rates must be sufficient to pay debt service. This omission perpetuates the longstanding failure to pay bondholders even as LUMA’s own witness admits the tangible, direct harm that lack of access to the capital markets is inflicting on ratepayers. **Second**, the provisional rate request elevates hundreds of millions of dollars of capital expenditure projects and related account funding above the utility’s debt, in violation of the Trust Agreement governing PREPA’s bonds that gives the Bondholders a perfected lien on Net Revenues, as recently affirmed by the U.S. Court of Appeals for the First Circuit. **Finally**, as the Hearing Examiner identified, the provisional rate request includes a large, unexplained line item as well as amounts for Genera and PREPA that are 100% of what those entities request in their *permanent* rate proposals—thus failing to recognize the very real possibility of the Bureau approving less than 100% of what they request.

I. The Provisional Rate Request Ignores the Utility’s Debt

Despite claiming to submit a petition that covers “the full scope of revenues, other income, and costs involved in providing electric service in Puerto Rico,”⁹ the Rate Petition is anything but

⁹ Rate Brief at ¶ 63; *see also, e.g., id.* at ¶ 4 (incorrectly claiming that the petition covers the “full ... costs involved in providing electric service”); *id.* at p.25 (misstating the revenue requirement as “System-Wide”); *id.* at ¶ 79 (purporting to submit “comprehensive financial, operational, and regulatory data”).

“comprehensive”¹⁰ when it comes to the debt owed to the Bondholders. In fact, LUMA *entirely excludes* these longstanding obligations from the proposed revenue requirement. In response to the Bureau’s important ROI asking whether LUMA “consider[ed] debt service obligations in its capital planning process, particularly as it relates to balancing debt repayment with necessary infrastructure investments and operational expenditures,” LUMA’s witness says, “No.”¹¹ Even though “LUMA understands that balancing debt repayment with necessary infrastructure investment and operational expenditures is something *the Energy Bureau must consider* when making its final Order,” Mr. Smith concedes that “LUMA did not consider debt service obligations as part of its capital planning process.”¹²

Yet this same witness elsewhere discusses the critical importance of the utility’s access to capital markets—the very thing PREPA cannot access because of its nonpayment of the debt that it now, again, tries to ignore. Mr. Smith explains how under the normal “debt-financing regime” for capital investment, a utility’s customers are able to pay dramatically less up front; in his illustrative example, “a 43% reduction in the amount of cash that must be collected in year-one from the customer versus a cash financing regime,” and an even greater reduction in successive years.¹³ As he puts it, “This dynamic directly and significantly reduces the impact on the rate per

¹⁰ *Id.* at ¶ 63.

¹¹ LUMA Exhibit 2.00 – Andrew Smith Testimony, at Question 35 (emphasis added); *see also* LUMA Exhibit 20.00 – Sam Shannon Testimony, at Question 39 (“[T]he utility is not asking for PREPA’s legacy debt to be included in the revenue requirement...”).

¹² LUMA Exhibit 2.00 – Andrew Smith Testimony, at Question 35 (first emphasis added, second emphasis original). These statements also conflict with LUMA’s acknowledgement that any provisional rate petition must be “consistent with sound fiscal and operational practices”—which would obviously include paying financial obligations—and that the Bureau must “authorize rates that *fully recover* the System’s prudent costs,” which would include debt service. Rate Brief at ¶¶ 88, 91 (emphasis added).

¹³ LUMA Exhibit 2.00 – Andrew Smith Testimony, at Question 29.

kWh that must be charged to the customer because less cash must be collected annually from the customer under a debt-financing regime versus a cash-financed regime.”¹⁴

That is exactly what the Bondholders have long been trying to tell the Oversight Board and PREPA. By ignoring debt repayment obligations, by reneging on settlements (including offers that include new financing for the utility, like Mr. Smith extols), and by taking unreasonable positions that have caused PREPA to languish in bankruptcy for nearly a decade, it remains locked out of the very capital markets that would allow its customers to *spend less on capital improvements now*. When the “System’s investment needs far exceed available funding,”¹⁵ the answer is financing—not trying to stick ratepayers with a cash-only bill for a system rebuild.

The Rate Petition, however, once more kicks the can on debt. The utility’s debt is not included in the provisional rate request. Nor is it included in the permanent rate revenue requirement. At most, LUMA proposes to include “the general structure” of an *empty, placeholder* “Legacy Debt Rider,” which would not actually be set and implemented until, at “[t]he earliest ... the 2027 test year.”¹⁶ This all but guarantees PREPA will remain locked out of the capital markets, and its customers will remain locked into what Mr. Smith identified as the burdensome “cash financing regime.”¹⁷

Excluding the debt here is also contrary to Commonwealth law and the Bureau’s prior orders in this proceeding. Various Commonwealth laws dictate that the Energy Bureau shall

¹⁴ *Id.*; see also *id.* at Question 32 (noting that “PREPA’s exit from Title III and return to capital markets and debt financing ... can help lower base rates for customers”); *id.* at Question 29 (“Higher credit quality should result in a lower cost of financing when PREPA is able to transition to a debt financing regime, which can help lower rates.”).

