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

IN RE: PUERTO RICO ELECTRIC POWER AUTHORITY RATE REVIEW

CASE NO.: NEPR-AP-2023-0003

SUBJECT: PUBLIC COMMENTS

PUBLIC COMMENTS

TO THE PUERTO RICO ENERGY BUREAU:

COME NOW Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc., Frente Unido Pro Defensa del Valle de Lajas, Inc., CAMBIO PR, Inc., and Comité Yabucoeño Pro-Calidad de Vida, Inc., collectively and respectfully submit these first set of public comments to the Puerto Rico Electric Power Authority Rate Review, ("Rate Review") Case No. NEPR-AP-2023-0003, before the Puerto Rico Energy Bureau ("PREB").

We submit these comments to the Rate Review to express serious concerns about topics covered during the Evidentiary Hearings held for LUMA's proposed rate review. The topics covered in this first set of public comments will address (1) Inter-utility Cooperation; (2) Budget Process and Budget Flexibility; (3) Transmission and Distribution Costs; and (4) Generation Costs. Additional sets of public comments will be submitted addressing other topics raised during the evidentiary hearings, as well as the recent lawsuit filed by the Puerto Rico Public- Private Partnerships Authority

("P3A") and the Puerto Rico Electric Power Authority ("PREPA") against LUMA Energy, LLC, and LUMA Energy Servco, LLC [1] ("collectively, "LUMA"), and its subsequent effects in this proceeding—particularly regarding the proposed long term budget allocations and the need to limit multi-year approvals in light of ongoing uncertainties and concerns surrounding the continuity of LUMA's role as operator of the Transmission and Distribution system.

[1] The lawsuit is now pending before the United States District Court for the District of Puerto Rico as *Public Private Partnerships Authority et al. v. LUMA Energy LLC et al.*, Adv. Proc. No. 25-00061 (LTS).

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I. Background

The Rate Review process before PREB is governed by Section 6.25 of Act 57-2014, which grants PREB the authority to review and approve proposed rates. Pursuant to Act 57-2014 PREB "shall ensure that all rates are just and reasonable and consistent with sound fiscal and operational practices that provide for a reliable and adequate service at the lowest reasonable cost."[2] In that direction, Act 17-2019 further establishes as one of Puerto Rico's Energy Public Policy goal

> [t]o establish the elements necessary for the People of Puerto Rico to attain their goal of having a modern, reliable, resilient, and stable Electrical System with rates below twenty cents per kilowatt-hour ($0.20/kWh) and clean, modern, and reliable energy which shall serve as the basis for Puerto Rico's sustainable economic development.[3]

Just nine months after the last rate review was approved by PREB in January of 2017[4], Hurricane María laid bare the severe vulnerabilities of Puerto Rico's centralized fossil-fuel dependent energy grid. It also demonstrated that rooftop solar systems could withstand category four hurricane force winds, while utility scale solar and transmission lines proved highly susceptible to storm damage.[5] The centralized energy grid proved to be unfit for an archipelago that sits in the middle of hurricane

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[2] Puerto Rico Energy Transformation and Relief Act, Act 57-2014, as amended, 22 L.P.R.A § 1054x (2014).

[3] Puerto Rico Energy Public Policy Act, Act. 17-2019, as amended, 22 L.P.R.A § 1141.

[4] *Puerto Rico Electric Power Authority Rate Review*, Case No. CEPR-AP-2015-0001, Final Resolution and Order, (January 10, 2017), https://energia.pr.gov/wp-content/uploads/sites/7/2017/01/Final-Resolution-and-Order.pdf.

[5] See Kalain Hosein, *Powerless: Puerto Rico's Grid Collapse, Recovery and the Quest for Resilience After Hurricane María*, COLUMBIA CLIMATE SCHOOL EARTH INSTITUTE, (MAY 31, 2018), https://ncdp.columbia.edu/wp-content/uploads/2025/08/Puerto_Rico_Grid_Collapse_Case_Study.pdf. Kelly Pickerel, *2015 Sollega Install in Puerto Rico Survives Hurricanes Irma and Maria*, SOLAR POWER WORLD, (Oct. 24, 2017), https://www.solarpowerworldonline.com/2017/10/2015-sollega-install-puerto-rico-survives-hurricanes-irma-maria/.

alley. Moreover, it also proved to be unfit for a series of earthquakes that shook Puerto Rico in 2020, affecting mostly the southern part of Puerto Rico where Puerto Rico's largest power plants are located.

Legislators responded with a two-part plan to improve reliability, resiliency, and affordability. First, they mandated that the archipelago switch exclusively to renewable energy sources by 2050. Second, they created a pathway for the Puerto Rico Electric Power Authority ("PREPA") to seek out private companies to operate the Transmission & Distribution grid, and to operate the system's powerplants.

In 2021, LUMA took over operation, maintenance and control of PREPA transmission and distribution functions. Most recently, in 2023, operation, maintenance and control of PREPA's legacy generation assets was transferred to a private company called Genera PR, LLC ("Genera"), a subsidiary of New Fortress Energy ("NFE"). Since LUMA and Genera took over control of the transmission and distribution system ("T&D") system and the generation plants, respectively, Puerto Rico has experienced at least 11 major or complete power outages, including the massive power interruption related to Hurricane Fiona, a category 1 hurricane that barely touched the southwest corner of Puerto Rico but combined with LUMA's ineptitude and incompetence once again left a large portion of the population without electricity for days. Amid this unnecessary and costly experimentation with privatization, PREPA has been submerged in its own Title III Bankruptcy proceeding -- a process that is still ongoing.

Following the passage of Hurricanes María and Fiona, as well as the earthquakes of 2020, Puerto Rico's electric power infrastructure was allocated over $15 billion of federal funding from various agencies, among them the Federal Emergency Management Agency ("FEMA"), The Department of Housing and Urban Development ("HUD"), and others.[6] Federal funds from the Department of Energy initially allocated for much needed distributed solar energy for Puerto Rico's health facilities and low- to medium-income households, were recently redirected to rebuilding the centralized grid.

