GOVERNMENT OF PUERTO RICO
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:** SESA's Motion to Submit Rebuttal Testimony of E. Kyle Datta

MOTION TO CORRECT OCTOBER 27 FILING

TO THE HONORABLE ENERGY BUREAU:

COMES NOW, the Solar and Energy Storage Association of Puerto Rico ("SESA") through its undersigned counsel of record and respectfully submits the following:

1. On October 27, 2025, SESA submitted for the record the rebuttal testimony by E. Kyle Datta, president and sole employee of New Energy Partners Inc, provided on behalf of SESA (the "October 27 Filing").
2. SESA respectfully submits this corrective filing to address a clerical error identified in the October 27 Filing due to inadvertently filing a non-final version of the rebuttal testimony.
3. SESA hereby submits the correct and final version of the E. Kyle Datta rebuttal testimony.
4. In light of the above, SESA respectfully request that the Energy Bureau accept this correction *nunc pro tunc* to the date of the original filing, deem the October 27 Filing amended as set forth above, and confirm that no other changes to the October 27 FIling are intended or effected by this filing.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this October 27th, 2025.

WE HEREBY CERTIFY that this Motion was filed using the electronic filing system of this Energy Bureau and that electronic copies of this Notice will be notified to Hearing Examiner, Scott Hempling, shempling@scotthemplinglaw.com; and to the attorneys of the parties of

record. To wit, to Luma Energy, LLC and Luma Energy ServCo, LLC through: Margarita Mercado, margarita.mercado@us.dlapiper.com; Carolyn Clarkin, carolyn.clarkin@us.dlapiper.com; and Andrea Chambers, andrea.chambers@us.dlapiper.com; 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; Juan Martínez, jmartinez@gmlex.net; and Natalia Zayas Godoy, nzayas@gmlex.net; and to *Genera PR, LLC*, through: Jorge Fernández-Reboredo, jfr@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 Oficina Independiente de Protección al Consumidor*, hrivera@jrsp.pr.gov; contratistas@jrsp.pr.gov; pvazquez.oipc@avlawpr.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; alexis.ramsey@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;

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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 NUM. NEPR-AP-2023-0003** **Rate Review Proceeding**

Rebuttal Testimony of E. Kyle Datta
October 27, 2025

Summary of Rebuttal Testimony of
E. Kyle Datta
ON BEHALF OF
SOLAR AND ENERGY STORAGE ASSOCIATION OF PUERTO RICO (SESA)

E. Kyle Datta submits this Rebuttal Testimony on behalf of SESA.

Datta addresses statements made by witness Justo Gonzalez (PC Exhibit. 64.0), witness for the Puerto Rico Energy Bureau - regarding his direct testimony.

Datta also addresses statements made by witness Zachary Ming (PC Exhibit. 61.0), witness for the Puerto Rico Energy Bureau - regarding his direct testimony.

Datta also addresses statements made by witness Melissa Whited (PC Exhibit. 59.0), witness for the Puerto Rico Energy Bureau - regarding her direct testimony.

E. Kyle Datta rebuts with LUMA data Gonzalez's statement that "the highest emergency generation dispatch capacity it achieved [by CBEST+] was approximately 15 MW." CBES+ demonstrates significant capacity with over 63,000 customers actively participating and a total enrolled nameplate capacity of 498.5 MW. CBES+ events last about 4 hours with staggered dispatch of battery sub-groups limited to 20 MW each, resulting in a reported average event capacity of 25.8 MWh and total energy of 108.8 MWh. Mr. Datta references the Monthly Status Report CBES+. Reporting period July 2025., NEPR MI-2022-0001. Total average capacity is clearly stated as 40.5 MW across 12 events in July 2025.

E. Kyle Datta rebuts expert Ming's claims that high fixed are reasonable for three reasons. First, the proposed fixed charges are beyond the cost allocation for direct costs incurred by the utility for additional customers, which is the basis for fixed charges. Second, since the fixed charges are grossly overstated, Luma's proposed high fixed charges are inefficient and send wrong price signals that encourage inefficient electricity use. High fixed charges create economic inefficiencies by distorting prices away from actual marginal costs of electricity delivery. Fixed fees suppress volumetric rates, encouraging overconsumption and undermining incentives for energy efficiency. Third, Mr Ming errs in his analysis that larger utilities have higher fixed charges per customer by virtue of a larger customer base. This is contrary to the actual data and represents a misunderstanding of economies of scale in utility administrative and operational functions. In addition, Mr. Datta rebuts Ming's statements in support of abrupt increases of fixed charges because that violates the principle of rate gradualism. Causing sudden bill shocks especially harm low-usage and low-income customers, and notes Puerto Rico's high poverty and local data showing low-income households adopt solar and storage at high rates due to the current rate structure, vulnerable customers that will be particularly harmed.

