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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:** Independent Consumer Protection Office's Legal Brief on Revenue Requirement

INDEPENDENT CONSUMER PROTECTION OFFICE'S LEGAL BRIEF ON REVENUE REQUIREMENT

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Independent Consumer Protection Office of the Public Service Regulatory Board (hereinafter, "ICPO or OIPC", for its Spanish acronym), by and through the undersigned attorneys, and respectfully STATES and PRAYS as follows:

1. On June 30, 2023, the Puerto Rico Energy Bureau of the Puerto Rico Public Service Regulatory Board (hereinafter, "Energy Bureau or PREB") issued a *Resolution and Order* initiating the instant case under number NEPR-AP-2023-0003/*Puerto Rico Electric Power Authority Rate Review*, in accordance with the provisions of Act 57-2014, as amended, known as the "*Puerto Rico Energy Transformation and RELIEF Act*" (hereinafter, "Act 57-2014").[1]

2. On February 12, 2025, the Energy Bureau issued a *Resolution and Order* (hereinafter, "February 12 Order") establishing the filing requirements and procedures for the Rate Review of the Puerto Rico Electric Power Authority (hereinafter, "PREPA").[2]

3. Consistent with our ministerial duty and the authority granted by Act 57-2014, *supra*, on April 4, 2025, the OIPC filed a document titled "*Moción Notificando Intervención de la Oficina Independiente de Protección al Consumidor*", notifying this Energy Bureau of our

[1] See, PREB's *Resolution and Order*, dated June 30, 2023.
[2] See, PREB's *Resolution and Order,* dated February 12, 2025.

intention to participate in the present proceeding in defense and representation of Puerto Rico's electric service consumers.

4. On July 3rd, 2025, LUMA filed a *Motion Submitting Rate Review Petition* (hereinafter, "*July 3rd Rate Review Petition"*) requesting, among other things, that the Energy Bureau approve a temporary or provisional rate increase pursuant to Section 6.25 (e) of Act 57-2014, to be collected in the interim period (commencing on September 1, 2025) while the PREB adjudicate the utility revenue requirement.[3]

5. On that same date, this Energy Bureau granted OIPC's intervention stating that "under the intervention criteria, the OIPC clearly satisfies all relevant factors: it has a legitimate interest that may be adversely affected by this tariff review, its statutory mandate to represent consumer interests cannot be adequately protected through other legal means, and its specialized expertise in consumer protection contributes valuable perspectives not otherwise available. This Bureau stated that "OIPC's intervention is not merely appropriate but legally mandated under the governing statute.".[4]

6. On July 7th, 2025, the PREB issued an *Order* setting deadlines relating to provisional rates granting intervenors until July 10th, 2025, to submit requests of information to LUMA relating to its request for provisional rates, and until July 11th, 2025, for objections to, statements of support for, or comments about LUMA's request for provisional rates.[5]

7. After several procedural developments, on July 14th, 2025, the PREB issued an *Order* granting intervenors until July 25th, 2025, to submit any final comments on the provisional rate. On said deadline, the OIPC submitted a document titled "*Independent Consumer Protection*

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[3] See, LUMA's *Motion Submitting Rate Review Petition* dated July 3rd, 2025, at page 3.
[4] See, PREB's *Resolution* dated July 3, 2025, at page 3.
[5] See, PREB's *Order* dated July 7, 2025.

Office's Comments on LUMA and Genera's Request for Provisional Rate Adjustment (hereinafter, "OIPC's Comments on Provisional Rates").

8. On July 31st, 2025, this Energy Bureau issued a *Resolution and Order* establishing the Fiscal Year 2026 Provisional Rates and Fiscal Year 2026 Provisional Budget (hereinafter, "July 31st Order on Provisional Rates").[6]

9. On September 8, 2025, all intervenors in this proceeding, including the OIPC, filed their respective *Answering Testimony*, after which, on October 30, 2025, LUMA filed a motion entitled *Motion Submitting LUMA's Surrebuttal Testimonies*.