These allocations were consonant with Congress' determination back in 2005, where it recognized the failures of a centralized energy grid. Specifically, Congress stated "…electric power transmission and distribution lines in insular areas [including Puerto Rico] are inadequate to withstand damage caused by the hurricanes and typhoons which frequently occur in insular areas and such damage often costs millions of dollars to repair."[7] This assessment was aligned with The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974[8] ("Stafford Act"), which mandates that FEMA funds address "loss of life, human suffering, loss of income, and property loss and damage."[9], These issues that the Stafford Act addresses are – in the context of Puerto Rico and the electric grid – directly caused by a centralized energy grid like the one LUMA and Genera propose to rebuild.

[6] Corrie E. Clark, *Electric Reliability and Resiliency in Puerto Rico*, https://www.congress.gov/crs-product/IF12913? (last visited Dec. 15, 2025).
[7] 48 U.S.C.A. § 1492(5).
[8] 42 U.S.C. § *et seq.*
[9] 42 U.S.C. § 5121 (a).

Furthermore, FEMA's mission had been broadened in 2006 by Congress, directing the agency to "reduce the loss of life and property and protect the Nation from all hazards, including national disasters, acts of terrorism, and other man-made disasters, by leading and supporting the Nation in a risk- based, comprehensive emergency management system of preparedness, protection, response, recovery, and mitigation."[10] Eleven years later, in 2017, through the Disaster Recovery Reform Act, Congress once again expanded FEMA's mandate to prioritize federal investment in mitigation efforts that protect public infrastructure and strengthen both public assistance and individual assistance programs.[11] Despite these clear directives, FEMA and other federal funds have now been made available to LUMA to rebuild the business-as-usual transmission and distribution infrastructure—an approach that is in stark contrast to congressional intent and perpetuates systematic risk rather than mitigating it.

In the current process, PREB sustains that the present status of Puerto Rico's energy system, coupled with the involvement of new grid and generation operators-- LUMA and Genera-- requires initiating this adjudicative process aimed at establishing new electricity rates to rebuild "the financial foundation of this electricity system" in order to "help PREPA re-establish access to capital markets and move beyond temporary support mechanisms."[12]

[10] 6 U.S.C. § 313(b).
[11] Pub. L. 115-254, 123 Stat. 3438.
[12] *Puerto Rico Electric Power Authority Rate Review*, Case No. NEPR-AP-2023-0003, Resolution and Order Initiating Rate Review, at 1-2, (June 31, 2023), https://energia.pr.gov/wp-content/uploads/sites/7/2023/06/20230630-AP20230003-Resolution-and-Order.pdf.

As part of this process, LUMA seeks approval from PREB to update the base rates for fiscal years 2026, 2027 and 2028, claiming that the current base rates are insufficient to cover operational needs and infrastructure upgrades.[13] LUMA also seeks funding for what they claim are critical investments needed to improve reliability, resiliency and modernization of Puerto Rico's electric grid. Its proposal consists of an Optimal Budget of $1.648 billion and a Constrained Budget of $1.231 billion. If the utilities proposed budgets are approved, ratepayers will see a significant increase in their monthly bill. For example, for residential customer consuming 400kWh per month, the increase in the bill would be an additional $39.02 (or 42.14% more than the current base rates) if the combination of LUMA's Constrained Budget, Genera's Optimal Budget, and PREPA's proxy is approved.[14]

II. Viable Alternatives to Unsustainable Rate Increases: The Queremos Sol Proposal[15]

The business-as-usual rebuilding of Puerto Rico's centralized grid and central station energy generation plants will inevitably lead to exorbitant costs and ratepayer increases.[16] Fortunately, Puerto Rico has all the elements necessary to build out a more affordable, accessible and resilient electric system:

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[13] LUMA Exhibit 1.04, LUMA Executive Summary at 1.
[14] LUMA Exhibit 1.04, LUMA Executive Summary at 3.
[15] *We Want Sun: Sustainable. Local. Clean.* (Version 4.0, Feb. 2020), https://queremossolpr.org/wp-content/uploads/2025/06/We-Want-Sun-ENG-2_2020.pdf [hereinafter, *We Want Sun Proposal*].
[16] London Economics International LLC, Critique of Government Parties' Assertion that the 9019 Settlement will Not Affect Non-settling Creditors and Will Avoid a Subsequent Tittle III Filing by PREPA, (Oct. 2019), *available at* https://www.londoneconomics.com/proposed-prepa-debt-repayment-leaves-customers-with-a-hefty-bill-says-london-economics-international-llc-report/.

- ✓ Distributed renewable energy and storage technology are readily available and affordable.
- ✓ Parking lots and other built-up spaces abound.
- ✓ Historic amounts of disaster recovery and mitigation funds have been allocated for the Puerto Rico electric system.
- ✓ Social acceptance of distributed renewable energy is manifest in the rapid uptake of rooftop solar and batteries by anyone who can afford to install private systems.

Yet many residents, businesses and institutions have been left behind in accessing these potentially life-saving technologies.

In light of the shortcomings exposed by Hurricane Maria back in September of 2017, various civil society groups, including community, environmental, labor, professional and members of academia co- founded and endorsed the Queremos Sol Proposal, which paved a path for transforming PREPA through policy changes. Under the Queremos Sol Proposal, PREPA --through a restructured approach to public ownership-- would serve as the catalyst for a new energy grid powered by distributed renewable energy, primarily consisting of rooftop solar and storage, providing Puerto Ricans with a truly resilient source of energy and eliminating the vulnerabilities and dangers associated with a centralized grid. In doing so, the proposal firmly opposed privatization. Moreover, it established several benchmarks such as 25% energy efficiency by 2035, 50% renewable energy by 2035, and 100% renewable energy by 2050.[17]

This proposal, aligned with Puerto Rico's public energy policy, is supported by the We Want Sun and We Want More study commissioned in 2021 by CAMBIO and the Institute for Energy Economics and Financial Analysis ("IEEFA").[18] Through grid modeling[19] and cost analysis this study concluded that achieving 75% distributed renewable energy generation in Puerto Rico by 2035, with 100% of households equipped with rooftop solar and storage as the primary source of energy, was possible.[20] Viewing new transmission and gas infrastructure as liabilities and a waste of money, the study argued for denying approval of such investments while phasing out reliance on fossil fuel and coal. It also concluded that distribution upgrades would need to be minimal. Notably, it established that "[t]he distributed energy scenarios demonstrate there is no need for new fossil fuel generation or conversions of existing units to natural gas. It is possible to move directly to the widespread deployment of distributed solar and storage technologies, rather than locking in decades of new natural gas infrastructure."[21] This is exactly the opposite of what Genera and LUMA are proposing to do. Both utilities strongly support and advocate for the expanded

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[17] *We Want Sun Proposal, supra* note 15.

