

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

Tierney Rebuttal Testimony

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

CASE NO.: NEPR-AP-2023-0003

**REBUTTAL TESTIMONY OF SUSAN TIERNEY, PH.D.
October 27, 2025**

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I. INTRODUCTION, PURPOSE, AND SUMMARY OF REBUTTAL TESTIMONY

Q.1 Have you previously testified in this proceeding?

A. Yes, on September 2, 2025, I submitted answering testimony on behalf of National Public Finance Guarantee Corporation, GoldenTree Asset Management LP, Syncora Guarantee, Inc., Assured Guaranty Inc., and the PREPA Ad Hoc Group (collectively, the “Bondholders”).¹

Q.2 Please describe the purpose of your rebuttal testimony.

A. In my answering testimony, I noted that the Puerto Rico Energy Bureau (the “Energy Bureau”) stated in the July 31 Provisional Rate Order that Commonwealth law requires the Energy Bureau to approve a rate sufficient to enable PREPA to meet its debt obligations and I opined that “approving a placeholder rider structure in the tariff now will allow [PREPA] to begin collecting funds to make legacy debt payments in a more expeditious manner without the need for a subsequent rate case for this purpose” once the amount to be repaid to PREPA’s bondholders is resolved.² My rebuttal testimony responds to Ralph Smith and Mark Dady, who submitted an expert report contending that a Legacy Debt Rider should not be developed now as part of the current rate case. Rather, they contend that the issue of a Legacy Debt Rider could be addressed “more appropriately” “after the Title III Court has determined what PREPA’s Legacy Debt Obligation is.”³

Q.3 Please summarize the key points in your rebuttal testimony.

A. In this rebuttal testimony, I show that it would not be novel for a regulator to adopt and

¹ Since I submitted my answering testimony on September 8, 2025, I understand that the Majority Member Ad Hoc Group has also joined the Cooperation Group of Bondholders as of October 1, 2025.

² Answering Testimony of Susan Tierney, Ph.D., *In re Puerto Rico Electric Power Authority Rate Review*, Case No. NEPR-AP-2023-0003, September 2, 2025, pp. 18-19.

³ Expert Report of Ralph C. Smith & Mark S. Dady, *In re Puerto Rico Electric Power Authority Rate Review*, Case No. NEPR-AP-2023-0003, October 6, 2025 (hereafter “Smith & Dady Testimony”), pp. 26-27, 49.

1 design a rider as part of an electric utility tariff without knowing the precise amount of money
2 that it would eventually need to collect from ratepayers.

3 I provide two examples where such regulatory action occurred: (1) the Wildfire Fund
4 non-bypassable charge established in 2019 by order of the California Public Utilities
5 Commission (“CPUC”); and (2) the transition charge to recover electric utility stranded costs
6 that was established by order of the Massachusetts Department of Public Utilities (“MDPU”) in
7 1998. In both instances, utility regulators approved a rider to recover legacy costs (a) pursuant
8 to state legislative requirements, (b) through a non-bypassable charge levied on relevant utility
9 customers, (c) using a volumetric (cent per kWh) charge, and (d) ahead of knowing the final
10 amount of funds that would need to be collected through the charge.

11 Also, as an example from this proceeding, I note here that the Energy Bureau’s recent
12 provisional rate order created a rider for PREPA’s pension obligations, notwithstanding that the
13 amount of such obligations is, just like PREPA’s debt obligations, subject to uncertainty in
14 PREPA’s Title III case.⁴

15 I provide these examples for consideration by the Energy Bureau as it contemplates
16 whether to adopt and design a Legacy Debt Rider in this rate case and weighs the efficiency of
17 doing so in advance of knowing the Title III Court’s decision about the amount of Legacy Debt
18 that PREPA will need to recover from its customers. Although I refer in this testimony to
19 statutory and regulatory actions and certain facts and circumstances associated with these
20 examples, I am not attempting to render legal opinions related to them (because I am not a

⁴ In its order, the Energy Bureau noted that “[T]he ultimate pension obligation may change based on the outcome of determinations [in] the Title III bankruptcy proceeding. That federal proceeding, not this rate case, will resolve issues surrounding the insolvency of the PREPA Employees’ Retirement System.” Resolution and Order, Establishment of Fiscal Year 2026 Provisional Rates and Fiscal Year 2026 Provisional Budget, Case No. NEPR-AP-2023-003, July 31, 2025, pp. 26-27, 37, available at <https://energia.pr.gov/wp-content/uploads/sites/7/2025/07/20250731-AP20230003-Resolution-and-Order.pdf>.

lawyer) but rather describe them based on my expertise in utility regulation.

II. THE CALIFORNIA WILDFIRE FUND CHARGE

Q.4 Please describe the California Wildfire Fund Charge.

