LUMA Exhibit 77.0

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

IN RE:	**CASE NO.:** NEPR-AP-2023-0003
PUERTO RICO ELECTRIC POWER AUTHORITY RATE REVIEW	

Surrebuttal Testimony of

Alejandro Figueroa-Ramírez

Chief Regulatory Officer, LUMA Energy ServCo, LLC

November 3, 2025

Summary of Surrebutal Testimony of ALEJANDRO FIGUEROA RAMIREZ ON BEHALF OF LUMA ENERGY LLC AND LUMA ENERGY SERVCO, LLC

Mr. Alejandro Figueroa-Ramírez, Chief Regulatory Officer for LUMA Energy LLC presents this Surrebuttal Testimony on behalf of LUMA Energy LLC and LUMA Energy ServCo, LLC (collectively, "LUMA") in Case No. NEPR-AP-2023-0003, *In Re: Puerto Rico Electric Power Authority Rate Review*. The purpose of Mr. Figueroa's surrebuttal is to respond to recommendations in the expert report of Energy Bureau Consultants, Mr. Ralph Smith and Mr. Mark Dady, as well as the answering testimony of Mr. Steve W. Chriss, witness appearing on behalf of Walmart, Inc.

Mr. Figueroa addresses the treatment of bad debt in revenue requirements and riders; the handling of debt service and the timing and structure of any Legacy Debt Rider; the design and scope of a permanent Major Storm Costs Rider and its relationship to the Outage Event Reserve Account and the Emergency Reserve Account; the appropriate approach to rider implementation and funding; and the level of base budget needed to meet contractual obligations and performance targets under the Transmission and Distribution System Operation and Maintenance Agreement ("T&D OMA").

Mr. Figueroa agrees that uncollectible expense (bad debt) must be reflected in the revenue requirement to promote adequate cash flow for the utility. He explains that the only proposal supported by empirical evidence in the record is LUMA's bad debt factor set forth in LUMA Exhibit 1.08 and supported by the surrebuttal of Mr. Andrew Smith (LUMA Exhibit 79). While LUMA's rate petition incorporates bad debt for the overall revenue requirement through base rates, Mr. Figueroa is supportive of supplementing recovery by including appropriate bad debt percentages in riders – specifically the Fuel Charge Adjustment Rider ("FCA") and the Purchase Power Charge Adjustment Rider ("PPCA"), and potentially other riders – so long as the factor is reflective of existing collection conditions. The central point is that the bad debt provision should be sized to actual experience and supported in the evidentiary record, whether recovered via base rates or riders.

Mr. Figueroa concurs that PREPA's debt service should not be included in the FY2026 base rate revenue requirement and should be addressed through a separate rider mechanism. He disagrees, however, with deferring the development of a Legacy Debt Rider until after resolution of PREPA's Legacy Debt Obligation in Title III. In his view, as with the Energy Efficiency rider created in the 2017 Rate Case and funded later, developing the tariff structure for a Legacy Debt Rider in this rate review is prudent and will streamline eventual implementation following the Title III process. Establishing the rider framework now, through the adjudicative process, facilitates timely and orderly regulatory action once the Plan of Adjustment is confirmed, without prematurely funding or applying charges.

Mr. Figueroa confirms that LUMA submitted proposed rider language (Schedule O-4) for a Major Storm Costs Rider applicable to all tariff groups. The rider is designed to provide revenue for PREPA to replenish the Outage Event Reserve Account required under Section 7.5(d) of the T&D OMA up to its $30 million minimum balance and to recover storm restoration costs, consistent with the Operators' rights under the T&D OMA. Mr. Figueroa explains the contractual definitions and mechanics governing "Outage Events," withdrawals, accounting, and replenishment obligations, underscoring that funding for both Outage Events, including storms, fall within PREPA's responsibilities under the T&D OMA. Mr. Figueroa further clarifies the rider should also provide revenue to replenish the Reserve Account contemplated under Section 7.6(d) of the Puerto Rico Thermal Generation Facilities OMA ("LGA OMA"), whether directly or via the Energy Bureau's Emergency Reserve Account ("ERA"), as requested by Genera PR LLC. Charges would apply to billed kilowatt-hours, as well as unbilled kilowatt-hours for specific customer classes, to ensure comprehensive cost recovery.