[18] Ingrid M. Vila-Biaggi, Cathy Kunkel & Agustín A. Irizarry Rivera, *We Want Sun and We Want More: 75% Distributed Renewable Generation in 15 Years in Puerto Rico Is Achievable and Affordable*, Exec. Summary (Mar. 2021), https://cambiopr.org/wp-content/uploads/2021/03/We-Want-Sun-and-We-Want-More-Summary-ENGLISH-03_21.pdf [hereinafter *We Want Sun and We Want More]*.

[19] "The modeling was conducted by Telos Energy and EE Plus, using data provided to CAMBIO and the Institute for Energy Economics and Financial Analysis (IEEFA) as a result of a public records request." *Id.* at 6.

[20] *Id.* at 20.

[21] *Id.*

buildout of fossil fuel infrastructure, increasing electricity rates and undermining Puerto Rico's statutory mandate to reach 100% renewable energy by 2050. The groups that join in these comments support the Queremos Sol proposal and urge PREB to take it into consideration when evaluating the proposed rates.

III. Concerns with LUMA's proposal during the Evidentiary Hearings

The Cost of Privatization is Undermining Puerto Rico's Energy Policy and Ratepayers Interests

Puerto Rico's experiment with privatizing its electric system has produced persistent operational failures, escalating costs, and systemic inefficiencies that harm ratepayers and undermine the archipelago's energy policy goals. The contracts with LUMA and Genera, far from serving the public interest, have entrenched a fragmented governance structure that prioritizes private profit while lacking transparency and accountability. This model obstructs the transition to distributed renewable energy and storage, leaving Puerto Rico vulnerable to climate risks and economic instability. Reclaiming and keeping the electric system under public ownership and operation is not only necessary but urgent—under a new governance framework that ensures professional, independent management and accelerates the shift toward a sustainable, publicly accountable energy system.

However, the current privatized model has not only failed to deliver these outcomes, but it has also created persistent dysfunction in coordination and accountability. The notion that privatization would foster clear roles, transparent coordination, and cooperative execution among the entities responsible for operating and transforming Puerto Rico's electrical system has proven to be nothing more than wishful thinking. The evidentiary record reveals a persistent pattern of conflict, mistrust, and structural misalignment among PREPA, LUMA, and Genera—conditions that materially delay infrastructure projects, increase costs, enable initiatives that run counter to the public interest, and negatively affect ratepayers.

The testimony presented on December 8, 2025, reveals that these coordination challenges are neither isolated nor trivial.[22] They persist across budgeting, planning, emergency preparedness, information sharing, and long-term system transformation. Their cumulative impact includes inefficiencies that drive up administrative expenditures, missed or delayed federal funding opportunities, erosion of public trust, and grid defection among those who can afford it—deepening inequities and leaving vulnerable communities even more exposed to an unreliable and costly electric system. All these consequences ultimately flow directly into rates.

The evidentiary record further shows that communication among LUMA, and PREPA is often "poor and dysfunctional," particularly regarding information sharing.[23] PREPA testified that it requires access to demand forecasts, customer trends, project development plans, and other operational information to meet its statutory obligations, but LUMA frequently resists such requests on the theory that its contractual obligations flow primarily through P3A and PREB.[24]

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[22] *See* Negociado de Energía en vivo, Vistas Evidenciarías, Case No. NEPR- AP- 2023-0003, YouTube, (Dec. 8, 2025), https://www.youtube.com/watch?v=F0p-JwHhcKA.
[23] *See* Negociado de Energía en vivo, Vistas Evidenciarías, Case No. NEPR- AP- 2023-0003, at 01:42:47, YouTube, (Dec. 8, 2025), httpschec://www.youtube.com/watch?v=gLgNyic9CPY.
[24] *Id.* at 01:27:15.

To protect ratepayers, restore accountability and achieve Puerto Rico's energy policy goals, PREB should evaluate whether privatization has truly delivered on the Legislature's assumptions of lower costs and improved service via privatization, particularly in light of persistent failures in coordination among LUMA, Genera and PREPA. Evidence from the hearings shows that fragmented governance and poor inter-utility cooperation have delayed projects and increased costs, this should not be permissible under any circumstance.

LUMA's Withdrawn Attempt to Strip PREB of Budget Oversight Exposes a Deep Misalignment with the Public Interest

On November 24, 2025, during the evidentiary hearings' Budget Process Panel, LUMA formally withdrew their request to eliminate PREB's authority to adjudicate LUMA's annual budget and instead make PREB rely solely on a consolidated fiscal-year budget prepared by the Public-Private Partnerships Authority ("P3A").[25] The withdrawal came after the Hearing Examiner's remarks during the November 21, 2025 session, where he stressed that LUMA's position was inconsistent with the operational and financial realities of Puerto Rico—specifically noting that Puerto Rico does not operate in an environment where a utility's treasury absorbs variances between approved budgets and actual spending.[26] When LUMA and Genera overspend, it is the public—not private shareholders—who pay the price, making

[25] Negociado de Energía en vivo, Vistas Evidenciarías, Case No. NEPR- AP- 2023-0003, at 00:18:18 YouTube, (Nov. 24, 2025) https://www.youtube.com/watch?v=cDbJv-AC1U8&t=566s.
[26] Negociado de Energía en vivo, Vistas Evidenciarías, Case No. NEPR- AP- 2023-0003, at 02:15:00 YouTube, (Nov. 21, 2025) https://www.youtube.com/watch?v=_xveMp_eMAw&t=679s.

robust regulatory review necessary and non-negotiable. The proposal originated in the direct testimony of LUMA witness Eduardo Balbis, who recommended that PREB replace its current practice of approving detailed budget allocations for LUMA, Genera, and PREPA with a system in which LUMA would simply provide, for informational purposes, the consolidated fiscal-year budget prepared by the P3A.[27]

Although LUMA ultimately disclaimed the proposal, the fact that it advanced such a request—and defended it until confronted during the hearings—reveals a profound misalignment between LUMA's corporate incentives and the statutory framework designed to protect ratepayers. By proposing to bypass PREB's independent scrutiny of the cost inputs that ultimately shape rates, LUMA's recommendation would have weakened the Legislature's framework for protecting consumers from absorbing unjustified or unreasonable expenditures or imprudent use of public funds. This request rested on the flawed premise that a private operator with no shareholder capital at risk should nevertheless operate with broad autonomy, subject only to P3A—an agency that is not an expert utility regulator—and under conditions that resemble jurisdictions where utilities themselves bear the financial consequences of budget variances, which is not the case in Puerto Rico. As the Hearing Examiner emphasized, this assumption ignores "the Puerto Rico realities,"[28] where every dollar in LUMA's budget comes from the public, and where the system's legacy of fiscal strains requires more oversight, not less.