¹⁵ Rate Brief at ¶ 98.

¹⁶ LUMA Exhibit 20.00 – Sam Shannon Testimony, at Question 98.

¹⁷ LUMA Exhibit 2.00 – Andrew Smith Testimony, at Question 29 (“Under the current cash-financing regime, *[PREPA] customers must pay for the total cost of capital investment in the year it is incurred*. This is because PREPA is unable to issue new debt due to PREPA’s ongoing Title III proceedings.” (emphasis added)).

approve a rate that is sufficient to ensure payment of debt service. For example, Act 57-2014 provides that:

- “The Bureau shall approve a rate that (i) allows electric power service companies to recover all ... financing costs ...” § 6.25.
- During a rate review, the Energy Bureau shall consider “the expenditures related to the Authority’s debt repayment.” § 6.25(b).
- It is the Energy Bureau’s duty to “[e]nsure that the powers and authorities exercised by PREB over [PREPA] ... including those related to rate review and approval, guarantee that [PREPA] meets its obligations to bondholders.” § 6.3(p).¹⁸

The Energy Bureau’s 2017 Rate Order likewise recognized that debt service must be included in the revenue requirement, and that Commonwealth law “leaves the [Bureau] no choice” in terms of providing for debt repayment through the base rate.¹⁹

Prior orders entered in this proceeding similarly recognize that *all* costs must be included here. On December 20, 2024, near the inception of this phase of the rate case, the Bureau stated that the case must consider “all costs,” “regardless of source or payee.”²⁰ This includes “debt that is subject to the Title III process.”²¹ Other orders have made this abundantly clear as well.²²

¹⁸ See also, e.g., Act 4-2016 § 9(c) (“The Commission shall approve a rate that [] is sufficient to guarantee the payment of principal, interest, reserves, and all other requirements of bonds and other financial obligations that have not been defeased as part of the securitization provided in Chapter IV of the Electric Power Authority Revitalization Act.”); Act 83-1941 § 5(l) (“The Authority is hereby conferred, and shall have and exercise, the rights and powers To propose and collect just, reasonable, nondiscriminatory rates and fees ... that are sufficient to cover reasonable expenses incurred by the Authority ... for the payment of the principal of and interest on its bonds, and for fulfilling the terms and provisions of the agreements entered into with or for the benefit of purchasers or holders of any bonds of the Authority and other creditors.”).

¹⁹ *Final Resolution and Order*, Case No. CEPR-AP-2015-0001, at p.91 (Jan. 10, 2017).

²⁰ *Resolution and Order re: Requests of Information and Scheduling of Technical Conference for January 10, 2025*, Case No. NEPR-AP-2023-0003, at p.3 (Dec. 20, 2024).

²¹ *Id.*

²² See, e.g., *Resolution and Order re: Preliminary Guidance on Rate Case Procedures and Notice of Upcoming Conference*, Case No. NEPR-AP-2023-0003, at p.1 (Dec. 16, 2024) (case covers “the full scope of revenues and expenditures”); *id.* at p.1 (“All expenditures means all expenditures for normal operations, storm resilience and restoration, Puerto Rico Electric Power Authority (‘PREPA’) owned infrastructure, *and anything else.*” (emphasis added)); *id.* at p.3 (case involves a “[c]omplete financial mapping of *all ... expenditures*” (emphasis added)); *Order*

Accordingly, there is no basis whatsoever for LUMA’s contention, buried in Mr. Smith’s testimony, that the Bureau’s directive for it to create a “bottom-up” assessment somehow “impli[ed]” that LUMA was free to exclude debt from its analysis.²³ Even if the Bureau *had* implied this, such an implication would be contrary to Commonwealth law, as discussed above, and therefore void. But there was no such implication. To the contrary, the Bureau told LUMA, repeatedly and explicitly, to consider all costs including debt in the revenue requirement. LUMA did not listen. This flaw infects both the provisional rate request and the permanent rate request.