With respect to incurred storm restoration expenditures, Mr. Figueroa maintains LUMA's proposal to recover the approximately $209 million of outage event costs incurred from December 2023 through February 2025 through the Major Storm Costs Rider once the Energy Bureau establishes the mechanism. Mr. Figueroa recommends that detailed funding and rate adjustments for riders be addressed in a separate, dedicated proceeding, consistent with how the Energy Bureau updates riders and subsidies, while this rate review proceeding focuses on establishing the rider itself and defining eligible cost criteria consistent with the T&D OMA, LGA OMA, and ERA orders.

Mr. Figueroa agrees with establishing a clear process for requesting replenishment of reserves and recovering storm restoration costs through temporary charges outside base rates where appropriate. Mr. Figueroa cautions against limiting eligible restoration costs solely to hurricanes, noting that recovery should encompass the full scope of events covered by the Outage Event Reserve Account under the T&D OMA and the Reserve Account under the LGA OMA. Mr. Figueroa explains that neither account is funded through base rates and that these restoration expenses are unforeseeable, making rider-based recovery essential to avoid cash flow challenges and the diversion of operational funds intended for Energy Bureau-approved activities. Mr. Figueroa supports the concept that reserve replenishment thresholds should be clear and actionable. However, Mr. Figueroa clarifies that, per the Energy Bureau's September 10, 2025 orders (as amended *nunc pro tunc*), the ERA is available only during the provisional rate period and cannot be replenished except via the temporary rate adjustment mechanism under Act 57-2014. For that reason, Mr. Figueroa urges approval of a permanent rider-based recovery mechanism, as outlined in his prefiled direct testimony and Schedule O-4.

Responding to Mr. Chriss's proposal to adopt LUMA's Constrained Budget as the starting point, Mr. Figueroa explains that LUMA's Optimal Budget represents the appropriate revenue requirement. The Optimal Budget is built from a bottom-up, executable plan reflecting the system's needs and is aligned with achieving performance targets. While recognizing the Energy

Bureau's preference for a customer-sensitive transition to an Optimal Budget by FY2028, Mr. Figueroa emphasizes that nothing less than the Constrained Budget should be approved at a minimum. Funding below the Constrained Budget would result in insufficient maintenance and capital investments to counteract ongoing system degradation, impair LUMA's ability to meet key performance metrics under the T&D OMA, and harm customers. Mr. Figueroa references LUMA's identification of approximately $1.6 billion in needed investments to make significant progress toward performance metrics and explains that even the Constrained Budget defers activities and thus delays system improvements. Approval below that level would materially undermine service quality and reliability objectives.

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I. INTRODUCTION

Q.1 Please state your name, business address, title, and employer.

A. My name is Alejandro Figueroa-Ramírez. My business address is LUMA Energy, PO Box 363508, San Juan, Puerto Rico 00936-3508. I am the Chief Regulatory Officer for LUMA Energy LLC and LUMA Energy ServCo, LLC (jointly referred to as "LUMA").

Q.2 On whose behalf are you testifying before the Commonwealth of Puerto Rico Energy Bureau (the "Energy Bureau" or "PREB")?

A. My testimony is on behalf of LUMA as part of the Commonwealth of Puerto Rico Energy Bureau's ("Energy Bureau" or "PREB") proceeding NEPR-AP-2023-0003, the Puerto Rico Electric Power Authority ("PREPA") Rate Review.

Q.3 What is the purpose of your surrebuttal testimony?

A. To respond to several portions of the expert report filed by Energy Bureau consultants Mr. Ralph a Smith and Mr. Mark Dady marked as PC Exhibit 62 ("Smith and Dady Report"); and the answering testimony of Steve W. Chriss ("Mr. Chriss") for Walmart Inc., dated September 2, 2025, marked as Walmart Exhibit 57.