10. Thereafter, following multiple procedural orders issued by the Hearing Examiner and additional filings by the parties, the evidentiary hearings in this proceeding were conducted from November 12, 2025, through December 19, 2025.

11. Finally, on January 9, 2026, LUMA filed a Motion Submitting Revised Revenue Requirement (hereinafter, "Revised Petition").

I. **<u>INTRODUCTION:</u>**

12. Act 57-2014, *supra*, delegated on the Energy Bureau the duty to modify the rates charged by PREPA. To that extent, Act. 57-2014, establishes:

> *Section 6.3. — Powers and Duties of the Energy Bureau.*
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> *(…)*
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> *(k) Review and approve and, if applicable, modify the rates or fees charged by electric power service companies in Puerto Rico in connection with any matter directly or indirectly related to the provision of electric power services.*

13. Regarding the process to be followed by the Energy Bureau, Act 57-2014, states the following:

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[6] See, PREB's *Resolution and Order*, dated July 31st, 2025.

Section 6.25. — Review of Electricity Rates.

(a) In General. — The Energy Bureau shall be in charge of following the process established herein to review and approve the electric power service companies' proposed rate reviews. The Energy Bureau 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. The regulations of the Energy Bureau for the rate review process shall comply with such principles.
(…)

(c) Rate Modification. — Every rate modification request previously approved by the Energy Bureau shall be filed with the Energy Bureau. The request shall state the grounds for the modification, the effect of such modification on the revenues and expenditures of the requestor, and any other information requested by the Energy Bureau through regulations or resolution. The Energy Bureau may initiate, motu proprio, or at the request of the Independent Consumer Protection Office or any other interested party, the rate review process when it is in the best interest of customers. Any modification to a rate proposed, whether to increase or decrease the same, shall undergo a discovery and a public hearing process to be held by the Energy Bureau to determine whether the proposed change is just and reasonable and consistent with sound fiscal and operational practices that provide for a reliable and adequate service, at the lowest reasonable cost. The Energy Bureau shall provide an opportunity to allow the participation of ICPO, the Energy Public Policy Program, the citizens, and interested parties in the process. The review and the order issuance processes shall not exceed one hundred eighty (180) days from the Energy Bureau's determination by resolution that the rate review request is complete; provided, however, that the Energy Bureau may extend the review process for an additional term that shall not exceed sixty (60) days.

(d) Temporary Rate Adjustment. — At the request of an electric power company, the Bureau may authorize an electric power service rate adjustment due to emergency or temporary events. Such request must be accompanied by all the documentation and information available that, in the judgment of the electric power company requesting it, warrants the temporary rate adjustment. The Bureau's preliminary determination authorizing or rejecting the proposed temporary rate adjustment shall be duly grounded, and issued and published not later than ten (10) days after the adjustment has been requested. If a temporary rate adjustment is approved, the Energy Bureau shall direct the requesting electric power company to issue a public notice informing the change and explaining, in general terms, the reasons that led to such temporary rate adjustment. If it is determined that a temporary rate adjustment is warranted, the Bureau shall hold public hearings within a term that shall not exceed thirty (30)

> *days from the effective date of the temporary rate adjustment, where the requesting company and the general public shall have the opportunity to present evidence or expert testimony and documentary evidence supporting their respective positions. The Bureau shall issue a final determination as to whether a temporary rate adjustment is warranted within a term not to exceed sixty (60) days after the hearing process ends. If it is determined that the temporary rate adjustment is warranted, the Bureau shall fix the duration and amount thereof. If the temporary rate adjustment is rejected, the Bureau shall determine whether the rates shall be adjusted for consumers to offset any difference resulting from the period in which the preliminary temporary rate adjustment was in effect. Failure to hold the public hearings shall render the temporary rate adjustment void. The effective term of temporary rate adjustment shall not exceed one hundred eighty (180) days as of the authorization thereof by the Bureau. The temporary rate adjustment herein established herein shall not be considered as a temporary rate.*
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> *(…)*
>
> *(f) Final Determination of the Bureau. — Upon concluding the public hearing process, the Energy Bureau shall issue its final determination with regards to the rate review request and establish the electricity rate it deems just and reasonable. Such a determination shall be duly grounded and comply with all the safeguards of the due process of law applicable to the final determinations of administrative agencies. The Bureau shall publish and notify its determination on its webpage, together with the authorized rate duly itemized pursuant to the transparent bill requirements. The newly approved rate shall take effect sixty (60) days after the effective date of the Bureau's order. The Energy Bureau may extend or reduce such term at the request of the rate change requestor, but it shall never be less than thirty (30) days after the effective date of the Bureau's order. Upon issuing a final order after the rate review process, the Energy Bureau shall direct the requesting company to adjust customers' bills so as to credit or charge any discrepancy between the temporary rate established by the Bureau and the permanent rate approved by the Energy Bureau.*

