

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

**NEPR**

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

**CASE NO:** NEPR-AP-2023-0003

**SUBJECT:** SESA'S Response to LUMA's  
December 3<sup>rd</sup> Motion and the December 8<sup>th</sup>  
Order

**SESA'S RESPONSE TO LUMA'S DECEMBER 3<sup>RD</sup> MOTION**  
**AND THE DECEMBER 8<sup>TH</sup> ORDER**

**TO THE HONORABLE ENERGY BUREAU:**

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

**I. INTRODUCTION**

On December 1, 2025, SESA and Solar United Neighbors ("SUN") filed a *Joint Motion to Request Deferral of Decision on Proposed Implementation of Pension Rider Fixed Monthly Charge* (the "Joint Motion"). Therein, SUN and SESA jointly moved the Honorable Energy Bureau to defer a decision on LUMA's proposed implementation of the fixed monthly pension rider charge until it can be considered within the full evidentiary record of the ongoing rate review.

On December 3, 2025, LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly, "LUMA") submitted *LUMA's Response to SUN and SESA's December 1<sup>st</sup> Joint Motion* (the "LUMA's December 3<sup>rd</sup> Motion"). Rather than address the Joint Motion's central concern, the absence of evidentiary development required to support a structural rate-design change, LUMA provides selective bill comparisons, omits analysis of low-income and low-usage customers, and

minimizes the magnitude and consequences of shifting from a volumetric to a fixed-cost recovery method.

Subsequently, on December 8, 2025, the Hearing Examiner issued an order (the "December 8th Order") requesting that all parties address whether LUMA's proposal presents "any legal vulnerability" under Section 4 of the Puerto Rico Net Metering Program Act, Act No. 114 of August 16, 2007, as amended (22 L.P.R.A. § 1011 *et seq.*), including whether statutory provisions related to per-kWh treatment of net-metering customers constrain the Energy Bureau's ability to approve such a change. The Examiner expressly invited parties to set forth "any legal view... not previously presented," underscoring the significance of Section 4's protections and the need for a clear legal analysis in the context of the proposed rider modification.

As explained herein, the proposal to replace the volumetric pension rider with a fixed monthly charge is not a ministerial adjustment but a material rate-design change with substantial distributional and legal implications; implications that LUMA's December 3<sup>rd</sup> Motion fails to confront. The shift disproportionately burdens low-usage and many low-income and net-metering households, raises statutory concerns under Section 4 of Act 114-2007, and has not undergone the evidentiary scrutiny required under Act 57-2014. LUMA's filings therefore only reinforce the necessity of deferring any decision on the proposal until it is fully examined in the Permanent Rate Review.

## **II. BACKGROUND**

On July 31, 2025, the Energy Bureau issued a Resolution and Order titled *Establishment of Fiscal Year 2026 Provisional Rates and Fiscal Year 2026 Provisional Budget* ("July 31 R&O"). In its order, the Energy Bureau approved, among other matters, the recovery of pension costs associated with the Puerto Rico Electric Power Authority ("PREPA") Employee Retirement

System. For purposes of the provisional pension rider, the Energy Bureau accepted PREPA's requested pension cost amount on an interim basis.

The Energy Bureau determined that the pension rider should ideally be recovered through a fixed charge assessed to each customer. However, due to certain billing system limitations, LUMA was unable to implement such a fixed-charge mechanism. As a result, the Energy Bureau directed LUMA to recover the pension costs through a volumetric (per-kWh) charge and to notify the Energy Bureau once it became feasible to implement the necessary modification to transition from a volumetric charge to a per-customer fixed charge.

Subsequently, on November 14, 2025, LUMA filed a *Motion on Pension Rider*, in which it revised its proposed methodology for recovering pension-related costs and presented a calculation approach to implement a fixed charge for the pension rider.

On November 26, 2025, LUMA submitted a motion titled *LUMA's Revised Motion in Compliance with July 31<sup>st</sup> Order Regarding Revision of Pension Rider*, proposing to convert the Pension Funding Rider from a volumetric charge to a fixed monthly charge for all customer classes effective January 1, 2026.

On December 1, 2025, SESA and SUN filed the Joint Motion, which asserts that shifting from a volumetric to a monthly charge represents a structural change in rate design that has not undergone evidentiary development, customer impact analysis, or low income/ delinquency assessment, and could disproportionately burden vulnerable residential customers. SESA and SUN requested that the Bureau maintain the current volumetric method during the interim to ensure revenue continuity, and that any modification be addressed together with broader rate design and cost allocation issues through testimony, discovery, public input and hearings in the rate case.