I note that in response to the Smith and Dady Report, I address in this surrebuttal, LUMA's proposal regarding the Emergency Reserve Account ("ERA") that the Energy Bureau adopted for provisional rate purposes in the Resolution and Order of July 31, 2025 and support a proposal for a permanent account to fund, among others, PREPA's duties under the Transmission and Distribution System Operation and Management Agreement ("T&D OMA") executed among PREPA, the Puerto Rico Public Private Partnership Authority ("P3A"), and LUMA dated June 22, 2020, to fund the Outage Event Reserve Account.

Q.4 Are there any exhibits attached to your testimony? If you answer in the affirmative, please identify and enumerate those exhibits.

A. Yes. My testimony includes the following exhibits:

i. Exhibit 77.1, PREPA-of-LUMA-PROV-34.

ii. Exhibit 77.2, Program Prioritization_FY2026_Updated.xlsx

Q.5 Please describe the exhibit that you are sponsoring labeled Program Prioritization_FY2026_Updated.xls.

A. This document was generated by my staff with data provided by the leaders of other key departments within LUMA. It lists LUMA's current capital programs and each program's associated department. The leaders of each department were asked to assign values to each program to reflect that program's relative importance. Those values were then added together to get a Program Rating between 0 and 20, and a program rank was assigned accordingly.

Q. 6 Which documents did you consider for your surrebuttal testimony?

A. The documents that I reviewed include:

i. My pre-filed direct testimony filed in this proceeding, LUMA Exhibit 1.0 and exhibits to the same,

ii. The pre-filed testimony of Mr. Jaime Sanabria Hernández,

iii. The Smith and Dady Report,

iv. The answering testimony of Mr. Chriss,

v. The surrebuttal testimony of my colleague Andrew Smith,

vi. The Puerto Rico PREPA-GenCo-HydroCo Operating Agreement ("PGHOA"), executed on June 19, 2023, and

vii. The Energy Bureau's Resolution and Order of September 10, 2025 with guidance on the

use of the Emergency Reserve Account ("ERA").[1]

II. SURREBUTTAL TO SMITH AND DADY REPORT

Q. 7 Did you review the report of Ralph Smith and Mark Dady, PC Exhibit 62.0?

A. Yes. I read the report, with emphasis on recommendations concerning bad debt expense, debt service, fuel and purchased power, and the Major Storm Costs Rider and Emergency Reserve Account.

Q. 8 On page 18 of the Smith and Dady Report, Smith and Dady state that one solution to address the fact that some customers pay their bills late, others do not pay or pay only a portion of their bills is to include in the revenue requirement an amount for uncollectibles. Do you agree?

A. Yes. The Energy Bureau should include in the revenue requirement an amount for uncollectibles – this is referred to as bad debt. The Energy Bureau should approve a bad debt factor that more closely reflects reality, as an important step in ensuring that the utility is generating sufficient cash to fund its financial obligations. The only bad debt proposal supported with empirical evidence on the record of this proceeding is LUMA's proposal filed in LUMA Exhibit 1.08, which my colleague Andrew Smith is supporting and explains in his surrebuttal testimony.

Q. 9 On page 622 and Section XI (F) of the Smith and Dady Report, Smith and Dady recommend that Energy Bureau include an uncollectible factor in the calculation of the Fuel Charge Adjustment Rider ("FCA") and the Purchase Power Charge Adjustment Rider ("PPCA"). Does LUMA agree?

[1] *Available at* https://energia.pr.gov/wp-content/uploads/sites/7/2025/09/20250910-AP20230003-Resolution-and-Order.pdf.

A. Yes. LUMA's proposal in this rate petition incorporates the bad debt provision for the entire revenue requirement into the base rate, but LUMA is also supportive of the proposal to collect the relevant portions of bad debt separately through each of the components of the bill instead. Incorporating a bad debt factor for the components of the bill, rather than including the full bad debt cost in the base rate, introduces some additional administrative effort into implementation and reconciliation, but also has the benefit of apportioning the bad debt costs to the various components of the bill rather than distorting the relative components of the bill by aligning bad debt for the system to just the base rate. Whether the Energy Bureau opts to adopt LUMA's proposal to consolidate bad debt to the base rate, or to instead incorporate a bad debt percentage into each of the riders (beyond simply FCA and PPCA, all riders should include this provision), LUMA's strong recommendation remains that the bad debt factor be reflective of realistic circumstances and supported by the best available data and information.