14. As previously noted, in its *February 12 Order*, the Energy Bureau established the scope and procedures governing this proceeding. In that *Order*, the Bureau determined that in this proceeding, they will set permanent rates for FY2026, and projected rates for FY2027 and FY2028. The rates are to reflect both known and projected costs, including the costs to carry out actions required by the existing Integrated Resource Plan and the Integrated Resource Plan for 2024-2025

that LUMA will file this year. The Energy Bureau will convert the projected rates for FY2027 and FY2028 into permanent rates through a procedure to be specified in the current proceeding's final Order.[7]

15. The PREB also established that "[t]his proceeding will function simultaneously as a budget proceeding and a rate proceeding. Doing so merges two processes that have become separated. The 2017 rate order envisioned the budget process and the rate case process as companions: annual reviews of budgets, and triennial reviews of rates. For eight years we have had reviews of budgets without reviews of rates. This combination of budget approval and rate approval is reflected in the Filing Requirements accompanying this Order. Schedules A-1 and A-2 will contain, respectively, an Optimal Budget and a Constrained Budget, each organized according to the outline in the Appendix. That an item is listed in that outline does not commit the Energy Bureau to approving any particular cost level. Schedules B through H will contain the information necessary to calculate new rates based on the new budget."[8]

16. In the Optimal Budget there are no tradeoffs among activities; every activity receives the necessary costs. That is why it is called the Optimal Budget. For the Constrained Budget, tradeoffs are unavoidable; the Energy Bureau will have to elevate some needs over others. But the revenue requirement still must give LUMA and Genera a reasonable opportunity to achieve the metrics that trigger for each operator its respective incentive fee.[9]

17. In addressing the revenue requirement for the Constrained Budget, therefore, the Energy Bureau will need to adjust the metrics, or the allocation of compensation, or both, to reflect

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[7] *See* PREB's *Resolution and Order* dated February 12, 2025, at pages 2-3.

[8] *Id* at page 3.
[9] *Id* at page 5.

the lower budget amount that some areas of the Constrained Budget will receive as compared to the Optimal Budget. The Energy Bureau has the authority to make these adjustments in this rate proceeding. Section 1.5 (3)(d) of Act 17-2019 states: "When deemed appropriate, during ratemaking processes, the Bureau shall establish performance-based incentives and penalty mechanisms for electric power service companies as well as mechanisms that ensure strict compliance with the orders of the Bureau(...). Any adjustment shall consider the metrics approved by the Energy Bureau in the performance metric proceeding and shall be consistent with just-and-reasonable ratemaking.[10]

18. Throughout this process, the Energy Bureau has reiterated the governing legal standard, rates must be just and reasonable, supported by substantial evidence, reflective of actual cost of service. The burden of proof rests squarely on the proposing parties to demonstrate that each component of the revenue requirement is prudent.

19. This legal brief focuses on the revenue requirement component. It does not challenge the Energy Bureau's authority to approve necessary investments, nor does it dispute that improvements to Puerto Rico's electric system require funding. Rather, OIPC's analysis is directed at whether the specific costs proposed by PREPA, LUMA, and Genera have been adequately justified, whether claimed efficiencies have been quantified and credited to consumers, whether revenues have been reasonably forecast, and whether costs have been allocated in a manner consistent with statutory mandates and regulatory precedent.