[27] LUMA Exhibit 3.0 (7.03.25), Direct Testimony Eduardo Balbis at 10.
[28] *Supra* note 26.

PREB has failed to deliver needed progress on distributed renewable energy, but weakening its authority would only worsen the situation. Without PREB's involvement, ratepayers and Puerto Rico's distributed renewable transition would be even more vulnerable to imprudent or shifting expenditures by LUMA and Genera. Moreover, PREB, not P3A is legally responsible for budget processes. P3A is not a substitute for the PREB budget process, and it has a distinct mission of structuring public-private partnerships, not regulating budgets, rates, or utility performance.

Even though the proposal has been withdrawn, the posture behind it remains revealing. It demonstrates a willingness to minimize independent review of ratepayer-funded spending—an approach fundamentally inconsistent with both statutory intent and the economic conditions facing Puerto Rican households and businesses, who already bear the burden of some of the highest electricity costs in United States jurisdiction for the worst service.

PREB Must Reject LUMA's Proposal to Eliminate PREB Oversight of Budget Amendments

LUMA's proposal seeks to eliminate the requirement that PREB approve budget amendments and reallocations exceeding 5% of any line item. In testimony, LUMA witness Eduardo Balbis argued that PREB should stop approving amendments altogether, claiming this would align with "best practices" in U.S. utility regulation.[29] Other witnesses, including Alejandro Figueroa and Andrew Smith,

[29] *Supra* note 27, at 14.

echoed this view, recommending that PREB either eliminate or significantly relax its current rules so that LUMA could freely move funds between approved budgets without prior authorization.[30] The record makes clear why this approach is unacceptable.

First, LUMA admitted under questioning that nothing in its proposal would prevent shifting funds away from critical maintenance. When pressed, the company acknowledged that under its plan, there would be no mechanism to stop reallocations from essential programs—such as vegetation management—to lower-priority expenditures.[31] Second, LUMA's position is that P3A—not PREB—controls cost disallowances and that PREB cannot require LUMA to absorb overruns from its own funds.[32] While PREB has repeatedly stated it is not bound by the OMA, LUMA's budget flexibility proposal and its view about PREB's authority would leave ratepayers vulnerable to unchecked and imprudent spending.

Recent regulatory enforcement actions involving ATCO Electric illustrate precisely why robust, independent regulatory scrutiny of utility budgets and expenditures is essential. ATCO was found to have overpaid a sole-sourced contractor by tens of millions of dollars and then attempted to recover those inflated contractor costs from ratepayers without appropriate justification or disclosure.[33] Facing regulatory scrutiny, ATCO ultimately agreed to a $31 million administrative penalty

[30] LUMA Exhibit 1.0 (7.03.25), Direct Testimony Alejandro Figueroa, at 89; LUMA Exhibit 2.0 (7.03.25), Direct Testimony Andrew Smith at 87.
[31] *Supra* note 25, at 00:30:02.
[32] *Supra* note 25, at 00:36:50.
[33] *See* Bob Weber, *ATCO Electric fined $3M for unearned rate increases, overstating its costs*, Global News, (July 10, 2024) https://globalnews.ca/news/10612164/atco-electric-rate-increases-costs-fine/.

after an investigator concluded that its conduct did not meet the standard of care owed to customers and regulators, and the utility was required not only to pay the penalty but to refund customers for the imprudent costs it sought to include in rates.[34] Regulators also ordered $16 million dollars in refund to ratepayers for ATCO's "imprudent management and execution."[35] In a recent separate order, regulators directed ATCO to repay approximately $71 million to customers after determining that costs the utility had attempted to recover through rates were not just and reasonable and that the documentation of savings was insufficient.[36]

As highlighted, the consequences would fall squarely on the public. Budget flexibility without oversight could enable diversion of funds to administrative or contractor expenses, and even the creation of artificial shortfalls used to justify rate increases. While administrative flexibility could be present in other jurisdictions, Puerto Rico's electric grid and governance context demand stronger—not weaker—regulatory controls. LUMA and Genera, both for-profit operators, have already shown patterns of inefficiencies and cost overruns. Stripping its authority to approve reallocations would weaken its ability to enforce discipline, detect misaligned priorities, and maintain public trust. Unmonitored reallocation of public funds represents a significant risk to ratepayers. Flexibility must be earned through years

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[34] *See* Rob Drinkwater, *ATCO Electric agrees to $31 million penalty following regulator's investigation*, CBC News, (April 18, 2022) https://www.cbc.ca/news/canada/edmonton/atco-electric-penalty-investigator-transmission-line-1.6422427.

[35] *See* Bob Weber, *Utilities commission increases refund ATCO owes for attempt to recoup contract costs*, CBC News, (April 27, 2023) https://www.cbc.ca/news/canada/edmonton/utilities-commission-increases-refund-atco-owes-for-attempt-to-recoup-contract-costs-1.6825297.

[36] *See* Fitch Ratings, *Fitch Rates CU Inc.'s Senior Unsecured Notes 'A',* (Sept. 11, 2025) https://www.fitchratings.com/research/corporate-finance/fitch-rates-cu-inc-senior-unsecured-notes-a-11-09-2025.

of consistent accuracy in budgeting and compliance—something LUMA has not demonstrated—especially given that these decisions involve public funds for an essential service.

Finally, PREB's own practices raise concerns. For example, in FY 2022, PREB approved a LUMA budget amendment just one month before the fiscal year ended.[37] LUMA submitted the amendment on June 6, 2022—hardly a meaningful review when the year was nearly over. LUMA should be able to estimate its annual budget with reasonable accuracy from the outset; staying within an approved budget is not an unreasonable expectation for a competent operator. Variances should be rare and limited to emergencies or unforeseeable circumstances—not routine adjustments that undermine accountability.