Q. 10 On Section V.E. of PC Exhibit 62.0, Mr. Smith and Mr. Dady recommend that the Energy Bureau does not include Debt Service in the base rate revenue requirement for FY2026 and that such amount be excluded from the revenue requirement until there is resolution of PREPA's Legacy Debt Obligation by the Title III Court. Does LUMA agree?

A. Yes. LUMA included debt service in response to the Energy Bureau's filing requirements and directive to include these amounts in the rate case. Any debt service for PREPA should be funded through a separate rider.

Q. 11 On Section V.E, of PC Exhibit 62.0, Mr. Smith and Mr. Dady recommend that the Energy Bureau defer the development of a Legacy Debt Rider until there is resolution of PREPA's Legacy Debt Obligation by the Title III Court. Does LUMA agree?

A. No. Similar to the establishment of the Energy Efficiency (EE) rider that was approved by the Energy Bureau in the 2017 rate case, which rider was not funded until 2023, development in this rate case of a Legacy Debt Rider will facilitate the timely eventual use of a rider to collect legacy debt amounts. It is LUMA's understanding that additions to the permanent rate structure should be developed through the adjudicative rate review process. Once the Title III process has concluded, the Energy Bureau can require details of the tariff and rate structure. This streamlines the regulatory process in advance of an eventual confirmation of a Plan of Adjustment for PREPA.

Q. 12 On Section IX of the Smith and Dady Report, Smith and Dady discuss LUMA's proposed Major Storm Cost Rider that is outlined in your pre-filed testimony but note that the filing Schedule J, does not include the proposed rider. Did LUMA submit for consideration a proposed storm rider?

A. Yes. The rider language is found in Schedule O-4. The rider would apply to all tariff groups. The rider aims to provide revenue to enable PREPA to recover storm and outage restoration costs as well as maintain the $30 million minimum balance for the Outage Event Reserve Account under Section of 7.5 (d) of the T&D OMA. Specifically, the T&D OMA defines an "outage event" as an event which results in "(i) at least twenty thousand, five hundred (20,500) T&D Customers are interrupted or (ii) at least one hundred fifty (150) outage jobs for the T&D System are logged, in each case within a twenty-four (24) hour period and due to an act of God, or, in the case of a storm, that is designated as such by the U.S. National

Weather Service, and shall end when a state in which fewer than one thousand (1,000) T&D Customers remain interrupted for a continuous period of (8) hours is achieved." [2] "Outage Event Costs" and "Outage Event Reserve" are defined as set forth in Section 7.5 (d)(i), which requires the Owner, PREPA, to set up one or more Outage Event Reserve Accounts, such that the Operator, LUMA," may draw funds from time to time to pay of it costs in connection with an Outage Event." [3] Section 7.5(d)(ii) requires PREPA to fund the account with $30 million and to promptly replenish that account to maintain a balance of $30 million. Section 7.5(d)(iii) requires notice from LUMA of withdrawals and detailed accounting provisions. So, it is clear that it contemplates both outages and storms, and both are PREPA's responsibilities to provide funding under the T&D OMA as set forth in Section 7.5(d).[4] Also, the rider shall provide revenue to replenish the Reserve Account as intended under Section 7.6(d) of the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement ("LGA OMA"), whether directly or through the ERA, as requested by Genera PR LLC. Costs will be charged for all kilowatt-hours billed to customers as well as unbilled kilowatt-hours for the RFR and PLG customers.

In light of the fact that the Outage Event Reserve Account is not being replenished by PREPA up to its required $30 million, and due to the fact that storm and outage

[2] *See* T&D OMA Article I, DEFINITIONS AND INTERPRETATION.