II. The Provisional Rate Request Impermissibly Elevates Capital Expenditures above Debt

Compounding the problem discussed above, the provisional rate request incorporates a massive amount of capital spending. The petitioners have access to billions of dollars in federal funds to repair, rebuild, and harden the electrical system—dollars they mostly have failed to use for years. Rather than timely put those funds to use, LUMA seeks to fund capital expenditures from rates, which violates PREPA’s Trust Agreement and is impermissible given that the Bondholders have a perfected lien on PREPA’s Net Revenues (essentially, the revenues remaining in a given period after PREPA has paid its current operating expenses for such period). But capital expenditures are required to be paid after the bonds, not before them. *See, e.g.*, Trust Agreement §§ 505, 507, 512-512B.

This problem is amplified by the fact that many of the capital expenditures are facially unnecessary, thus saddling ratepayers with inflated expenses and exacerbating the violation of the Bondholders’ legal property interests. The Bondholders agree that rates need to be increased, but

Establishing Scope and Procedures for Rate Case, Case No. NEPR-AP-2023-0003 (Feb. 12, 2025) (including multiple filing requirements related to debt, including specifically the Title III debt).

²³ LUMA Exhibit 2.00 – Andrew Smith Testimony, at Question 35.

the additional funds should be used first to pay debt service, not subordinate expenses, and particularly not facially unnecessary ones.

While the Bondholders are continuing to review the Rate Petition, the following are some preliminary, larger-dollar examples of capital expenditures included in the provisional rate request and proposed to be funded ahead of debt:²⁴

- **Replace poles, restore out-of-service distribution lines, address situations where wire is out of code: \$44.2 million incremental.**²⁵
 - Pole “replacements” are capital expenditures under the Trust Agreement that may not be paid ahead of debt service. In addition, “replacements” indicates there is either an existing functioning pole, or a nonfunctioning pole that is not essential to system operation.
 - If a distribution line is currently out of service yet the system is operational, this indicates its restoration is discretionary (after all, such line has been and is out-of-service, yet power continues to flow).
 - A lack of code compliance does not equate to non-functionality.
- **Substation installation of new parts: \$44.4 million incremental.**²⁶
 - Installing new substation parts is a capital expenditure. In addition, a project to install new parts indicates the current parts are functioning and have not yet failed.
 - As Mr. Burgemeister explains, the substation reliability project is meant to address a “backlog heretofore *not addressed in previous years*.”²⁷ Replacement of an older part that has continued to function for years is discretionary. In fact, its continued operation in previous years proves that proactively replacing it in previous years was *not* necessary.
 - Further, Mr. Burgemeister explains that the current status quo is “a repair on failure regimen,” but that LUMA wishes to “transition towards future

²⁴ These examples are non-exhaustive, and the Bondholders reserve all rights to supplement or modify as they continue to review the Rate Petition.

²⁵ See LUMA Exhibit 5.00 – Pedro Meléndez-Meléndez Testimony, at Question 98.

²⁶ See *id.*

²⁷ LUMA Exhibit 6.00 – Kevin Burgemeister Testimony, at Question 87 (emphasis added).

state for substations.”²⁸ Again, a “future state” may be ideal but is discretionary.

- Mr. Burgemeister also claims that LUMA has *already* “improved maintenance practices” regarding substations, but says that LUMA wants more money to obtain “full implementation of the industry standard preventative maintenance program.”²⁹
- **Transmission restoration of out-of-service line segments: \$30.8 million incremental.**³⁰
 - If a transmission line segment is currently out of service yet the system is operational, this indicates its restoration is discretionary.
 - As Mr. Burgemeister explains, LUMA’s desire here is to prevent the system from falling out of “designed configuration and limit any contingencies to absorb system disturbances without incurring unplanned outages.”³¹ Such flexibility to use extra line segments is discretionary (after all, such segments have been and are out-of-service, yet power continues to flow).
- **Operations costs tied to capital expenditures above: \$34.4 million.**³²
 - Same notes as above.
- **“Critical facilities initiatives,” including installing new backup building generators, AC units, building “improvements,” building “modernization,” and “SCADA new equipment”: \$20.3 million.**³³
 - As Mr. González admits, these “do not pertain directly to repairs or upgrades of the T&D System.”³⁴

²⁸ *Id.* at Question 90.

²⁹ *Id.*

³⁰ See LUMA Exhibit 5.00 – Pedro Meléndez-Meléndez Testimony, at Question 98.

³¹ LUMA Exhibit 6.00 – Kevin Burgemeister Testimony, at Question 87.

³² LUMA Exhibit 1.00 – Alejandro Figueroa Testimony, at Question 113 Table 12 (sum of operations total for transmission priority pole replacements, substation reliability, substation rebuilds, substation maintenance); see also Rate Brief at ¶ 110; LUMA Exhibit 6.00 – Kevin Burgemeister Testimony, at Questions 85, 90.

³³ LUMA Exhibit 17.00 – José Carlos Latorre González Testimony, at Questions 59-60.

³⁴ *Id.* at Question 60.