On December 3, 2025, LUMA responded to the Joint Motion, opposing the request for deferral.

On December 8, 2025, the Hearing Examiner issued an order (the "December 8<sup>th</sup> Order") whereby it asked stakeholders to answer the following question:

*Pension rider:* Pending before the Energy Bureau is LUMA's proposal to change the per/kWh charge to a fixed charge. Is there any legal vulnerability to this change, in light of the statutory provision relating to per-kWh treatment of solar-panel customers? If the pension costs were rolled into base rates, rather than recovered through a rider, would that then mean that the pension costs would have to be recovered, per the statute, via a kWh charge? This matter is pending before the Energy Bureau, not me. But if parties have a legal view on this question that they have not presented before, they need to present that view by motion to the Energy Bureau quickly, no later than Friday, December 12, 2025.

### **III. DISCUSSION**

#### **A. RESPONSE TO LUMA**

##### ***i. LUMA MISCHARACTERIZES THE JOINT MOTION AND FAILS TO ADDRESS ITS CENTRAL POINT: THE PROPOSED FIXED CHARGE CANNOT BE EVALUATED WITHOUT A FULL RATE-CASE RECORD***

LUMA's December 3<sup>rd</sup> Motion provides no evidence that the proposed fixed charge has undergone the scrutiny required for structural rate design changes, including cost-of-service foundation, customer impact analysis across usage levels, socio-economic impact analysis, examination of effects on low-income and delinquent accounts, analysis of distributional fairness or cost causation.

A conversion from a volumetric rider to a fixed monthly charge disproportionately redistributes impacts away from high-usage customers and onto low-usage customers. Any such consideration of changes must, at a minimum, be evaluated through the same evidentiary processes required in the full rate review, including being subject to full scrutiny under judicial review.

##### ***ii. LUMA'S ANALYSIS IS FUNDAMENTALLY INCOMPLETE AND OMITTS THE VERY CUSTOMERS MOST LIKELY TO SUFFER HARM***

***(1) LUMA analyzes only “average” customers and avoids low and high-usage households***

LUMA's illustrative analysis includes only three customer profiles that are all roughly “average” in consumption. It does not analyze, for example, low-usage households consuming 100 kWh/month or less, which often correlate with low-income, elderly, or fixed-income populations.

Using LUMA's own methodology, a 100-kWh customer paying \$1.90 under the volumetric charge would pay approximately \$11 under the fixed charge; an over 450% increase. This impact is material, foreseeable, and entirely unaddressed in LUMA's filing.

Similarly, a high-usage household consuming 3,000–5,000 kWh/month would pay \$57-95/month under the volumetric rider, versus \$11/month under the fixed rider; an 81-90% decrease. LUMA omits this category entirely, despite its obvious relevance to whether the fixed rider is equitable or unduly discriminatory.

***(2) LUMA acknowledges that “impacts are greater for lower-consumption customers”***

LUMA concedes that impacts are usage-dependent and greater for lower-consumption customers. This admission contradicts LUMA's claim that the structure is “fairer.” A charge that increases the burden on the most vulnerable customers while reducing the burden on the highest users cannot be adopted without the careful evidentiary process that rate design modifications require. Nor could such a change reasonably be deemed “fairer,” particularly when compared to maintaining the pension rider as a per-kilowatt-hour charge, which equitably distributes the burden among customers by requiring higher-income customers with greater electricity consumption to contribute more than lower-income customers with lower kilowatt-hour usage.

***iii. LUMA'S COMPARISON IS NOT AN APPLES-TO-APPLES EVALUATION OF THE  
PENSION RIDER***

LUMA's analysis compares total bill amounts rather than the line-item impact of the pension rider itself. This obscures the consequences of the rate-design change and is inapposite, as the actual bill impacts sought in the current rate case are substantially higher and involve a complex array of hundreds of distinct financial considerations that are being evaluated both individually and collectively as part of the comprehensive rate case review.

The relevant legal and policy questions are: 1) would conversion of this charge from volumetric to fixed be allowed by law at all, and 2) if so, how would the proposed change in rate design (the conversion from volumetric to fixed) alter cost responsibility among customer classes? On that question, LUMA provides no full bill impact table that includes low-usage or high-usage customers, does not quantify distributional shifts among income strata, and does not provide the demographic information requested by SESA and SUN. LUMA's analysis therefore cannot be relied upon by the Bureau to implement the fixed rider without further evidentiary development.