20. As detailed in the sections that follow, the evidentiary record reveals material deficiencies in the proposed revenue requirement. These deficiencies include the failure to quantify efficiencies, the overstatement of certain cost categories, the understatement of non-electric

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[10] *Id*.

revenues, the inclusion of costs that primarily benefit third parties, and the reliance on outdated or unsupported assumptions. Left uncorrected, these shortcomings would result in rates that shift undue economic risk onto ratepayers and undermine the Energy Bureau's obligation to ensure just and reasonable rates.

21. Accordingly, OIPC respectfully submits this legal brief to assist the Energy Bureau in fulfilling its statutory responsibilities and to provide a clear, evidence based framework for evaluating the revenue requirement proposed in this proceeding.

II. OIPC'S LEGAL BRIEF:

A. LUMA's Revenue Requirement on Bad Debt:

22. The *February 12 Order* required LUMA to submit, as part of the Rate Case Filing Requirements Schedules A-1 and A-2: Budgets, within the Financial Costs category, the amount related to "uncollectibles, as known as, Bad Debt.[11]

23. On the *July 3rd Rate Review Petition*, LUMA proposed to include $129 million for bad debt expense. In response to Request of Information # PC-of-LUMA-PROV-38, Mr. Sam Shannon, LUMA's Expert Witness, stated that this amount was calculated by applying the 2.97% bad debt percentage established on the January 10, 2017, Rate Order, to the total projected revenue.[12]

24. Using that percentage, in its original optimal revenue requirement LUMA included bad debt expenses of $158,980,998 for FY2026, $166,713,168 for FY2027, and $167,782,434 for FY2028.

[11] *See* PREB's *Resolution and Order* dated February 12, 2025, at page 18.
[12] *See*, PREB's Consultant ROI #PC-of-LUMA-PROV-38.

25. In its constrained revenue requirement, using the same 2.97% factor from the 2017 Rate Order, LUMA included bad debt expense of $129,957,435 for FY2026, $129,532,871 for FY2027, and $125,148,056 for FY2028.

26. On the *Revised Petition*, LUMA's optimal revenue requirement included bad debt expenses of $172,118,286.65 for FY2026, $178,891,518.22 for FY2027, and $182,287,803.53 for FY2028. In the constrained revenue requirement, LUMA included bad debt expense of $155,358,568.91 for FY2026, $159,916,896.82 for FY2027, and $161,000,529.17 for FY2028.[13]

27. In *OIPC's Comments on Provisional Rates* we requested from this Energy Bureau to reject LUMA's proposal on bad debt, on the basis that LUMA did not provide any analysis of aged accounts receivable balances to support the proposed amount. Instead, it relied exclusively on the 2.97% factor from the 2017 Rate Order, without demonstrating if this figure reflects current operating conditions or recent collection performance.

28. Moreover, this approach was inconsistent with historical practices. In previous years, specifically in the FY2024 and FY2025 budgets, the Energy Bureau approved bad debt expenses of $59 million, as presented by LUMA using a methodology of a bad debt percentage of 1.5%.[14]

29. OIPC's position was that this discrepancy raises serious concerns regarding the appropriateness of applying a higher factor, nearly double the recent precedent, without updated, data driven justification and that LUMA has access to actual collection and bad debt data since the

[13] See, LUMA's *Motion Submitting Revised Revenue Requirement*, dated January 9, 2026, Annex 1-Revenue Requirement Schedules.
[14] *See*, Exhibit 1 of LUMA's *Request for Approval of T&D Budgets and Submissions of GenCo Budgets for FY2025 and Budget Allocations for the Electric Power System*, dated May 25, 2024, in Case NEPR-MI-2021-0004/ *Review of LUMA's Initial Budget* at page 28, footnote 5.

implementation of the 2017 rates, which would allow it to assess whether the 2.97% factor remains appropriate, but no such analysis has been presented to support this proposal.