- Improving and installing new equipment at LUMA’s buildings is discretionary (particularly when such buildings are not directly part of the T&D System).
- **Funding for LUMA’s “operational” account: \$120 million.**³⁵
 - As the Bureau reasoned in denying LUMA’s emergency rate petition, which contained a similar request for funding of the operational account, this is a contractual obligation and LUMA has been able to address outages regardless.³⁶ LUMA offered “no evidence that the utility will become imminently unable to restore service without immediate tariff relief.”³⁷
 - That remains true. Now, LUMA claims that failure to replenish the operational account may in turn impair capital “long-term system improvements,” as well as capital “reconstruction and modernization projects.”³⁸
 - Such “long-term,” “modernization” capital improvements are, by definition, not an immediate issue.

In sum, the provisional rate request itself admits that it is proposing “investments,”³⁹ “modernization,”⁴⁰ “replacements,”⁴¹ “proactive[] repair,”⁴² and “improvements,”⁴³ in order to obtain a “future state.”⁴⁴ LUMA’s executive summary of the Rate Petition describes the desire for massive additional funding (beyond the billions in available federal funding) to build “storm-

³⁵ See Rate Brief at ¶ 141.

³⁶ See *Determination on LUMA’s Petition to Implement Temporary Rates*, Case No. NEPR-AP-2025-0002, at p.4 (May 29, 2025).

³⁷ *Id.*

³⁸ LUMA Exhibit 1.00 – Alejandro Figueroa Testimony, at Questions 129, 133.

³⁹ *E.g.*, Rate Brief at ¶¶ 92, 96, 98, 142; LUMA Exhibit 1.00 – Alejandro Figueroa Testimony, at Questions 102, 113.

⁴⁰ *E.g.*, Rate Brief at ¶ 105; LUMA Exhibit 5.00 – Pedro Meléndez-Meléndez Testimony, at Question 97.

⁴¹ *E.g.*, Rate Brief at ¶ 130.

⁴² *E.g.*, LUMA Exhibit 1.00 – Alejandro Figueroa Testimony, at Question 102.

⁴³ *E.g., id.* at Question 136.

⁴⁴ *E.g.*, LUMA Exhibit 6.00 – Kevin Burgemeister Testimony, at Question 90.

resilient infrastructure,” “smart grid technologies,” “modernize[d] grid infrastructure,” and to “prepar[e] for a future of renewable energy.”⁴⁵ These may well be good ideas in the abstract and with the availability of unlimited funds. But they are not appropriate when PREPA remains in bankruptcy, when its substantial obligations to the Bondholders remain unpaid, when those capital expenditures are expressly subordinate to debt service on the bonds, and when the Oversight Board alleges it must impose strict caps on PREPA’s ability to charge rates.

III. The Provisional Rate Request Is Missing Information and Is Overstated as to PREPA and Genera

As identified in the Hearing Examiner’s July 8th order, there are additional issues with the provisional rate request. As to LUMA, most notably, it includes a \$505 million “Other” item.⁴⁶ Given its half-billion-dollar magnitude, this line item obviously should have been disaggregated and appropriately explained in the Executive Summary.

As to Genera and PREPA, it appears that both entities simply copied their permanent rate request number onto their provisional rate request number. This ignores the Bureau’s guidance, nearly three months ago, that provisional rate requests must be more limited than a permanent rate request, lest one of the entities spend money collected under the provisional rate and then be unable to refund customers if a lower permanent rate is approved.⁴⁷ As the parties discussed in prior hearings, this is a material concern because it is not clear that PREPA, LUMA, or Genera would

⁴⁵ LUMA Exhibit 1.04 – LUMA Executive Summary.

⁴⁶ See LUMA Exhibit 1.04 – LUMA Executive Summary, at p.2 (“Other,” Provisional Rate Proposal: \$505 million, Permanent Rate Proposal: \$576 million). There is also a \$178 million line item for “Net Operating Income.” This line item appears to be based on a debt service coverage ratio for an assumed \$2.5 billion of bonds—which amount is taken from the contested, not-yet-considered, not-yet-confirmed, proposed PREPA plan of adjustment. It is also unclear what the petitioners intend to do with these debt service coverage funds for unissued new bonds, given that the associated plan of adjustment is not even under active consideration by the Title III court.

⁴⁷ See *Revisions and Additions to February 12 Order on Rate Case Procedures*, Case No. NEPR-AP-2023-0003, at p.6 (April 21, 2025).

be willing or able to come up with the money to make such refunds in a timely manner (or ever), and in that case customers would need to be refunded through rates, leading to a deficiency. This is one more reason to deny the provisional rate request.