***iv. IMPLEMENTING THE FIXED RIDER NOW WOULD CREATE REGRESSIVE AND  
POTENTIALLY UNDULY DISCRIMINATORY OUTCOMES***

Puerto Rico law requires rates to be just and reasonable, non-discriminatory, reflective of cost causation, and mindful of socioeconomic impacts on vulnerable populations.

A fixed charge that increases costs for the lowest-usage customers by over 450%, while reducing costs for the highest-usage customers by 80-90%, raises serious concerns under these standards.

Low-income households in Puerto Rico already spend a disproportionately high share of their income on electricity, among the highest energy burdens in the United States. Implementing the fixed charge now, without examination, risks cementing regressive and destabilizing effects on vulnerable populations.

Beyond the facial problems of legality and discriminatory impacts, there is a resulting domino effect which has gone completely unexamined. That is, what impact this proposed change would have on customer nonpayment rates and resulting customer disconnections. Logically, there is no way to imagine that conversion of the pension charge to a fixed charge possibly lowering customer rates of nonpayment or lowering rates of customers disconnections, both goals of the current rate case.

Moreover, even setting aside the discriminatory impacts described above, the Bureau cannot determine whether the proposed conversion is fair or reasonable without a comprehensive Value of Solar analysis. By way of illustration, in SESA's estimation, the over \$5 billion of private capital which customers have invested to result in the over 185,000 homes and businesses which have installed over 1.2 GW of net metered solar provide tremendous value to all ratepayers in preventing daytime blackouts, and the accompanying over 800MW of distributed batteries already installed provide tremendous potential - as already demonstrated via the CBES program - in preventing nighttime blackouts as well. Consideration of Value of Solar has been prohibited as part of this rate proceeding via order, and has been prohibited by law until at least 2030.<sup>1</sup> If the PREB does decide to move forward with serious consideration of conversion of this pension fund charge from volumetric to fixed, then we would assert that would trigger a

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<sup>1</sup> See Section 4 of Act 114-2007 (22 L.P.R.A. § 1014), which mandates that the establishment of new net metering rates in accordance with a Study on Net Metering and Distributed Energy which shall not begin before January 2030.

need to re-open inclusion of a full-blown Value of Solar analyses as part of this rate case; something that is, again, prohibited until at least 2030.

***v. THE BUREAU SHOULD DEFER CONSIDERATION OF IMPLEMENTATION UNTIL  
THE RATE CASE PROVIDES A FULL RECORD***

The Bureau has stated that the fixed charge is preferable as a matter of principle, but it has not evaluated: the legality of doing so, distributional fairness, impacts across the usage spectrum, effects on arrearages or disconnections, socioeconomic impacts, or cost-of-service justification. The ongoing rate review provides the procedural vehicle for this analysis. LUMA's December 3<sup>rd</sup> Motion provides no basis for short-circuiting that process.

***B. RESPONSE TO THE DECEMBER 8<sup>TH</sup> ORDER***

The Hearing Examiner's December 8<sup>th</sup> Order asks whether LUMA's proposal to convert the volumetric pension rider into a fixed monthly charge presents "any legal vulnerability" in light of "the statutory provision relating to per-kWh treatment of solar-panel customers."

Section 4 of Act 114-2007 (22 L.P.R.A. § 1014) establishes three key guardrails relevant to this inquiry: (1) charges applicable to net-metering customers may not modify the export credit formula or net-consumption structure; (2) the Energy Bureau may not approve direct or indirect charges on renewable generation, nor any charge that discourages participation in net metering; and (3) all net metering-applicable rates must be established through the Act 57-2014 rate-review process or a comparable administrative procedure supported by evidence. Each of these guardrails is implicated by LUMA's proposal.

***i. The Proposed Fixed Rider Does Not Modify the Export Credit Formula, but it Does  
Alter the Functional Application of Net Consumption***



Section 4(b) of Act 114-2007 requires that net-metering export credits and charges related to new values resulting from the statutory net metering study be based on “net consumption.” The fixed charge pension rider does not redefine net consumption as set forth in the statute. Thus, the pension rider is not prohibited on this ground.