PREB Should Reject LUMA's Proposal to Eliminate the Fourth Quarterly Report

During the evidentiary hearing, LUMA argued that the current requirement for a fourth quarterly budget report is duplicative and administratively burdensome. Instead, LUMA proposed submitting three quarterly reports and one annual report, with the annual report due within 120 days after the fiscal year ends.[38] According to testimony from Eduardo Balbis and Andrew Smith, the fourth quarterly report largely overlaps with the annual report and consumes significant resources without

[37] Puerto Rico Energy Bureau, *Resolution and Order,* In Re: Review of LUMA's Initial Budgets, Dkt. No. NEPR-MI-2021-0004 (Aug. 2, 2022) https://energia.pr.gov/wp-content/uploads/sites/7/2022/08/20220803-MI20210004-Resolution-and-Order.pdf.
[38] *Supra* note 25, at 03:16:11.

adding meaningful oversight value.[39] Smith noted that if the fourth quarterly report were eliminated, LUMA could potentially accelerate the annual report timeline to 60–90 days after year-end.[40]

PREB, however, expressed concern that the annual report includes major year-end adjustments and cannot serve as a substitute for a Q4 snapshot.[41] Despite LUMA's attempt to argue efficiencies, eliminating Q4 reporting would reduce transparency. In Puerto Rico's context, quarterly reporting remains one of the few tools enabling PREB to detect emerging risks before they result in rate increases. While improvements in reporting format may be warranted, reducing reporting frequency would undermine oversight at a critical time.

PREB Should Reject LUMA's Attempt to Avoid Additional Data Tracking and Analysis

LUMA, through its witness, Eduardo Balbis, argues that requiring additional data tracking and analysis would reduce efficiency and necessitate costly technological upgrades.[42] However, this position ignores the reality of Puerto Rico's electricity system, PREB's statutory mandate and the lessons of past failures—where lack of tracking and oversight contributed to chronic mismanagement and delayed reforms. Even after four years of privatization—promoted as the solution to Puerto

[39] LUMA Exhibit 3.0 (7.03.25), Direct Testimony Eduardo Balbis, at 7; LUMA Exhibit 2.0 (7.03.25), Direct Testimony Andrew Smith at 85.
[40] Negociado de Energía en vivo, Vistas Evidenciarías, Case No. NEPR- AP- 2023-0003, at 00:52:29 YouTube (Nov. 24, 2025) https://www.youtube.com/live/Zv6ADCICU_c?si=yA1AWcQ4S_Udu4cM&t=3149.
[41] *Id.* at 00:43:06.
[42] *Supra* note 27, at 25.

Rico's systemic problems—the grid remains fragile and underperforming. PREB's ability to detect misallocation, inefficiencies, or emerging risks depends on timely, granular data—not broad metrics without context or quantification.

PREB has repeatedly stated that efficiency claims cannot be accepted without measurable evidence.[43] During the hearing, Commissioners and the Hearing Examiner pressed LUMA on its assertions of cost savings and operational improvements—such as contracting efficiency, collections of past-due bills, transmission loss reduction, theft mitigation, and meter upgrades.[44] LUMA's witnesses pointed to some progress but failed to provide dollar-based quantifications for several items.[45] Without these figures, PREB cannot reflect claimed efficiencies in the revenue requirement or ensure that ratepayer funds are being used effectively. Budget oversight and program evaluation require transparent data, measurable baselines, and detailed reporting. It is surprising that LUMA is requesting to reduce data tracking and reporting, given that it was expected to leverage the "extensive experience" of its parent companies, ATCO and Quanta, as prominently advertised when it secured the contract.[46]

Puerto Rico is in the midst of a mandated transition toward renewable generation under Law 17-2019. Distributed solar as the model proposed in the

[43] *Supra* note 40, at 01:11:46.
[44] *Id.* 1:45:13.
[45] *Id.* 1:22:24.
[46] *See* ATCO, *ATCO and Quanta form LUMA to Transform Puerto Rico's Electricity System* (June 22, 2020) https://www.atco.com/en-ca/about-us/news/2020/122897-atco-and-quanta-form-luma-to-transform-puerto-rico-s-electricity.html; Press Release, LUMA, *LUMA Selected to Transform and Operate Puerto Rico's Electricity System* (Aug. 2020) https://lumapr.com/wp-content/uploads/2020/08/LUMA-Press-Release-1.pdf.

Queremos Sol Plan,[47] is the most cost-effective path forward. PREB must ensure that budgets and operational decisions actively enable, rather than obstruct, this transformation. This requires rigorous tracking to confirm that resources are being directed toward distributed renewable energy such as rooftop solar adoption, coupled with energy storage deployment, energy efficiency initiatives, demand response and similar alternatives and a steady reduction in reliance on fossil fuel plants, including LNG facilities that perpetuate dependency on imported fuels and volatile costs. Without detailed data, PREB cannot determine whether LUMA and Genera's spending aligns with these statutory goals or whether inefficiencies are driving unnecessary rate increases.

Additionally, LUMA and Genera must undergo a comprehensive third-party audit. This audit should make clear how—and how effectively—these entities have spent the funds already collected from Puerto Rico's ratepayers and verify their current proposals. Without this transparency, PREB cannot ensure that additional charges are justified or that existing resources are being managed responsibly. PREB has explicit authority to require such audits under Section 6.3(y) of Act 57-2014, which empowers the Bureau to "[c]onduct inspections, investigations, and **audits**, if necessary, to achieve the purposes of this Act. The Energy Bureau may delegate this power through a resolution. In such resolution, the Energy Bureau shall establish the limits and the term of such delegation of powers."[48] This provision underscores that

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[47] *See* We Want Sun Proposal, *supra* note 15.; We Want Sun and We Want More, *supra* note 18.
[48] 22 L.P.R.A. § 1054b. (*Emphasis added*).

audits are not optional—they are a critical tool for accountability and ratepayer protection. Before approving any rate increase, PREB should exercise this authority to confirm that LUMA and Genera's spending aligns with efficiency claims, contractual obligations, and Puerto Rico's energy policy goals.