IV. Reservation of Rights

As noted, the Bondholders have not had sufficient time to fully review the Rate Petition, and nothing herein shall be construed as a waiver of the Bondholders' right to object to any issues related to the Rate Petition or otherwise. The Bondholders reserve all rights to address and object to these or other elements of the Rate Petition at the appropriate juncture.

WHEREFORE, the Bondholders respectfully request that the Energy Bureau deny the current provisional rate request.

RESPECTFULLY SUBMITTED,

THIS 11th DAY OF JULY 2025

CERTIFICATE OF SERVICE: We hereby certify that the foregoing petition was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System, and courtesy copies were sent via electronic means to mvalle@gmlex.net; arivera@gmlex.net; jmartinez@gmlex.net; jgonzalez@gmlex.net; katiuska.bolanos-lugo@us.dlapiper.com; Yahaira.delarosa@us.dlapiper.com; margarita.mercado@us.dlapiper.com; carolyn.clarkin@us.dlapiper.com; andrea.chambers@us.dlapiper.com; sromero@sbgblaw.com; gcastrodad@sbgblaw.com; jennalvarez@sbgblaw.com; jfr@sbgblaw.com; regulatory@genera-pr.com; legal@genera-pr.com; hriviera@jrsp.pr.gov; contratistas@jrsp.pr.gov; victorluisgonzalez@yahoo.com; Cfl@mcvpr.com; nancy@emmanuelli.law; jrinconlopez@guidehouse.com; Josh.Llamas@fticonsulting.com; Anu.Sen@fticonsulting.com; Ellen.Smith@fticonsulting.com; Intisarul.Islam@weil.com; kara.smith@weil.com; rafael.ortiz.mendoza@gmail.com; rolando@emmanuelli.law; jan.albinolopez@us.dlapiper.com; Rachel.Albanese@us.dlapiper.com; varoon.sachdev@whitecase.com; jdiaz@sbgblaw.com; javrua@sesapr.org; Brett.ingerman@us.dlapiper.com; agraitfe@agraitlawpr.com; jpouroman@outlook.com; epo@amgprlaw.com; loliver@amgprlaw.com; acasellas@amgprlaw.com; matt.barr@weil.com; Robert.berezin@weil.com; Gabriel.morgan@weil.com; corey.brady@weil.com; lramos@ramoscruzlegal.com; tlauria@whitecase.com; gkurtz@whitecase.com; ccolumbres@whitecase.com; isaac.glassman@whitecase.com; tmacwright@whitecase.com; jcunningham@whitecase.com; mshepherd@whitecase.com; jgreen@whitecase.com; hburgos@cabprlaw.com; dperez@cabprlaw.com; howard.hawkins@cwt.com; mark.ellenberg@cwt.com; casey.servais@cwt.com; bill.natbony@cwt.com; thomas.curtin@cwt.com; escalera@reichardescalera.com; riverac@reichardescalera.com; susheelkirpalani@quinnemanuel.com; erickay@quinnemanuel.com; dmonserrate@msglawpr.com; fgierbolini@msglawpr.com; rschell@msglawpr.com; eric.brunstad@dechert.com; Stephen.zide@dechert.com; David.herman@dechert.com; Julia@londoneconomics.com; Brian@londoneconomics.com; luke@londoneconomics.com; juan@londoneconomics.com; mmcgrill@gibsondunn.com; LShelfer@gibsondunn.com; jnieves@cstlawpr.com; arrivera@nuenergypr.com; apc@mcvpr.com; shempling@scotthemplinglaw.com; rsmithla@aol.com; guy@maxetaenergy.com; jorge@maxetaenergy.com; rafael@maxetaenergy.com; dawn.bisdorf@gmail.com; msdady@gmail.com; mcranston29@gmail.com; ahopkins@synapse-energy.com; clane@synapse-energy.com; kbailey@acciongroup.com; hjudd@acciongroup.com; zachary.ming@ethree.com; PREBconsultants@acciongroup.com; carl.pechman@keylogic.com; bernard.neenan@keylogic.com; tara.hamilton@ethree.com; aryeh.goldparker@ethree.com; roger@maxetaenergy.com; Shadi@acciongroup.com.

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Appendix A

**COMMONWEALTH OF PUERTO RICO
PUERTO RICO ENERGY NEGOCIADO**

**IN RE: PUERTO RICO ELECTRIC
POWER AUTHORITY RATE
REVIEW**

CASE NO.: NEPR-AP-2023-0003

SUBJECT: PREPA Bondholders' Preliminary
Response to Provisional Rate Request

**RESUMEN DE: RESPUESTA PRELIMINAR DE LOS BONISTAS DE PREPA
A LA SOLICITUD DE TARIFA PROVISIONAL**

AL NEGOCIADO DE ENERGÍA DE PUERTO RICO:

Los peticionarios National Public Finance Guarantee Corporation, GoldenTree Asset Management LP, Syncora Guarantee, Inc., Assured Guaranty Inc., y PREPA Ad Hoc Group (colectivamente, los “Bonistas”), presentan esta respuesta preliminar a la solicitud de tarifa provisional presentada por LUMA en representación de sí misma, Genera, y PREPA.