To remove Luma's financial accountability for reliable grid operations using the justification of increased revenues is repugnant to regulatory principles, creates a moral hazard for Luma management, and is undermines the good faith of the ratepayer. Regarding witness Melissa Whited's testimony, in support of inclusion of outages in the decoupling mechanism, E. Kyle Datta reaffirms that including sales lost to outages caused by Luma's failure to act in decoupling mechanisms removes a mechanism for outage accountability, and notes that while performance-based regulation (PBR) is normally an appropriate method for incentivizing reliability under a fixed-fee contract, LUMA has not met reliability benchmarks despite PREB's PBR approaches, reinforcing the need to keep accountability measures.

Table of Contents

REBUTTAL TESTIMONY TO FILED TESTIMONY OF WITNESS JUSTO GONZALEZ

Q.1 On page 12 of his testimony, witness Gonzalez expresses, "Mr. Datta's testimony on DER contributions raises important questions about the methodology used to account for these resources. The 1,200 MW of installed solar capacity and 2,486 MWh of battery storage represent a major resource that, if properly integrated into system operations and planning, could provide firm dispatchable capacity. However, I do not believe the system operator currently has the necessary assurances to classify these DERs as firm resources, which are essential for reliable planning. Having examined the data provided by LUMA, I cannot validate Mr. Datta's claim that the Customer Battery Energy Sharing program already provides more than 40 MW of peak support. The highest emergency generation dispatch capacity it achieved was approximately 15 MW." Do you agree?

A. No. As per the latest monthly status report submitted at PREB on October 20th by LUMA Energy to the Puerto Rico Energy Bureau for the Customer Battery Energy Sharing (CBES+) program, covering September 2025,[1] the CBES+ leveraged customer battery storage systems to support the electric grid during peak demand, improve reliability, and reduce load shedding. As reported by LUMA, total enrolled nameplate capacity was 498.5 MW and nameplate energy of 1.26 GWh. In July 2025, there were 12 events with an average of 40.5 MW per event each over 4 hours. The extended duration reflects the dispatch of battery sub-groups, a design implemented to ensure a safe and reliable ramping up and ramping down of energy in accordance with the recommendations of LUMA's System Operations team. Each sub-group is limited to no more than 20 MW, and

[1] https://energia.pr.gov/wp-content/uploads/sites/7/2025/10/20251020-MI20220001-Motion-to-Subm-Monthly-Status-Report.pdf.

each is dispatched in intervals no shorter than 15 minutes. As a result, while the overall duration of the event remains 4 hours for all participating batteries, the event length extends to 4.25 hours when accounting for staggered start times." Thus, even though the installed, on-demand firm emergency capacity resource of over 63,000 participants with batteries that could be reliably discharged at 5kW each (which would equal around 315 MW on demand), CBES+ opts to use less of that resource, and also extends the use of that resource by separating in batches or subgroups. The average capacity in both July and September for each event was 40.5 MW and 25.8 MW.

REBUTTAL TESTIMONY TO FILED TESTIMONY OF WITNESS ZACHARY MING

Q.2 On pages 88 and 89 of his testimony, Mr. Ming expresses that your view that "[h]igh fixed charges that include costs that in reality vary with demand are inefficient and send perverse price signals that encourage inefficient use of electric service." And that your statement "over-simplifies the challenge of designing efficient rates." Do you agree?

A. No. Most importantly, the proposed allocation of fixed charges does not adhere to the regulatory principle that fixed charges per customer should include only those charges that are directly caused by the addition of a new customer on the system per customer class, the cost of metering, billing, customer care, and, in some cases, interconnection to nearest transformer. Fixed charges in rate design are not meant to cover the entire fixed costs of being connected to the grid and operating the grid. Luma has clearly violated this principle by proposing to include entire categories of costs related to customer services, grid operations, etc. Witness Ming is entirely incorrect that fixed charges are based on the magnitude of volumetric charges. Witness Ming appears to misunderstand the concept of economies of scale in utility administrative functions and grid operations.