[3] *Id.*

[4] It bears noting that in a Resolution and Order issued in Case No. NEPR-AP-2020-002, the Energy Bureau issued an Energy Compliance Certificate, finding that the T&D OMA complies with Puerto Rico energy public policy. *See* Resolution and Order of June 17, 2020 at p. 9 ("the Energy Bureau DETERMINES that the Proposed Contract (as modified) complies with the Puerto Rico Energy Public Policy and the regulatory framework and ISSUES an Energy Compliance Certificate in connection with the Preliminary Contract (as modified."), *available at https://energia.pr.gov/wp-content/uploads/sites/7/2020/06/Resolution-and-Order-NEPR-AP-2020-0002.pdf.*

restoration must be performed, implementing these riders to fund these accounts will generate dedicated revenue streams to cover expenses as outlined in the Operators' contracts and to maintain safe and reliable service to the electric consumers in Puerto Rico. These costs are outside the scope of base rates because they are not anticipated in advance and are, by their nature, extraordinary to day-to-day operations.

Q. 13 On Section IX of the Smith and Dady Report, Smith and Dady discuss that LUMA seeks to recover approximately $209 million over a two-year period to reimburse outage event costs incurred from December 2023 through February 2025 and to fund the $30 million reserve set forth in the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement by way of the Outage Event Reserve Account. Smith and Dady also state that in the provisional rate order the Energy Bureau denied recovery of the amounts requested by LUMA and instead established a system-wide reserve account. Given Smith and Dady's discussion and recommendations, does LUMA maintain its proposal to request recovery outage event costs incurred from December 2023 through February 2025?

A. Yes, LUMA respectfully maintains its proposal to recover the $209 million in costs incurred between December 2023 and February 2025 through the Major Storm Costs Rider once the mechanism is established by the Energy Bureau. However, LUMA proposes that the discussion of funding all riders moved to a separate proceeding and addressed in the same manner that the Energy Bureau updates other rates such as riders and subsidies.

Q. 14 Please explain why.

A. In this proceeding LUMA proposes that the Energy Bureau focuses on establishing the outage rider, and reserve discussions of funding the outage rider to a separate

proceeding. This is similar to how the Energy Efficiency rider was established during a rate proceeding and then funded in a separate proceeding. As I discuss earlier in my surrebuttal testimony, the same approach should be taken with the Legacy Debt Rider – the same treatment should be applied to any new rider established in this rate review proceeding.

In this rate review proceeding, the Energy Bureau should approve an Major Storm Costs Rider and set the criteria for eligible (past and present) expenses that can be recovered through the mechanism consistent with the T&D OMA, LGA OMA, and any rulings on the ERA, to be aligned with the criteria for the Outage Event Reserve Account and the Reserve Account contemplated in the T&D OMA and the LGA OMA, as well as the Emergency Reserve Account, respectively.

Q. 15 In Section IX (F) of the Smith and Dady Report, Smith and Dady propose a mechanism to recover storm costs and replenish the system-wide Emergency Reserve Account that the Energy Bureau created in the provisional rate order of July 31, 2025. Smith and Dady recommend that storm costs be recovered through temporary charges that are not included in base rates. Does LUMA have a position on that proposal?

A. LUMA agrees that a rider should be approved to recover storm and Outage Event Costs, but that it should be established on a permanent basis. As discussed above, the rider should be available to recover storm and outage restoration costs as well as maintain the $30 million minimum balance for the Outage Event Reserve Account under Section of 7.5 (d). Also, the rider shall provide revenue to replenish the amounts intended for the Reserve Account under Section 7.6(d) of the LGOMA, as requested by Genera PR LLC, whether that is directly or through the ERA.

Q. 16 On Section IX (F) of the Smith and Dady Report, Smith and Dady recommend there should be a "clear way of providing for a means of requesting replenishments" of the Emergency Reserve Account that the Energy Bureau created in the provisional rate order of July 31, 2025 and to fund restoration of costs associated with future extreme or severe weather events. Does LUMA agree with the proposal for a mechanism to fund restoration costs?