Los Bonistas aún están procurando acceso a la información sometida por LUMA bajo sello de confidencialidad y se encuentran todavía revisando la voluminosa solicitud radicada apenas hace una semana. Además, muchas de las respuestas a los Requerimientos de Información aparentan ser no responsivos. Véase Apéndice B. Por lo tanto, los Bonistas se reservan todos sus derechos, incluyendo a complementar o modificar esta respuesta preliminar a la solicitud provisional de tarifa, a requerir información adicional mediante el descubrimiento de prueba y a responder a la solicitud de tarifa de forma más general y completa a lo largo de este procedimiento o de cualquier otro modo.

TRASFONDO

El 3 de julio de 2025, LUMA sometió una solicitud de tarifa (“Solicitud de Tarifa”) por sí y para Genera y PREPA. La Solicitud de Tarifa solicita una tarifa base permanente de

\$2.75 billones anuales⁴⁸ (un aumento de más de 100% sobre la tarifa base). Esto aumentaría la factura promedio mensual residencial por la cantidad de \$39.02, y aún más si se adoptara el presupuesto óptimo propuesto por LUMA. Además, la Solicitud de Tarifa solicita una tarifa provisional de **\$2.42 billones** que comenzaría aún más temprano y hasta que se establezca la tarifa permanente, y que aumentaría la factura promedio mensual residencial por la cantidad de \$30.04.⁴⁹ La tarifa provisional se traduce en un cargo nuevo de **7.8 c/kWh**.⁵⁰ Esta respuesta preliminar atiende únicamente la solicitud de tarifa provisional (aunque nos reservamos el derecho de responder adicionalmente a la Solicitud de Tarifa en más detalle en un futuro).

RESPUESTA PRELIMINAR

Primero, la Solicitud de Tarifa no reconoce la deuda pendiente de la empresa, obviando el requisito legal que requiere que cualquier tarifa sea suficiente para cubrir el servicio de la deuda, y perpetuando así la prolongada falta de pago a los Bonistas, incluso cuando el propio testigo de LUMA admite el daño tangible y directo que la falta de acceso a los mercados de capital está infligiendo a sus clientes.

Segundo, la solicitud de tarifa provisional eleva cientos de millones de dólares de proyectos capitales y su financiación por sobre la deuda de la empresa, en violación del contrato de fideicomiso (“Trust Agreement”) que gobierna los bonos emitidos por PREPA, y que otorga a los Bonistas un gravamen perfeccionado sobre sus Ingresos Netos.

Finalmente, la Solicitud de Tarifa incluye una partida significativa sin explicación, así como cantidades para Genera y PREPA que constituyen el 100% de lo que estas entidades solicitan

⁴⁸ Esta cantidad no incluye los costos del pago de pensiones de PREPA.

⁴⁹ Esta cantidad no incluye los costos del pago de pensiones de PREPA.

⁵⁰ Esta cantidad no incluye los costos del pago de pensiones de PREPA.

como tarifa *permanente*, por lo que no reconocen la posibilidad muy real de que el Negociado apruebe menos del 100% de lo que solicitan.

I. La solicitud de tarifa provisional ignora la deuda de la empresa

LUMA *excluye por completo* las obligaciones a los Bonistas de su requerimiento de ingresos propuesto. El Sr. Smith, testigo de LUMA, admite que LUMA no tuvo en cuenta las obligaciones del servicio de la deuda como parte de su proceso de planificación de capital. Sin embargo, el propio testigo luego explica la importancia crítica del acceso a los mercados de capital y cómo, en un régimen normal de financiación de la deuda para inversiones de capital, los clientes de una empresa de servicios públicos suelen pagar cantidades mucho menores por adelantado; en su ejemplo una reducción de 43% en el primer año, y reducciones aún más importantes en años sucesivos. Esto es exactamente lo que los Bonistas han estado tratando de explicarle a la Junta de Supervisión Fiscal y a PREPA. Al ignorar sus obligaciones de repago, renegar acuerdos transaccionales, y tomar posiciones irrazonables que han causado que PREPA continúe en quiebra, ello resulta en que PREPA no tenga acceso a mercados capitales *que permitirían a sus clientes pagar mucho menos en proyectos capitales ahora*.