30. For the reasons stated above, OIPC requested the Energy Bureau to reject the use of the 2.97% factor and to exclude the $129 million bad debt expenditure as calculated by LUMA. Instead, we recommended the PREB authorize no more than 1.5% of total projected revenues for bad debt expense, consistent with recent regulatory precedent and in the absence of sufficient justification for any upward deviation.

31. In its *July 31st Order on Provisional Rates*, this Bureau concurred with OIPC's position, expressly finding that "LUMA offers no aging analysis, receivables study, or other empirical evidence to support the continued validity of that-figure.".[15]

32. This Bureau further stated that "[a] bad-debt allowance is appropriate, to ensure that the funding level approved by this Resolution and Order is actually collected. But LUMA has not justified the 2.97 percent factor with current data or analysis.".[16]

33. Accordingly, the Energy Bureau granted LUMA's request to include a bad-debt provision, but for provisional rate purposes set the factor at 1.5 percent of projected billed revenues, ordering LUMA to revise Schedule C-2 and its associated provisional rate design to reflect this adjustment, and expressly stated that the appropriate bad debt factor would be determined in the permanent rate phase. For that purpose, the Bureau directed LUMA to promptly supply information, through witness testimony and supporting evidence, that would provide credible support for the proposed factor.

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[15] See, PREB's *Resolution and Order*, dated July 31st, 2025, at page 30.
[16] *Id.*

34. On August 15, 2025, during the discovery process, OIPC serves LUMA Requests of Information #OIPC-of-LUMA-NONPHYS_OPS-56 and #OIPC-of-LUMA-NONPHYS_OPS-57.

35. Through ROI #OIPC-of-LUMA-NONPHYS_OPS-56 (OIPC's Exhibit 242), the OIPC requested that LUMA provide: (1) the total actual uncollectible balances recorded (in dollars) by customer class and in total; (2) the total actual revenues for each year; (3) the resulting bad debt percentage for each year, calculated as the ratio of actual uncollectible balances to total actual revenues; (4) to identify any changes in accounting policies or definitions of "bad debt" during this period that may affect comparability across years; (5) to provide a reconciliation, by fiscal year, comparing: (a) the bad debt amounts approved by the Energy Bureau in each Annual Budget; (b) the amounts budgeted by LUMA; (c) the actual uncollectible amounts recorded; (d) any variances between approved, budgeted, and actual amounts, with explanations for significant differences.

36. In its response, LUMA submitted Attachment 1 (OIPC's Exhibit 242.1), which provided only partial information. LUMA reported bad debt expenses of $62,302 for FY2021, $147,342 for FY2022, $75,398 for FY2023, $137,288 for FY2024 and $398,979 for FY2025. LUMA also reported bad debt percentages of 2% for FY2021, 4% for FY2022, 2% for FY2023, 3% for FY2024 and 9% for FY2025.

37. With respect to Energy Bureau approved bad debt, LUMA reported amounts of $68,407 for FY2021, $63,405 for FY2022, $74,400 for FY2023, $59,450 for FY2024 and $59,529 for FY2025, exactly the same amounts LUMA reported as budgeted. LUMA further reported recorded uncollectible amounts of $62,302 for FY202, $147,342 for FY2022, $75,398 for FY2023, $137,288 for FY2024 and $398,979 for FY2025.

38. Through ROI's #OIPC-of-LUMA-NONPHYS_OPS-57, (OIPC's Exhibit 245), the OIPC requested that LUMA provide any benchmarking studies, industry comparisons, or regulatory precedents relied upon to support the proposed 2.97% bad debt factor. LUMA responded that "there are no benchmarking studies or useful industry comparisons to support its proposal and did not provide any analysis.". [17]

39. LUMA further stated that it "will eventually be able to produce an accurate, credible bad factor. But, in the meantime, for purposes of the present rate review, LUMA chose to rely on the 2.97% that was approved in the Puerto Rico Electric Power Authority (PREPA)'s 2017 Rate Order."[18]