PREB Must Reject Ratepayer Cost-Shifting when Federal Funds are Available but Underutilized

Federal funds have been-- and continue to be—available to modernize Puerto Rico's electric grid through investments in distributed solar and storage, along with targeted distribution upgrades. Instead of leveraging resources effectively, the government has squandered significant funds on LUMA and Genera's proposals. In light of this reality, PREB should reject any attempt to shift costs onto ratepayers when federal funding is accessible. Otherwise, LUMA will retain reimbursed funds and effectively receive double compensation. This is crucial because testimony during the first two days of the Evidentiary Hearings on Transmission and Distribution revealed significant flaws in LUMA's approach to federally funded capital and ratepayer funded capital, particularly in vegetation management and other critical components of its operations like line management. As detailed below, witnesses, Mr. Pedro Meléndez and Mr. Kevin Burgemeister acknowledged that LUMA lacks a precise, methodological, and transparent process for determining the appropriate funding source for specific projects. They also revealed deficiencies in LUMA's practices related to the administration and oversight of federal funding. These deficiencies in managing federal funding are particularly troubling because, when

LUMA was granted control of the Transmission and Distribution system, consumers were assured of expertise in federal funding procurement, management and deployment – promised as part of LUMA's close working relationship with Innovative Emergency Management ("IEM").[49] Moreover, LUMA was selected in part due to this supposed experience in the field of federal funding.[50] The evidence, however, demonstrates that such experience has been conspicuously absent.

While LUMA repeatedly cited FEMA's slow obligation process in the vegetation management area as justification for relying on ratepayer funded capital, one of PREB's consultant and the commissioners questioned why such planning gaps persist despite LUMA's contractual obligation to anticipate maintenance needs.[51] This reliance on ratepayer funded capital for foreseeable issues reflects a failure of proactive planning and raises serious concerns about accountability when ratepayers are asked to absorb unsustainable increases for projects that could be federally funded if LUMA correctly administered funding.

On the first day of hearings, significant issues emerged regarding the completion of vegetation management projects. Mr. Burgemeister, LUMA's Senior

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[49] *See* Puerto Rico Public- Private Partnerships Authority, *Government of Puerto Rico Selects LUMA Energy to Operate and Transform Electric Power Tranmission and Distribution System*, (June 22, 2020), https://docs.pr.gov/files/P3-PublicaPrivadas/Press%20Room/govpr-selects-luma-energy-ope-trans-electric-power-transmi-dist-sis.pdf.

[50] *See* Puerto Rico Discal Agency and Financial Advisory Authority, *Consorcio LUMA Operará la Transmisión y Distribución de la AEE*, (June 22, 2020), https://www.aafaf.pr.gov/aafafinthenews/consorcio-luma-operara-la-transmision-y-distribucion-de-la-aee.

[51] *See* Negociado de Energía en vivo, Vistas Evidenciarías, Case No. NEPR- AP- 2023-0003 at 01:06:44- 01:10:00 02:12:50–02:13:24; 02:15:39–02:18:54; YouTube (Nov. 12, 2025), https://www.youtube.com/watch?v=GQBKKfHLoFs.

Vice President of Operations, testified that planned ratepayer funded work under Operations and Maintenance ("O&M") , had been halted since early October due to "funding constraints,"[52] leaving LUMA unable to pay vendors and accumulating $20 million in debt to vegetation management contractors.[53] This revelation surprised commissioners, particularly President Commissioner Avilés, given that PREB had approved a budget for vegetation management.[54] When asked if work would resume, Mr. Burgemeister could not provide a definitive answer, stating only that he "believe[s] by the end of December" they will be in a position to restart.[55] He acknowledged this was a short-term fix and claimed that funding issues must be resolved to prevent future disruptions.[56]

A recent article from a media outlet, Metro, notes that in a letter sent on November 13, 2025, to LUMA's President, Juan Saca, the P3A rejected LUMA's claims of insufficient funds for vegetation management work and instead affirmed that LUMA does in fact have federal and local funds to continue the work, however "administrative deficiencies" and "poor project execution" have caused them to halt working on the maintenance side of vegetation management.[57] More specifically, the letter denounces that "[i]n total, LUMA submitted 29 vegetation management

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[52] *Id.* at 01:07:11; 01:39:06.

[53] Burgemeister notes that the overall debt is much larger than that. And that "20 million would not help us, would help get the vegetation contractors paid, but not everybody else. Uh, so the bigger problem isn't resolved." *Id.* at 01:49:26.

[54] *See Id.* at 01:08:25.

[55] *Id.* at 01:09:03.

[56] *Id.* at 01:09:03 - 01:09:20.

[57] *Zar de Energía Acusa a LUMA de Suspender Trabajos sin Justificación*, METRO, Nov. 14, 2025, https://www.metro.pr/noticias/2025/11/14/zar-de-energia-acusa-a-luma-de-suspender-trabajos-sin-justificacion/.

projects totaling $585.5 million, but the vast majority remain stalled due to incomplete documentation, pending environmental assessments, and delays in submitting the required technical information."[58]

Further, on November 12, 2025, Mr. Burgemeister testified that part of the proposed rate increase is intended to cover the cost of ratepayer funded vegetation management.[59] Yet, upon questioning from Commissioner Torres he could not guarantee that current payment issues would not recur, noting only that LUMA is taking "extensive measures" to address cash flow problems and emphasizing that he is not responsible for federal funds. [60] LUMA's explanations regarding the issues facing the vegetation management program reveal both financial and operational mismanagement. On one hand, as LUMA's Senior Vice President of Operations, Mr. Burgemeister should provide clear assurances to ratepayers, particularly when customers are being asked to absorb an unsustainable rate increase for projects that in many instances could be financed with federal funds. On the other hand, the existence of cash flow problems despite having a full budget for years, coupled with claims of significant vendor debt, raises legitimate questions about LUMA's ability to manage ratepayer funds responsibly. These are more evident still in LUMA Exhibit 6.14 which acknowledges that in the front-end transition period pruning practices

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[58] *Id.*
[59] *See supra* note 51.
[60] *Id.* at 01:44:06.

were not effective and that LUMA initially miscalculated clearings costs which ended up being "more expensive than originally estimated."[61]

Similar concerns arise in Mr. Melendez' testimony for transmission repairs under the Transmission Priority Pole Replacement Program, specifically the "PB PBUT13". He stated that LUMA has applied for $15.7 million through a DOE grant.[62] Yet, despite seeking those federal funds, LUMA is simultaneously requesting the same amount from ratepayer funded capital.[63] While LUMA claims to be actively filing and submitting documentation to secure federal funding, it argues that pending application and delays require preemptive reliance on ratepayer dollars. This approach once again reflects a fundamental planning failure where financial responsibility is shifted to customers simply because LUMA seems to not master the management of federal funding.