A. Yes. I note that on page 45 of the Smith and Dady Report, they recommend that eligible restoration costs recover costs of repairing electrical infrastructure damaged by hurricanes. LUMA opposes limiting costs recovery to hurricanes. Eligible costs should include those allowed in the Outage Event Reserve Account under Section of 7.5 (d) of the T&D OMA. Also, the rider shall provide revenue to replenish the Reserve Account under Section 7.6(d) of the LGA OMA. Neither of these accounts is funded through base rates, as the contracts do not contemplate these costs to be within each Operators' approved budgets but rather as an obligation of PREPA and Owner of the energy system. Moreover, the expenses recovered from these accounts are not foreseeable nor part of ordinary day-to-day operations and therefore cannot be explicitly budgeted. Without an established and full cost recovery mechanism, the utility will continue to be subject to unpredictable cash flow conditions, as recovery of costs incurred in outage and storm restoration efforts will remain uncertain. Without a dedicated funding mechanism, and without access to traditional debt and capital markets, the utility lacks an important tool to maintain appropriate funding levels for both ordinary and extraordinary events. Additionally, Operators are compelled to utilize funds from their operational accounts, which are funded through base rates and allocated for specific Energy Bureau-approved activities, to cover expenses that, if proper recovery

mechanisms were in place, would be separately recoverable. Consequently, any recovery mechanism should not be limited to less than the scope defined by the Operators' contractual provisions regarding cost recovery.

Q. 17 On Section IX (F) of the Smith and Dady Report, Smith and Dady recommend there should be a means to replenish the Emergency Reserve Account if the funds drop below zero and state that the portion of the funds should be used to restore the Emergency Reserve Account to a level of $20 [*sic*] million. Does LUMA agree?

A. Yes. However, I must clarify that per the Energy Bureau's orders (*i.e.*, September 10, 2025, issued in this proceeding, as amended *nunc pro tunc*[5]), the Emergency Reserve Account will be available only during the provisional rate period. And LUMA agrees that this mechanism should be temporary, precisely because it does not provide for replenishment and thus, the only legal process to replenish such an account outside a rate-making process is using the Act 57-2014 Section 6.25(d) Temporary Rate Adjustment provision (sparingly referred to as "emergency rate"). Wherefore, a permanent recovery mechanism should be established, as LUMA proposed in this proceeding, supported by my pre-filed direct testimony and outlined in Schedule O-4.

III. SURREBUTTAL TO ANSWERING TESTIMONY OF STEVE W. CHRISS

Q. 18 Mr. Chriss proposes that the Energy Bureau should treat the Constrained Budget for LUMA as the starting point in this case and make adjustments upward or downward from those points based on the costs and benefits of the various proposals in this case. Does LUMA agree?

[5] *Available at* https://energia.pr.gov/wp-content/uploads/sites/7/2025/09/20250910-AP20230003-Resolution-and-Order.pdf and https://energia.pr.gov/wp-content/uploads/sites/7/2025/09/20250912-AP20230003-Nunc-Pro-Tunc.pdf.

A. No.

Q.19 Please explain your response.

A. As referenced in the direct testimony of my colleague Andrew Smith, LUMA maintains that the Optimal Budget represents the revenue requirement that meets the T&D System's needs. This budget is grounded in LUMA's comprehensive, bottoms-up budgeting approach and reflects a realistic and executable plan. Accordingly, it should be approved. However, in recognition of the Energy Bureau's stated preference for a "customer-sensitive transition from the status quo to an Optimal Budget in FY2028," LUMA asserts that, at a minimum, nothing less than the Constrained Budget must be approved as part of the overall utility revenue requirement. The direct testimonies of several of my LUMA colleagues detail the risks associated with deferring critical initiatives identified under the Optimal Budget, and the impact that such would cause on timelines for remediation of the T&D System.

LUMA's Optimal Budget proposal is a reflection of the system's true needs -- addressing its deteriorated physical and operational condition while enabling meaningful progress toward established performance targets. In contrast, the Constrained Budget acknowledges the limitations in available funding and the resulting necessity to defer certain investments. Even this deferral to the constrained will delay the realization of substantial improvements in system performance.

Through this Rate Review process, LUMA has identified that an investment of $1.6 billion is required to make significant strides toward achieving the expected performance metrics. If the Energy Bureau approves a revenue requirement below the Constrained Budget, the level of maintenance and capital investments will fall short of

what is needed to counteract routine system degradation and to deliver the service quality improvements anticipated under the T&D OMA. As described in the testimony of my colleague Pedro Melendez, approval of the Constrained Budget is needed for LUMA to be able to fund the investments necessary to contain the continued, accelerated degradation of the grid and associated customer impacts.