A. In an October 2019 Decision, the CPUC ordered the imposition of a non-bypassable charge as part of electric utilities' tariffs to support cost recovery for California's Wildfire Fund.⁵

The context for that CPUC decision included the following circumstances:⁶ the state's legal framework, which imposed strict liability on utilities for damages resulting from operation of their infrastructure; the multiple catastrophic wildfires that had occurred in California in the middle of the last decade, some of which were caused by electric utility equipment; the constraints on the ability of an investor-owned utility ("IOU") to pass along the costs of such liability to its ratepayers; the billions of dollars of liability claims that had been asserted against California IOUs; and the January 2019 bankruptcy filing of Pacific Gas & Electric ("PG&E"), which cited the company's exposure to well over \$30 billion in claims related to wildfires occurring in 2017 and 2018.⁷

In July 2019, California enacted AB 1054, which authorized the CPUC to establish a mechanism to support ratepayer funding to cover the costs of the IOUs' wildfire liability.⁸ The

⁵ California Public Utilities Commission, "Decision Approving Imposition of a Non-Bypassable Charge to Support California's Wildfire Fund and Adopting Rate Agreement Between the California Department of Water Resources and the California Public Utilities Commission," *Order Instituting Rulemaking to Consider Authorization of a Non-Bypassable Charge to Support California's Wildfire Fund*, Rulemaking 19-07-017, Decision 19-10-056, October 24, 2019, (hereafter "CPUC Wildfire Fund Decision"), available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M318/K549/318549782.pdf>, p.1.

⁶ Jeremy Gradwohl, "Comments - Electric Utility-Caused Wildfire Damages: Strict Liability Under Article I, Section 19 of the California Constitution," *Temple Law Review*, Vol. 92, 2020, available at https://www.templelawreview.org/lawreview/assets/uploads/2020/05/Gradwohl_92-Temp.-L.-Rev.-595.pdf.

⁷ "If PG&E were to be found reliable for certain or all of the costs, expenses and other losses described above with respect to the 2017 and 2018 Northern California wildfires, the amount of such liability could exceed \$30 billion." "PG&E Corporation Form 8-K," Securities and Exchange Commission, January 13, 2019, available at <https://www.sec.gov/Archives/edgar/data/75488/000095015719000032/form8k.htm>.

⁸ California Public Utilities Code § 451.1(a), Assembly Bill No. 1054, approved July 12, 2019, available at

1 2019 law used a framework established after the 2001 California electricity crisis in which the
2 state's Department of Water Resources ("DWR") procured power on behalf of the utilities,
3 issued bonds to cover the costs, and then was repaid by revenues collected by a non-bypassable
4 charge on IOU customers' bills. For wildfire liability costs, AB 1054 directed the DWR to
5 establish a Wildfire Fund, issue bonds to cover liability payments, and be repaid through a
6 charge (i.e., rider) on the electricity bills of customers if the CPUC approved such a charge.

7 The CPUC's October 2019 decision approved the rider and resolved several technical
8 issues associated with the design of the Wildfire Fund Charge.⁹ The CPUC's decision also had
9 to take into account uncertainty surrounding the total revenue requirement to be collected from
10 IOUs' customers in light of PG&E's status in bankruptcy court at the time of the CPUC
11 decision.¹⁰ Ultimately, PG&E was able to participate in the Wildfire Fund, having taken actions
12 to meet the eligibility requirements by the deadline for doing so.

13 **Q.5 In your view, how are the circumstances related to the CPUC's adoption of the**
14 **Wildfire Fund Charge similar to those that are before the Energy Bureau as it**
15 **considers a Legacy Debt Rider for PREPA in this rate case?**

16 A. I see several similar or potentially similar circumstances: First, the CPUC adopted this
17 charge pursuant to legislative authority (i.e., AB 1054); similarly, Commonwealth statutes and
18 regulations provide that the Energy Bureau will "guarantee that PREPA meets its obligations to

<https://legiscan.com/CA/text/AB1054/id/2046243>.

⁹ For example, the CPUC addressed several implementation issues, including how to interpret the statutory directive that the funds collected through the charge occur "in the same manner as" payments made historically under a prior DWR bond charge; whether to collect the charge from all customer classes at the same volumetric rate; and whether to exempt some customers from the charge. *See* CPUC Wildfire Fund Decision, p. 7.