Moreover, upon questioning from Commissioner Ramos regarding the $34.5 million allocated as ratepayer funded capital for pole replacements and whether LUMA would pursue federal funds for this, Mr. Meléndez testified that LUMA has submitted approximately 500 projects, of which 209 have been obligated.[64] Mr. Meléndez further claimed that there are challenges in obtaining the remaining funds but did not specify what those challenges are. Throughout this line of questioning,

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[61] LUMA Exhibit 6.14, Enabling portfolio: Vegetation Management and Capital Clearing Implementation at 2, Active Gaps Table.
[62] Negociado de Energía en vivo, Vistas Evidenciarías, Case No. NEPR- AP- 2023-0003, at 00:20:58-00:21:58, YouTube, (Nov. 12, 2025), https://www.youtube.com/watch?v=zlByndfNycI.
[63] *Id.* at 00:25:05- 00:25:43.
[64] Negociado de Energía en vivo, Vistas Evidenciarías, Case No. NEPR- AP- 2023-0003, at 01:02:37, YouTube, (Nov. 13, 2025), https://www.youtube.com/watch?v=15R_TQryoYI.

the Hearing Commissioner highlighted a lack of clarity and objectivity regarding federal fund maximization. He stated "[w]e're going to need something about procedure, something about criteria, something about internal standards, something about internal accountability that the commissioners can use to put into their order when they make a finding that LUMA has or has not maximized."[65]

LUMA has repeatedly demonstrated that it is unfit to manage its budget and effectively secure—or even navigate—the process of obtaining federal funds. This is therefore not an isolated concern. On February 13, 2025, the Puerto Rico Public Private Partnership Authority ("P3A") issued a letter concluding that the lack of funds in the T&D system was directly linked to LUMA's failure to properly manage federal funding. P3A also explained that LUMA's liquidity crisis was a product of LUMA diverting money that had been earmarked for operating expenses without first securing FEMA reimbursements.[66] P3A has issued several other letters denouncing LUMA's inability to proactively and correctly manage federal funds.[67]

In a previous letter dated July 22, 2025, regarding the notice of dispute to LUMA under Article 15 of the T&D OMA, Mr. Josué Colón sharply criticized LUMA's

[65] *Id.* at 01:08:10.
[66] *Puerto Rico Electric Power Authority Rate Review*, Case No. NEPR-AP-2023-0003, PREPA's Motion to Amend Rate Application and Objection to LUMA's Requested Provisional Rate Rider Amount, at 5, (July 11, 2025), https://energia.pr.gov/wp-content/uploads/sites/7/2025/07/20250711-AP20230003-PREPAs-Motion-to-Amend-Rate-Application-and-Objection.pdf.
[67]Puerto Rico Pub. Priv. Partnerships Authority, Notice of Disputes to LUMA Energy, LLC and LUMA Energy ServCo, LLC, under Article 15 of the T&D OMA, at 11, 15, 18 (July 22, 2025), available at https://www.slideshare.net/slideshow/carta-de-la-autoridad-de-las-app-a-luma-energy/281870092#10.

failure to fully utilize FEMA funds. Writing to LUMA's President, Mr. Juan Saca, Colón stated:

> Put simply, **LUMA wants consumers to pre-pay for capital work the federal government stands ready to reimburse, while also footing the bill for everyday maintenance that FEMA will never cover.** PREPA rejects that premise outright: when LUMA's actual revenues fall short of its optimistic forecasts, the remedy is internal cost discipline—trimming seconded employee expenses, attacking technical and non-technical losses—not conscripting Puerto Rican families to subsidize managerial inefficiency through higher rates.[68]

The letter further documents instances where LUMA failed to timely request reimbursements, noting that the company had been: "urged to diligently and timely request federal reimbursements to stop or significantly reduce the drainage of state funds to replenish accounts for the benefit of clients." Likewise, as PREPA noted in their *Motion to Amend Rate Application and Objection to LUMA's Requested Provisional Rate Rider Amount*, PREB has also called LUMA out for misuse of federal funds and not mastering the federal funding procedure.[69]

The Evidentiary Hearings and Pre-Filed Testimonies reinforced the concerns raised in Colon's July 22, 2025, letter to LUMA: ratepayers are not only being asked to fund components of the T&D system that could qualify for federal funding, but also to shoulder ongoing costs of routine maintenance. This approach is not only fundamentally unethical but also risks locking ratepayers into perpetual payments for a system that remains vulnerable and inefficient. PREB must weigh these implications carefully before approving any rate increase that exacerbates the energy

[68] *Id.* at 3 (*Emphasis added*).
[69] *Supra* note 66, at 5.

burden without delivering true resiliency or accountability. PREB's responsibility to weigh these factors is even more important in light of Act 17-2019 which creates a duty for LUMA to "provide and allow for the provision of reliable, clean, efficient, and affordable electric power, contributing to the general wellbeing and sustainable development of the people of Puerto Rico."[70]

All in all, PREB must not turn a blind eye to LUMA's persistent lack of proficiency in securing and using federal funds and its documented failures in financial management. PREB must in turn require LUMA to fully utilize available federal funds before approving any cost recovery through rates. Costs that qualify for federal funds should never be shifted to ratepayers simply because LUMA consistently fails to correctly carry out the federal funding process.

LUMA Must Create a Prioritization Process to Evaluate Projects for Funding Requests, Whether from the Federal Government or Ratepayers

During hearings on November 18-20, Genera witnesses explained that LUMA has a formal approval structure for the numerous capital projects being considered.[71] Commissioners and witnesses concurred on the value of creating a transparent, structured process where LUMA prioritizes projects based on various criteria important to PREB and stakeholders. LUMA promised to create that process, which should be the basis for its formal approval of each project. Upon designing the process

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[70] Puerto Rico Energy Public Policy Act, Act. 17-2019, as amended, 22 L.P.R.A § 1.10.(a).
[71] Negociado de Energía en vivo, Vistas Evidenciarías, Case No. NEPR- AP- 2023-0003, at 00:27:38, YouTube, (Nov. 21, 2025), https://www.youtube.com/watch?v=QYq7vHjQEcM.