However, by shifting recovery from a per-kWh charge to a fixed monthly fee, the rider effectively decouples part of a customer's bill from consumption entirely, thereby diminishing the economic value of net metering for customers who offset substantial portions of their load with solar generation. Although this does not constitute a modification to the statutory formula, it has consequences expressly addressed in Section 4(c): indirect charges and discouragement of net metering.

***ii. The Proposed Fixed Rider Functions as a Prohibited “Indirect Charge” on  
Renewable Generation Under Section 4(c)***

Section 4(c) states unequivocally: “No direct or indirect charge shall be imposed on the generation of renewable energy by prosumers.” Section 4(c) of Act 114-2007, 22 L.P.R.A. § 1014.

As explained above, customers with the lowest net consumption, a usage pattern associated with net-metering participants, especially low-income solar adopters, would experience an over 450% increase under the fixed rider, while high-usage customers would experience 80–90% decreases.

This impact pattern is not incidental; it is a direct result of shifting cost responsibility from volumetric recovery (which aligns with net consumption) to a fixed fee (which does not).

Because solar customers reduce their net consumption by producing renewable energy, a fixed charge that penalizes low net consumption is functionally equivalent to imposing a charge triggered by renewable generation itself.

It is also intended as such according to the Bureau's own statements: "For purposes of the provisional-rate pension rider, therefore, the charges to customers must be, temporarily, on a cents/kWh basis, for the reasons discussed below in Part IV, Rate Design. This approach does not ensure fairness, because customers who can reduce their kWh consumption but still benefit from the electric system, such as net metering customers, will not pay their fair share. ... A fairer approach may be for the pension rider to use a per-customer charge rather than a per-kWh charge." July 31 R&O at page 26. Thus, the Bureau is choosing to consider imposing a fixed charge specifically to target net metering customers. The Bureau's stated basis for this choice does not negate the fact that the fixed fee is expressly intended as a charge upon net metering customers, which the law does not permit.

Therefore, the proposed fixed rider triggers Section 4(c)'s prohibition on indirect charges tied to renewable self-generation.

***iii. The Proposed Fixed Rider Would "Discourage" Participation in Net Metering in Violation of Section 4(c)***

Section 4(c) also provides that: "the rate approved by the Bureau for net metering customers shall not be discriminatory or discourage entering into net metering agreements." *Id.*

By dramatically increasing the bills of customers who generate much of their own energy, while reducing costs for those who consume the most, the fixed rider would materially alter the

payback period and economic value of distributed solar. As previously stated, solar adoption among low-income households in Puerto Rico exceeds U.S. national averages; these households face disproportionately high energy burdens; and an increase in fixed charges of the magnitude being considered would significantly erode the financial viability of net metering.

These outcomes are precisely the type of “discouragement” that Section 4(c) proscribes. A charge that increases costs for those who self-generate renewable energy, and reduces costs for those who do not, is structurally discouraging by design. Thus, Section 4(c)'s second prohibition is triggered.

***iv. The Proposed Fixed Rider Has Not Been Developed Through the Required Act 57-2014 Rate Review Process***

Although the pension rider is being considered within the ongoing Permanent Rate Review proceedings, the specific modification LUMA proposes, the conversion of a volumetric, consumption-based rider into a fixed monthly charge, has not undergone the evidentiary scrutiny required by Act 57-2014 for any structural rate-design change. Act 57 requires that “any modification to a rate” be supported by discovery, public hearings, cost-of-service evidence, and analysis demonstrating that the change is just, reasonable, non-discriminatory, and consistent with sound fiscal and operational practices. None of these safeguards has been applied to the proposed rider modification.

Section 4(b) of Act 114-2007 reinforces this requirement by mandating that “the rate applicable to net metering customers” be set exclusively through the Act 57 rate review process or through

a formal administrative proceeding.<sup>2</sup> The pension rider is indisputably part of the rate applicable to net-metering customers, and the proposed structural change would shift cost responsibility among those customers in a manner that cannot be evaluated without the evidence contemplated by Act 57.

Furthermore, Section 4(c) prohibits the Energy Bureau from approving any charge that is discriminatory, indirectly charges renewable generation, or discourages participation in net metering. Determining whether a proposal complies with these substantive limits requires precisely the type of evidentiary record, usage-distribution analyses, cost-causation testimony, socioeconomic impact assessments, that is absent here. A record limited to LUMA's illustrative tables and high-level assertions is legally insufficient for the Bureau to discharge its obligations under Section 4 of Act 114-2007. The fixed pension rider is part of the rate applicable to net metering customers, because they must pay it. Thus, any modification to that rider, especially one that changes: its design (fixed vs. volumetric), its cost recovery method, and its distributional impacts, must be supported by a rate-review-level evidentiary record (or a comparable "separate process," which the Energy Bureau has not created).