Larger utilities tend to have smaller correctly allocated fixed charges per customer. Further, as referenced by witness Faruqui, utilities with high volumetric rates, like Luma, tend to have smaller fixed charges per customer. Therefore, the proposed fixed charges are inexcusably high. High fixed charges on electricity bills create economic inefficiency by fundamentally misaligning prices with the actual marginal costs of electricity delivery. The core problem is that when utilities recover a large portion of revenue through flat monthly fees—rather than through per-unit consumption charges—they artificially suppress volumetric rates and send distorted price signals to consumers. Fixed charges encourage overconsumption by making electricity appear cheaper than it actually is. They also undermine incentives for all customer side investments, including CHP, NEM, distributed resources and storage, and energy efficiency, since customers cannot proportionally reduce bills through conservation when a large portion is fixed.

Q.3 On pages 95-96, witness Ming states, “Mr. Datta argued that LUMA’s proposed fixed charge increase for residential customers “violates the principle of rate gradualism.” […]

Mr. Datta argued that low energy users are often low-income customers but did not provide evidence to support this assertion. A recent study of residential electricity use in California found that occupancy, climate, and installed distributed generation are all more important factors in determining household electricity usage than income. To the extent the Bureau is considering affordability for low-income customers as a policy objective, I recommend the Bureau focus on the discounts provided through the low-income rates and the accessibility of those rates to low-income households, as opposed to focusing attention on low-usage customers within the GRS rate class, who are not necessarily low-income customers. Do you agree?

A. No, I don't. The principle of gradualism prevents abrupt rate hikes or structural changes that could cause excessive volatility in customer bills or harm particular groups. Gradualism, in this context, aims to phase in rate changes over time, not abruptly. Fixed electricity rates—especially when introduced or raised suddenly—violate this principle because they represent a sharp, non-incremental change in how utilities recover costs. Fixed charges replace variable, usage-based charges with flat fees that customers must pay regardless of consumption. When implemented quickly or in large amounts, this causes immediate and uneven financial impacts, especially on low-usage or low-income customers, leading to significant bill shocks. Such abrupt adjustments conflict with the gradualist emphasis on smooth and predictable transitions in pricing structures. Puerto Rico, the U.S. jurisdiction with the highest poverty rate, is quite different from California socio-economically. Note that an analysis developed using zip code-level data from existing net-metered residential solar installations and recent census data categorized by income levels as defined by the United States Department of Housing and Urban Development (HUD), found that "rates of lower-income households installing solar in Puerto Rico are 27% to 37% higher than the U.S. national averages". Specifically, 27.90% of customers with solar in the net metering program (which are obviously low grid electricity usage users) are in very low, low and moderate-income brackets (of which 11% are in the low and very low-income brackets),[2] all economically disadvantaged groups that will invariably be particularly harmed by high fixed fees.

[2] *Impacts of the devaluation of the net metering policy in Puerto Rico*, SESA-PR, 7/11/24, https://www.sesapr.org/_files/ugd/a17184_020e00cfa1eb4a5ba82a5b2e71842743.pdf.

Q.4 On pages **102-103**, witness Ming refutes your view that higher fixed charges lowers volumetric rates and discourages solar adoption, expressing that "LUMA did not propose a reduction in the volumetric charge. Rather, LUMA proposed an increase in the volumetric charge that would actually lead to a significant improvement in the economics for rooftop solar relative to current rates." Do you agree?

A. As noted in my testimony, cetus paribus, the rate design that misallocates utility costs with the intention of raising fixed charges compared with volumetric charges, will, for any level of rate increase that the PREB ultimately approves, result in lower distributed energy resource adoption that would have otherwise occurred. This is based on the fundamental financial reality that the distributed energy resource customer avoids the volumetric charges, not the non-bypassable fixed charges (as proposed by the utility). The net impact of this rate case on all distributed energy resources will depend on the degree of increased volumetric tariff compared to the existing one. That said, the issue I am addressing in my testimony is rate design, not the absolute magnitude of rate increase.