La Solicitud de Tarifa provisional no incluye el pago de su deuda. Tampoco está incluida dicha obligación en la Solicitud de Tarifa permanente. LUMA propone posponer cualquier cargo al respecto hasta el 2027, garantizando así que PREPA no tendrá acceso a los mercados de capital hasta por lo menos esa fecha.

Excluir la deuda aquí también es contrario a la ley y varias órdenes de este Negociado, que requieren que el Negociado apruebe una tarifa suficiente para cubrir el pago de la deuda. Por ejemplo, la Ley 57-2014 establece que:

- El Negociado aprobará una tarifa que (i) permita a las empresas de servicios de energía eléctrica recuperar todos ... los costos de financiación ... § 6.25.

- Durante una revisión tarifaria, el Negociado considerará “los gastos relacionados con el repago de la deuda de la Autoridad.” § 6.25(b).
- Es deber del Negociado “[a]segurar que los poderes y facultades ejercidos por el PREB sobre [PREPA] ... incluyendo los relacionados con la revisión y aprobación de tarifas, garanticen que [PREPA] cumpla con sus obligaciones con los bonistas.” § 6.3(p).

La Orden de Tarifas de 2017 del Negociado reconoció igualmente que el servicio de la deuda debe incluirse en el requisito de ingresos, y que la ley del Estado Libre Asociado “no deja opción al [Negociado]” en términos de proveer para el pago de la deuda a través de la tarifa base. El 20 de diciembre de 2024, el Negociado declaró igualmente que este caso debe considerar “todos los costos”, “independientemente de la fuente o el beneficiario”. Esto incluye “la deuda que está sujeta al proceso del Título III.”

II. La solicitud de tarifa provisional eleva impermisiblemente los gastos de capital por encima de la deuda

A pesar de que los peticionarios han tenido acceso a billones de dólares en fondos federales que no han utilizado, pretenden utilizar fondos generados por las tarifas para sufragar sus gastos de capital. Pero eso viola el Trust Agreement y no es permisible pues los Bonistas tienen un gravamen perfeccionado sobre los Ingresos Netos de PREPA. El Trust Agreement requiere que las inversiones de capital se paguen *después* de los bonos, y no antes. *Trust Agreement* §§ 505, 507, 512-512B.

Los Bonistas están de acuerdo en que es necesario aumentar las tarifas, pero los fondos adicionales deben utilizarse en primer lugar para pagar el servicio de la deuda, no los gastos subordinados, y en particular no los aparentemente innecesarios.

A continuación se exponen algunos ejemplos preliminares, de mayor cuantía económica, de gastos de capital incluidos en la petición provisional de tarifas y que LUMA propone financiar antes de la deuda:

- **Sustitución de postes, restablecimiento de líneas de distribución fuera de servicio, resolución de situaciones en las que el cableado está fuera de la normativa: Incremento de 44.2 millones de dólares.**
 - Las “sustituciones” de postes son gastos de capital que bajo el Trust Agreement no se pueden pagar antes del pago contra la deuda con los Bonistas. La falta de cumplimiento del código no equivale a la falta de funcionalidad.
- **Instalación de nuevas piezas en las subestaciones: 44.4 millones de dólares de incremento.**
 - Instalar nuevas piezas de subestación es un gasto de capital.
- **Restablecimiento de la transmisión de los segmentos de línea fuera de servicio: 30.8 millones de dólares de incremento.**
 - Si un segmento de línea de transmisión está actualmente fuera de servicio pero el sistema está operativo, esto indica que su restablecimiento es discrecional.
- **Costos de explotación vinculados a los gastos de capital arriba indicados: 34.4 millones de dólares.**
- **“Iniciativas para instalaciones críticas”, incluida la instalación de nuevos generadores de reserva, unidades de aire acondicionado, “mejoras” en los edificios, “modernización” de los edificios de LUMA y “nuevos equipos SCADA”: 20.3 millones de dólares.**
 - Como admite el Sr. González, estas mejoras a los edificios de LUMA “no pertenecen directamente a reparaciones o mejoras del Sistema T&D”.
- **Financiación de la cuenta “operacional” de LUMA: 120 millones de dólares.**
 - Las mejoras de capital “a largo plazo” no son un problema inmediato.

El resumen ejecutivo de la Solicitud de Tarifa describe su deseo de cantidades masivas de fondos adicionales (por encima de los billones disponibles en fondos federales) para construir “infraestructuras resistentes a las tormentas”, “tecnologías de red inteligente”, “modernizar las infraestructuras de red” y “prepararse para un futuro de energías renovables”. Estas ideas no son apropiadas mientras PREPA continúe en quiebra, cuando sus obligaciones sustanciales con los Bonistas siguen sin pagarse a pesar de que tienen prioridad sobre dichas inversiones de capital, y

cuando la Junta de Supervisión alega que debe imponer límites estrictos a las tarifas que debe cobrar PREPA.