¹⁰ "The California Public Utilities Code Section 3292(b)(1) states that a utility that is subject to an insolvency proceeding, or on criminal probation, must, by June 30, 2020, meet certain criteria in order to participate in the Wildfire Fund. As a result, whether or not the collections of historic DWR Bond Charges from PG&E's ratepayers will be included in the calculation of the revenue requirement for the Wildfire Fund NBC (non-bypassable charge) is a question that can only be definitively resolved after June 30, 2020." CPUC Wildfire Fund Decision, p. 19.

bondholders.”¹¹ Second, at the time it approved the Wildfire Fund Charge, the CPUC did not know the exact amount of money to be collected through the rider;¹² similarly here, the Energy Bureau likely will not know the amount of Legacy Debt PREPA will be required to repay by April 2026, when the Energy Bureau is expected to issue its order in this rate case.¹³ Third, the costs to be recovered through the rider – i.e., the wildfire-related liability costs supported by customer payments through the Wildfire Fund Charge,¹⁴ or PREPA’s Legacy Debt costs – appear to be attributed to the utility enterprise as a whole, without assignment to particular investments or operational cost drivers or groups of customers.¹⁵

III. THE MASSACHUSETTS TRANSITION CHARGE (BOSTON EDISON)

Q.6 Please describe the Massachusetts Transition Charge.

A. In its January 1998 Order approving the electric industry restructuring transition plan and rates for Boston Edison Company (“Boston Edison”), the MDPU ordered the imposition of a non-bypassable charge to recover Boston Edison’s stranded costs from its ratepayers.¹⁶

The context for that Massachusetts decision was that the Massachusetts legislature enacted the Electric Utility Restructuring Act of 1997 (“Massachusetts Restructuring Act”),

¹¹ “Puerto Rico Energy Transformation and RELIEF Act” Act No. 57 of May 27, 2014, as amended, May 8, 2025, (hereafter “Act 57-2014”), Section 6.3(m), available at <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/2-ingles/57-2014.pdf>.

¹² CPUC Wildfire Fund Decision, p. 19.

¹³ Resolution and Order, Completeness Determination of the LUMA Petition for Rate Review, Case No. NEPR-AP-2023-003, August 19, 2025, pp. 2-3, available at <https://energia.pr.gov/wp-content/uploads/sites/7/2025/08/20250819-AP20230003-Resolution-and-Order-Completeness.pdf>.

¹⁴ Note the California Wildfire Fund reimburses utilities for third-party damages resulting from covered wildfires ignited after July 12, 2019. This includes certain costs incurred before the Wildfire Fund Charge was collected, as well as future claims.

¹⁵ In the case of the cost-allocation and rate design for Wildfire Fund Charge, the CPUC interpreted AB 1054’s language on retaining the same cost recovery approach as was used in the prior DWR bonding, by using the same cent per kWh volumetric rate determined to be the appropriate rate design for all customers (except for some exempted customers, including California Alternate Rates for Energy (“CARE”) residential customers and Medical Baseline residential customers). See CPUC Wildfire Fund Decision, pp. 24-31.

¹⁶ *Petition of Boston Edison Company, pursuant to G.L. c. 164, § 76 and 220 C.M.R. 1.00 et seq., For Review of its Electric Industry Restructuring Proposal*, Massachusetts Department of Public Utilities (known at the time as the Department of Telecommunications and Energy), Docket No. 96-23, January 28, 1998 (hereafter “MDPU Order”), available at <https://eeaonline.eea.state.ma.us/dpu/fileroom/#/dockets/docket/6453>.

1 with the purpose of transitioning those IOUs to allow for competition and customer choice in
2 the generation portion of the industry.¹⁷ The Massachusetts Restructuring Act provided the
3 IOUs with the opportunity to recover their generation-related investment in rate base that would
4 become uneconomic and unrecoverable in a competitive generation market, so long as the
5 utilities divested their generation and used the proceeds from the sale of generation assets to
6 mitigate the costs that would be recovered from ratepayers. Boston Edison's transition costs,
7 for example, were approximately \$3.17 billion.¹⁸

8 The Massachusetts Restructuring Act authorized the MDPU to review the IOUs'
9 restructuring plans and identified, among other things, the types of costs that could be eligible
10 for recovery as stranded costs, subject to the approval of the MDPU.¹⁹ The Act also created the
11 framework for potential utility securitization of such stranded costs with revenues to pay back
12 the securitizations through a non-bypassable charge on electricity customers' bills.²⁰

13 Ultimately, the utilities entered into settlement agreements that included new proposed
14 customer rates for delivery service, a rider (a "transition charge" to collect stranded costs) and
15 many other elements.²¹ The MDPU eventually approved the settlement agreement (including

¹⁷ Commonwealth of Massachusetts, Division of Energy Resources, "DOER Report: 1998 Market Monitor An Annual Report to the Great and General Court on the Status of Restructured Electricity Markets in Massachusetts," September 1999, available at <https://www.mass.gov/doc/mmlongpdf/download>.

¹⁸ Commonwealth of Massachusetts, Division of Energy Resources, "Electricity Price, Reliability, and Markets Report 2002-2004 A Report to the Great and General Court on the Status of Restructured Electricity Markets in Massachusetts," Spring 2006, p. 20, available at <https://www.mass.gov/doc/mm5longpdf/download>.