It is important to emphasize that the Constrained Budget is designed to defer certain activities without compromising LUMA's ability to comply with T&D OMA. However, it is not sufficient to drive transformative improvements beyond merely maintaining the current state of the system. Should the Energy Bureau approve funding below the Constrained Budget, LUMA's ability to meet key performance metrics will be adversely impacted, and accordingly its customers. Therefore, the starting point for any assessment of the T&D System's needs must be the Optimal Budget, and any "tradeoff" should not exceed those already contemplated as part of the Constrained Budget.

Q. 20 Does this complete your testimony?

A. Yes.

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ATTESTATION

Affiant, Alejandro Figueroa-Ramírez, being first duly sworn, states the following:

The prepared Surrebuttal Testimony and exhibits constitute my Surrebuttal Testimony in the above-styled case before the Puerto Rico Energy Bureau. I would give the answers set forth in the Surrebuttal Testimony if asked the questions that are included in the Surrebuttal Testimony. I further state that the facts and statements provided herein, are my Surrebuttal Testimony and to the best of my knowledge are true and correct.

_____
Alejandro Figueroa-Ramírez

Affidavit No. _____

Acknowledged and subscribed before me by Alejandro Figueroa-Ramírez, in his capacity as Chief Regulatory Officer of LUMA of legal age, married, and resident of San Juan, Puerto Rico, who is personally known to me.

In San Juan, Puerto Rico, this ___ day of November 2025.

_____

Notary Public

LUMA Ex. 77.1

PREPA-of-LUMA-PROV-34

Responses for Information on Provisional Rates

NEPR-AP-2023-0003

Response: PREPA-of-LUMA-PROV-34

SUBJECT

Provisional Rates

REQUEST

According to LUMA's Exhibit 1.0, Alejandro Figueroa's Direct Testimony, and Exhibits 1.05 and 1.06, LUMA is seeking to recover approximately $209 million over a two-year period to reimburse LUMA's Operating Account for Outage Event Costs that were paid from the Operating Account rather than from the Outage Event Reserve Account. Of this amount, LUMA requested $90 million to be recovered by the provisional rate during FY2026 (the total requested amount is $120 million of which $30 million is earmarked to replenish the Outage Event Reserve Account). According to LUMA's Exhibit 1.05, the $209 million represent expenditures incurred from December 2023 to February 2025. How does LUMA reconcile its request for provisional rates with the regulatory principle prohibiting retroactive ratemaking? LUMA is essentially requesting a revenue increase for the period of December 2023 to February 2025 in the amount of $209 million, $90 million of which were requested to be recovered through provisional rates. How does LUMA reconcile this request with the Filed Rate Doctrine?

RESPONDER

Counsel for LUMA

RESPONSE

LUMA notes that this discovery request improperly seeks a legal opinion or a response on matters of law. Without waving future objections to discovery requests that elicit legal opinions, LUMA notes that there judicial precedent holds that under the filed-rate doctrine and rule against retroactive ratemaking a utility is prohibited "from collecting a rate other than the one filed with the relevant government agency and that agency "itself" cannot retroactively "impos[e] a rate increase for [power] already sold."[1] Other jurisdictions have stated that the purpose of the filed-rate doctrine and the rule against retroactive ratemaking serves two basic functions: "protect[ing] the public by ensuring that present consumers will not be required to pay

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[1] *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 578 (1981).

for past deficits of the company in their future payments," and (2) "prevent[ing] the company from employing future rates as a means of ensuring the investments of its stockholders."[2]