High fixed rates keep volumetric rates artificially low. Utilities must recover total costs (fixed infrastructure and variable operations) through customer bills. When they increase fixed monthly charges, they proportionally reduce per-kilowatt-hour (kWh) volumetric rates to maintain the same total revenue. Also, rooftop solar economics depend entirely on offsetting volumetric charges. Solar systems cannot reduce fixed monthly fees—they only displace usage-based electricity purchases. As fixed charges increase and volumetric rates decrease, each kWh of solar generation becomes worth less in dollar terms. The result is significant deterioration of solar economics. High fixed charges will extend solar payback periods, and the higher the fixed charge, the more deleterious it will

be to solar economics, substantially reducing annual savings of solar customers as well as their investment returns. What might be an economically attractive payback under high volumetric pricing can become a 10+ year payback under rate structures with substantial fixed charges.

REBUTTAL TESTIMONY TO FILED TESTIMONY OF WITNESS MELISSA WHITED

Q.5 On pages **12-13**, witness Whited expresses, in regard decoupling, that "SESA argued that PREB should exclude outage-related losses to ensure accountability for grid reliability. In Puerto Rico, however, LUMA receives compensation through its management contract, not through volumetric sales. As a result, decoupling does not insulate LUMA from the financial consequences of poor performance. Instead, excluding outage-related sales would deprive the utility of necessary revenues for maintenance and investment, which would ultimately harm customers by undermining system reliability. A more direct way to address performance incentives is to partially condition LUMA's compensation on reliability. I therefore do not agree with SESA's position that outages should be excluded from the decoupling mechanism." Do you agree?

A. No. To remove Luma's financial accountability for reliable grid operations using the justification of increased revenues is repugnant to regulatory principles, creates a moral hazard for Luma management, and is undermines the good faith of the ratepayer. Regarding witness Melissa Whited's testimony, in support of inclusion of outages in the decoupling mechanism, E. Kyle Datta reaffirms that including sales lost to outages caused by Luma's failure to act in decoupling mechanisms removes a mechanism for outage accountability, and notes that while performance-based regulation (PBR) is normally an appropriate method for incentivizing reliability under a fixed-fee contract,

LUMA has not met reliability benchmarks despite PREB's PBR approaches, reinforcing the need to keep accountability measures. Ms. Whited is actually identifying a critical defect in the Luma management agreement, specifically the proportion of annual compensation that is fixed vs. the Luma compensation that is tied to reliability incentives and adherence to approved budgets. This already creates a disconcerting degree of moral hazard related to Luma's operation of the grid and deployment of its own capital. Although Ms. Whited is correct to say that under a fixed-fee contract model like LUMA's, regulators will often shift from decoupling to performance-based regulation (PBR), linking financial rewards or penalties to measurable outcomes such as grid reliability, customer satisfaction, and emissions reduction. But still, including sales lost from utility-caused outages in a decoupling mechanism in Puerto Rico should be avoided because no utility accountability signal would persist. In February of 2024, PREB initiated PBR obligations on LUMA in docket NEPR-AP-2020-0025.[3] And under docket NEPR-MI-2019-0007, which focuses on performance metrics, PREB required LUMA monthly reporting of reliability indicators like SAIDI (duration of outages) and SAIFI (frequency of outages).[4] But PREB has already found in a February 2025 Order that LUMA had not met the expected reliability benchmarks, particularly for SAIDI, which showed a worsening trend versus 2023 and the 2020 baseline.[5]

[3] https://www.scribd.com/document/827720548/20240226-AP20200025-Resolution-and-Order.

[4] https://energia.pr.gov/wp-content/uploads/sites/7/2025/05/20250516-MI20190007-Resolution-and-Order.pdf.

[5] https://www.scribd.com/document/865155935/20250211-AI20250001-Resolution-and-Order.

ATTESTATION

Affiant, E. Kyle Datta states the following under penalty of perjury:

The prepared Rebuttal Testimony constitutes my Rebuttal Testimony in the above-styled case before the Puerto Rico Energy Bureau. I further state that the facts and statements provided herein are my Rebuttal Testimony and, to the best of my knowledge, are true and correct.

In Hawaii, this 27th day of October 2025.

s/ E. Kyle Datta
E. Kyle Datta