¹⁹ The 194th General Court of the Commonwealth of Massachusetts, Session Laws Chapter 164, *An Act Relative To Restructuring The Electric Utility Industry In The Commonwealth, Regulating The Provision Of Electricity And Other Services, And Promoting Enhanced Consumer Protections Therein*, Acts 1997, Section 1G, available at <https://malegislature.gov/Laws/SessionLaws/Acts/1997/Chapter164>.

²⁰ The 194th General Court of the Commonwealth of Massachusetts, Session Laws Chapter 164, *An Act Relative To Restructuring The Electric Utility Industry In The Commonwealth, Regulating The Provision Of Electricity And Other Services, And Promoting Enhanced Consumer Protections Therein*, Acts 1997, Section 1H, available at <https://malegislature.gov/Laws/SessionLaws/Acts/1997/Chapter164>.

²¹ MDPU Order. pp. 12-13; *See also*, Restructuring Settlement Agreement, Massachusetts Department of Public Utilities, D.P.U Docket Nos. 96-100 and 96-25, March 28, 1997, available at <https://www.lawinsider.com/contracts/cUzwPknHJ0M>.

1 the transition charge) filed by Boston Edison in January 1998. The MDPU decision approved
2 the rider without knowing the ultimate amount of stranded cost revenue requirements and set
3 the initial transition charge at 3.51 cents/kWh for all customers, which would be mitigated over
4 time (through such things as proceeds from asset sales).²²

5 **Q.7 In your view, how are the circumstances related to the MDPU's adoption of the**
6 **Boston Edison Transition Charge similar to those that are before the Energy Bureau**
7 **as it considers a Legacy Debt Rider for PREPA in this rate case?**

8 A. I see the following similar circumstances, akin to those I described above for the CPUC's
9 review of the Wildfire Fund Change and the Energy Bureau's review of a proposed Legacy
10 Debt Rider in this rate case: First, the MDPU adopted this charge pursuant to legislative
11 authority (i.e., the Massachusetts Restructuring Act). Second, at the time the MDPU approved
12 Boston Edison's transition charge, no one knew the exact amount of money to be collected
13 through it (because of subsequent mitigation actions). Third, like the Wildfire Fund costs, the
14 legacy stranded costs that would be recovered through a transition charge in Massachusetts
15 appear to have been attributed to the utility enterprise as a whole, without assignment to
16 particular investments or operational cost drivers or groups of customers, with a uniform
17 volumetric charge collected from all customers.

18 **Q.8 Does this complete your rebuttal testimony?**

19 A. Yes.

²² MDPU Order, p. 49.

RESUMEN DE: TESTIMONIO DE REFUTACIÓN DE SUSAN TIERNEY, PH.D.

Muestro que no sería novedoso que un regulador adoptara y diseñara una cláusula adicional como parte de una tarifa de servicios públicos de electricidad sin saber la cantidad precisa de dinero que eventualmente necesitaría cobrar de los contribuyentes. Proporciono dos ejemplos en los que ocurrió dicha acción regulatoria: (1) el cargo no anulable del Fondo de Incendios Forestales establecido en 2019 por orden de la Comisión de Servicios Públicos de California; y (2) el cargo de transición para recuperar los costos varados de los servicios eléctricos que se estableció por orden del Departamento de Servicios Públicos de Massachusetts en 1998. En ambos casos, los reguladores de servicios públicos aprobaron una cláusula adicional para recuperar los costos heredados (a) de conformidad con los requisitos legislativos estatales, (b) a través de un cargo no eludible cobrado a los clientes de servicios públicos relevantes, (c) utilizando un cargo volumétrico (centavos por kWh) y (d) antes de conocer la cantidad final de fondos que deberían recaudarse a través del cargo.

Observo que la reciente orden provisional de tarifas del Negociado de Energía creó una cláusula adicional para las obligaciones de pensiones de la AEE, a pesar de que el monto de dichas obligaciones está, al igual que las obligaciones de deuda de la AEE, sujeto a incertidumbre en el caso del Título III de la AEE. Proporciono estos ejemplos para que el Negociado de Energía considere si adoptar y diseñar una cláusula adicional de deuda heredada en este caso de tarifas y sopesa la eficiencia de hacerlo antes de conocer la decisión del Tribunal del Título III sobre la cantidad de deuda heredada que la AEE necesitará recuperar de sus clientes. Aunque me refiero en este testimonio a acciones legales y reglamentarias y ciertos hechos y circunstancias asociados con estos ejemplos, no estoy tratando de emitir opiniones legales relacionadas con ellas (porque no soy abogado), sino más bien describirlas en función de mi experiencia en la regulación de servicios públicos.