Judicial precent holds that "[t]he 'filed rate doctrine' forbids a regulated entity from charging a rate for its services other than the rate on file with the appropriate regulatory authority." *Crumley v. Time Warner Cable, Inc.,* 556 F.3d 879, 881 (8th Cir. 2009) (citing *Ark. La. Gas Co. v. Hall*, 453 U.S. at 577). Under the Federal Power Act ("FPA"), the Federal Energy Regulatory Commission ("FERC") "itself lacks authority to alter filed rates retroactively." *City of Osceola v. Entergy Arkansas, Inc*., 791 F.3d 904, 908 (8th Cir. 2015). If the FERC "finds a filed rate to be unreasonable, it only has statutory authority to impose a new rate prospectively." *Id.* (citing *Ak. La. Gas Co. v. Hall*, 453 U.S. at 578). LUMA is not proposing a retroactive change to the rates that it charged customers in the past. LUMA has filed a provisional rate to be included in its new tariff charges to be applied prospectively. As required by the statute, LUMA filed a provisional rate to change the rates it charges its customers from the rates that are currently on file with the Puerto Rico Energy Bureau ("PREB") to new rates to be charged after notice to customers with new tariff rates to be effective on September 1, 2025, provided that PREB approves the new rates. LUMA is not proposing to change any tariff rates that it charged customers prior to the effective date of the new provisional rates to collect the unfunded storm costs. Rather, it is seeking to recover unfunded storm costs through prospective rate increases.

Other jurisdictions have also recognized that there is a "*plethora* of cases from other jurisdictions permitting a utility to recover the extraordinary costs associated with an unusually severe storm indicate that the rule against retroactive ratemaking does not come into play in such instances."[3] Those jurisdictions have explained that if the filed-rate doctrine and rule against retroactive ratemaking came into play there would be perverse incentives contrary to public safety and reliability.[4] For example, it has been held that "[t]he next time a storm of this magnitude occurs, the [utility] would have no incentive to . . . to restore service efficiently and swiftly to customers if no reimbursement for extraordinary expenses would be forthcoming."[5]

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[2] *Pub. Advocate v. PUC*, 718 A.2d 201, 206-207 (Me. 1998) (quoting *Narragansett Elec. Co. v. Burke*, 415 A.2d 177, 178-79 (R.I. 1980)).

[3] *Narragansett Elec. Co.*, 415 A.2d, at 179-180 (citing the *plethora of* cases); *see also State ex rel. Pittman v. Miss. Pub. Ser. Comm'n.,* 520 So. 2d 1355, 1362 (Miss. 1987) ("The exception to the rule against retroactive ratemaking applies where an extraordinary event such as a severe storm causes damage to a utility resulting in great expense on repair and restoration of service to its customers."); *Phila. Elec. Co. v. Pa. Publ. Util. Comm'n*, 502 A.2d 722, 728 (Pa. 1985) ("An exception to this rule in the case of retroactive recovery of unanticipated expenses has been recognized where the expenses are extraordinary and nonrecurring") (citing *Blue Mountain Consol. Water Co. v. Pa. Pub. Util. Comm'n*, 57 Pa. Commonwealth Ct. 363, 426 A.2d 724 (1981); *UGI, Corp. v. Pa. Pub. Util. Comm'n*, 49 Pa. Commonwealth Ct. 69, 410 A.2d 923 (1980)); *Re United Illuminating Co.*, 7 P.U.R. 4th 417 (Conn. P.U.C. 1974) ("The rule [against retroactive ratemaking] serves to protect present customers from paying for a utility's past operating deficits. This aspect of the rule must be weighed against the interest of providing immediate service to customers when a destructive, unexpected storm occurs. On such an occasion the public interest in quickly restoring heat and electricity to the homes of customers must prevail.").

[4] *Narragansett Elec. Co.*, 415 A.2d, at 179 (stating the "application of the rule [against retroactive ratemaking] to expenses related to such an emergency situation so inextricably related to the public health and safety would serve to thwart the goal of effective customer service.").

[5] *Id.*

In addition, it has been held the filed-rate doctrine and the rule against retroactive ratemaking are not implicated when a rate adjustment "was not used to insure or improve the return of investors in the utility."[6]

LUMA is requesting to recover extraordinary costs that it incurred to restore service to Puerto Rico following severe storm events. As an agent for a municipal utility, none of the costs that LUMA recovers are used to insure or improve the return of investors. Therefore, the filed-rate doctrine and the rule against retroactive ratemaking are not implicated here.

[6] *Pub. Advocate*, 718 A.2d, at 206-07.

LUMA Ex. 77.2

Program Prioritization_FY2026_Updated.xlsx

(Excel spreadsheet)