LUMA must tailor it to Puerto Ricans' Energy Public Policy Goals for an affordable and resilient grid.

We agree with Commissioner Mateo's conclusion that PREB cannot approve LUMA's project list, and that LUMA has failed to provide adequate public information, until LUMA provides "some detailed explanation of what [projects were] moved from where [and what the dollar] amounts were. So the average person can understand what really happened and they do not feel like they are being told that money was shuffled from one column to the other without understanding."[72] Witness Hogan concurred on the value of a process to evaluate project likelihoods to guide ratepayer funding.[73] LUMA promised to provide that project prioritization list, including the probability of federal funding.[74]

The probability of federal funding is an important criterion, however, criteria tied to PREB's mandate, such as the following, should be added:

- Does the project improve affordability, **after** incorporating capital costs, O&M costs, and fuel costs?
- Does the project align with or conflict with Puerto Rico's mandate for 100% clean energy by 2050?[75]

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[72] Negociado de Energía en vivo, Vistas Evidenciarías, Case No.: NEPR- AP- 2023-0003, at 01:10:04, YouTube, (Nov. 18, 2025), https://www.youtube.com/watch?v=AvfauwXX7PI&t=14s.
[73] Negociado de Energía en vivo, Vistas Evidenciarías, Case No. NEPR- AP- 2023-0003, at 00:27:04., YouTube, (Nov. 20, 2025) https://www.youtube.com/live/pNUD1WSnnjE?si=Nxj4Cg8X7cN0w6n-
[74] *Supra* note 72, at 01:19:08.
[75] Puerto Rico Energy Public Policy Act, Act. 17-2019, as amended, 22 L.P.R.A § 1.6(7).

- Will the project improve resilience, considering that even "blackstart" fossil fuel units will take an hour or more to return to service, whereas rooftop solar + storage has consistently been online immediately after storms?[76]
- FEMA and the Department of Energy have already rejected several of these projects, but Genera and LUMA plan to re-submit some of them. We suggest that the initial rejection be incorporated as a criterion in the process. In other words – the federal government's rejection should be a strike against funding the project, from either federal funds **or** ratepayer funds.

Investments which enhance the value of existing rooftop solar and storage, while driving broader adoption, should rank at the very top of any fair prioritization criterion.

PREB Should not Backtrack on the Shuttering of San Juan 7-10

The proposed resuscitation of San Juan Power Plant Units 7-10—in particular—is a terrible project that would be scrapped in any fair prioritization process.

Genera, whose affiliated company NFEnergia would stand to rake in millions of dollars by fueling revived San Juan 7-10 units, proposes to add these projects, which would cost $125M and take three years at the very least, onto ratepayers' tab

[76] *Supra* note 73, at 01:19:08.

over and above the proposed 40% increase.[77] In the previous Integrated Resource Plan, PREB had already considered and rejected extensions of these units' lifetimes.[78] Genera requested that the Department of Energy pay for the project, and DOE also rejected it. As detailed above, that rejection speaks to the failure of these projects to achieve stakeholder goals.

Genera and its witnesses strongly prefer gas-fired projects over distributed clean energy. We believe this is strongly related to two troubling facts. First, Genera's sister company stands to profit handsomely from each new gas-fired plant approved. Second, renewable energy reduces Genera's operational scope, ultimately leading to Genera's phase-out.[79] In other words, each successful clean energy addition, and fossil energy retirement, accelerates Genera's phaseout. These two facts present two conflicts of interest for Genera when evaluating these projects. Genera seeks to present these projects, including the conversion of San Juan Units 7-10, to PREB as a *fait accompli*, much as Genera's affiliated company NFEnergia did with its LNG import terminal and conversion of San Juan Units 5-6 in 2019. PREB should reject this and instead require Genera to add these projects to the Integrated Resource Plan

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[77] Negociado de Energía en vivo, Vistas Evidenciarías, Case No. NEPR- AP- 2023-0003, at 00:36:29, YouTube, (Nov. 18, 2025), https://www.youtube.com/watch?v=iprOQ7RSAuc&t=1912s; Negociado de Energía en vivo, Vistas Evidenciarías, Case No. NEPR- AP- 2023-0003, at 01:20:55., YouTube, (Nov. 20, 2025), https://www.youtube.com/watch?v=AvfauwXX7PI&t=14s.
[78] *Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan, at para. 101, (Aug. 21, 2020), https://energia.pr.gov/wp-content/uploads/sites/7/2020/08/AP20180001-IRP-Final-Resolution-and-Order.pdf.
[79] Negociado de Energía en vivo, Vistas Evidenciarías, Case No. NEPR- AP- 2023-0003, at 00:20:16, YouTube, (Nov. 18, 2025), https://www.youtube.com/watch?v=iprOQ7RSAuc&t=1912s.

process, to be evaluated against options including distributed renewable energy such as rooftop solar + storage.

IV. Conclusion

As detailed above, in these initial set of comments, we ask PREB to:

- Examine the inefficiencies and costs of privatization evident in the lack of inter-utility cooperation.
- Reject LUMA's proposal to eliminate PREB oversight of Budget Amendments.
- Reject LUMA's attempt to avoid additional data tracking analysis.
- Reject LUMA's attempt to eliminate the Q4 Report.
- Reject LUMA's attempts to shift costs to ratepayers for projects where federal funding is available.
- Require LUMA to analyze all projects through a Prioritization Process, incorporating Puerto Rico's Energy Policy Goals.
- Require Genera to comply with the planned retirements of San Juan Units 7-10.

Failure to address these concerns will irreparably harm ratepayers, who will continue to bear the financial and operational burdens of an antiquated energy grid. Through this case, PREB has an opportunity to redirect LUMA and Genera to transition to distributed renewable energy, using available of federal funding.

PREB should use the rate case to ensure LUMA and Genera comply with Act 57-2014 and Act 17-2019 and provide ratepayers with access to reliable, affordable and resilient renewable energy, particularly rooftop solar and storage.

Respectfully submitted. In San Juan Puerto Rico, on December, 18, 2025.

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CERTIFICATE OF SERVICE

I certify that on December 18, 2025, I have proceeded with the filing of this document and a copy was notified by electronic mail to the Hearing Examiner, Scott Hempling, shempling@scotthemplinglaw.com, and to the attorneys of the parties of record:

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