Accordingly, even though this proceeding is housed within an Act 57 rate-review, the change itself has not been subjected to Act 57's procedural requirements or the substantive protections of Section 4 of Act 114-2007. The Energy Bureau therefore cannot lawfully approve the proposed fixed pension rider at this time. It must instead defer consideration to the full

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<sup>2</sup> Section 4(b) of Act 114-2007 requires that: "The rate applicable to net metering customers... shall be determined exclusively by the Energy Bureau as part of the electric power service rate review process... or through a separate administrative process when deemed necessary or convenient." *Id.*

evidentiary process of the Permanent Rate Review, where the impacts and legality of this structural rate-design change can be properly examined.

Lastly, the December 8 Order also requested stakeholders to provide a response to the following: If the pension costs were rolled into base rates, rather than recovered through a rider, would that then mean that the pension costs would have to be recovered, per the statute, via a kWh charge?

No. The pension costs have been recovered in a variety of ways before September 2025, including by grants and loans from the central government. However, if the pension costs are to be recovered by rates at all, then the answer is categorically Yes - the only legal way to do so would be via continuing the current practice of recovering this cost via a per-kWh charge based upon customers' net consumption.

SESA contends that the specific cost-allocation proposed by LUMA would violate Section 4's substantive and procedural constraints. Because the fixed charge disproportionately burdens low-usage customers, including many net-metering households, it risks imposing a prohibited indirect charge on renewable generation and risks discouraging participation in net metering, both of which are expressly barred under Section 4(c). Accordingly, the manner in which LUMA proposes to recover them here is discriminatory, unlawful, and procedurally unsupported, and cannot be approved without violating both Section 4 of Act 114-2007 and Act 57-2014.

**WHEREFORE**, SESA respectfully requests that the Honorable Energy Bureau:

1. Defer any decision on LUMA's proposed conversion of the provisional volumetric pension rider into a fixed monthly charge until the proposal can be examined within the full evidentiary record of the ongoing Permanent Rate Review under Act 57-2014;
2. Find that the proposed fixed rider, as submitted, raises legal vulnerabilities under Section 4 of the Puerto Rico Net Metering Program Act, including the prohibitions on indirect charges on renewable generation and charges that discourage participation in net metering;
3. Determine that the proposed modification has not undergone the evidentiary and procedural requirements mandated for rate modifications under Act 57-2014, including analysis of cost causation, distributional fairness, and socioeconomic impacts;
4. Order that any future proposal to restructure the pension rider be supported by appropriate testimony, discovery, customer impact analysis, and all other evidentiary elements required in the Permanent Rate Review; and
5. Grant any other remedy or relief that the Energy Bureau deems just, proper, and consistent with the public interest.

Respectfully submitted on December 12, 2025, in San Juan, Puerto Rico.

**WE HEREBY CERTIFY** that this motion was filed using the Energy Bureau's electronic filing system and that electronic copies of this motion will be notified to the Hearing Examiner. Scott Hempling, via [shempling@scotthemplinglaw.com](mailto:shempling@scotthemplinglaw.com); and to the attorneys of the parties of record. To wit, to LUMA through Margarita Mercado - [margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com); Carolyn Clarkin - [carolyn.clarkin@us.dlapiper.com](mailto:carolyn.clarkin@us.dlapiper.com); and Andrea Chambers - [andrea.chambers@us.dlapiper.com](mailto:andrea.chambers@us.dlapiper.com); the Puerto Rico Electric Power Authority through Mirelis Valle-Cancel - [mvalle@gmlex.net](mailto:mvalle@gmlex.net); Juan González- [jgonzalez@gmlex.net](mailto:jgonzalez@gmlex.net); and Alexis G. Rivera Medina - [arivera@gmlex.net](mailto:arivera@gmlex.net); and to

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A courtesy copy of this motion will also be notified to the following:

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**SESA'S Response to LUMA's December 3<sup>rd</sup> Motion**

**and the December 8<sup>th</sup> Order**

**December 12, 2025**

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