III. La solicitud provisional de tarifas carece de información y es exagerada en cuanto PREPA y Genera

La Solicitud de Tarifa provisional de LUMA incluye una solicitud bajo “Other” de \$505 millones. Dado su magnitud, este ítem debió ser segregado y su necesidad explicada específicamente.

Genera y PREPA aparentemente simplemente utilizaron los mismos números de su Solicitud de Tarifa permanente para su Solicitud de Tarifa provisional. Esto hace caso omiso de la orden del Negociado, hace casi tres meses, de que las solicitudes de tarifas provisionales debían ser más limitadas que su solicitud de tarifa permanente, a no ser que una de las entidades gaste el dinero recaudado bajo la tarifa provisional y luego no pueda reembolsar a los clientes si/cuando se apruebe una tarifa permanente más baja. Como las partes han discutido en conferencias anteriores, esta es una preocupación material porque no está claro que PREPA, LUMA o Genera estén dispuestas o sean capaces de conseguir el dinero para hacer tales reembolsos de manera oportuna.

IV. Reserva de derechos

Los Bonistas no han tenido tiempo suficiente para revisar completamente la Solicitud de Tarifa, y nada de lo aquí expuesto se interpretará como una renuncia al derecho de los Bonistas a oponerse a cualquier otra cuestión relacionada con la Solicitud de Tarifa. Los Bonistas se reservan todos los derechos a abordar y objetar estos u otros elementos de la Solicitud de Tarifa en el momento oportuno.

POR LO TANTO, los Bonistas solicitan respetuosamente que el Negociado de Energía deniegue la Solicitud de Tarifa provisional actual.

Appendix B

Examples of Deficient Responses (preliminary, non-exhaustive)

1. LUMA Response ROI-LUMA-AP-2023-0003-20250324-PREB-067 states that a FEMA determination is subject to appeal but does not answer the Bureau's March 24 ROI, which requested *quantification* of the cost impact of FEMA's determination. There is no such quantification in the response. The requested quantification is possible and appropriate regardless of whether the FEMA determination may be subject to appeal.
2. At page 30 of the Rate Brief, as to Item VII.C, LUMA refuses to provide any estimate of improved efficiencies and resulting savings that it has achieved. Of course, given that private operators were selected in part to achieve cost savings—as noted in PREPA's cover letter⁵¹—concretely estimating such savings is particularly important. LUMA's refusal in this regard is telling.
3. LUMA Responses to LUMA ROIs 54 through 61 (related to the Commonwealth's assumption of irrigation costs) redirect the ROIs to PREPA. PREPA's separately submitted responses, in turn, are largely nonresponsive to the questions, *e.g.* not providing requested updates on plans, stating without explanation or justification that no discussions have occurred since October 2024, and claiming without explanation or justification that cost recovery is “not feasible.”⁵²
4. LUMA Response ROI-LUMA-AP-2023-0003-20250324-PREB-002 relied, for “[s]pecific information,” on two exhibits titled “LUMA Ex. 5.01: NFC Long Term Investment Plan (‘LTIP’) FY2026-FY2035 Unconstrained (Breakout of NFC funding and Consolidated Units by Program,” and “LUMA Ex. 5.02: NFC LTIP FY2026-FY2035 Constrained (Breakout of NFC funding and Consolidated Units by Program).” These exhibits were not provided in the Sharefile, and after counsel requested them via e-mail, LUMA's counsel claimed these very specific references were somehow inadvertent. This ROI response is largely predicated on these two cited exhibits; the exhibits clearly exist (and have detailed titles including defined terms used elsewhere in the Rate Petition); and their titles suggest they contain relevant information. LUMA should provide these exhibits.
5. LUMA Response ROI-LUMA-AP-2023-0003-20250324-PREB-076 regarding federal funding denials fails to provide the reasons for such denials, as requested, because “LUMA does not receive formal documents” from FEMA. But LUMA does not state whether it could simply request such documents from COR3 and/or PREPA (or FEMA for that matter), which would be appropriate given LUMA's integral involvement in applying for and using federal funds.

⁵¹ See June 30, 2025 Letter from Ms. Zapata to Mr. Saca, at p.4 (PREPA Ex. 31) (Rough Translation: “Therefore, the Puerto Rico Government's understanding in relation to LUMA's representation that the 2017 tariff revenues would be sufficient to cover its expenses was that LUMA would implement efficiencies that would provide sufficient savings for those revenues to cover all expenses, including the annual charge.”).

⁵² Annex I.C, PREPA Responses to RFI 02 (PREPA Ex. 46).