40. On September 3, 2025, LUMA filed a *Motion Submitting Bad Debt Proposal* as a supplemental response to ROI #NPGFC-of-LUMA-SURCHGS-1. In that filing, LUMA reaffirmed its proposal to apply the 2.97% bad debt factor included in the July 3rd Rate Review Petition:

> "*LUMA's proposal for Bad Debt Expense, as filed in its July 3rd petition, was calculated based on 2.97% of projected gross revenues as stated in my testimony, LUMA Ex. 1.0, on lines 788-789. This bad debt factor is consistent with the percentage that was approved for PREPA by the Energy Bureau in the 2017 Rate Order. That is the last time a bad debt factor was reviewed and approved in a rate review proceeding. Based on this percentage, Bad Debt Expense was forecasted at $159,980,998 in FY2026, $166,713,168 in FY2027 and $167,782,434 in FY2028."*[19]

41. LUMA acknowledged that "persistent limitations in PREPA's billing and financial system data prevented and prevent LUMA from submitting a data-driven proposal for bad debt in this rate review."[20]

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[17] *See*, OIPC Ex. 245.
[18] *Id*.
[19] *See*, LUMA's Exhibit 1.08, at page 1.
[20] *Id*, at page 2.

"Based on this, and the significant number of write-offs that LUMA has begun recording as part of the cleanup of PREPA's accounts receivable aging, LUMA understands that the appropriate bad debt factor, whenever determined, will likely be higher than the 1.5% applied by the FOMB and the Energy Bureau.

Table 1 below reflects the total aggregated uncollectible balances for the fiscal years since LUMA commenced operations. PREPA's audited financial results show bad debt as a percentage of revenue at 1.95% and 3.52% for FY2021 and FY2022, respectively. In subsequent unaudited fiscal years of FY2023 and FY2024, bad debt is listed at 1.6% and 3.4%, respectively. However, the unaudited numbers are expected to change because accounts receivable and allowance for doubtful accounts are not recorded at their net realized value until PREPA's financial statements audit, which historically occurs about two years after the year-end closing. A simple average of bad debt as a percentage of revenues for FY22 through FY24 revenues produces 2.86%, which is very close to the 2.97% that was last approved in a rate review proceeding.

Faced with this incomplete and inaccurate data that is subject to change, LUMA used its best judgement to propose in its July 3rd petition a conservative estimate for bad debt expense based on observed data. With the understanding that no number put forward would be unassailable, LUMA opted for 2.97% given its regulatory precedent and because, for the reasons stated above, realized bad debt expense is expected to be higher than 1.5%."[21]

42. On September 8, 2025, OIPC submitted the Answering Testimony of Expert Witness, Mr. Jaime Sanabria's.[22] Mr. Sanabria testified, among other things, about bad debt the following:

"*As part of its revenue requirement, LUMA proposes applying a 2.97% bad debt factor, relying on a January 10, 2017, Rate Order. However, LUMA has admitted that there are no benchmarking studies or useful industry comparisons to support this proposed amount. LUMA further stated that it will only be able to produce a credible, accurate factor at some point in the future*.[23]

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[21] *Id*.
[22] *See*, *Motion to Submit the Independent Consumer Protection Office's Answering Testimony*.
[23] See, *Direct Testimony* of Mr. Jaime Sanabria Hernández as ICPO's Expert Witness, dated September 8, 2025, at page 13.

This approach is inconsistent with recent regulatory practice. In previous years, specifically in the FY2024 and FY2025 budgets, the Energy Bureau approved bad debt expenses based on a 1.5% factor, which LUMA itself applied in its filings. The sudden proposal to nearly double that factor, without providing updated, data-driven justification, raises serious concerns about its appropriateness and fairness to consumers.[24]

(…)

The data submitted by LUMA in response to ROI-OIPC-of-LUMA-NONPHYS_OPS-56 shows uncollectible amounts of $137,288 for FY2024 and $398,979 for FY2025, which correspond to bad debt percentages of 3% and 9%, respectively.

In addition, LUMA's own accounting records show that it recorded extraordinary write-offs of approximately $77 million in FY2024 and $339 million in FY2025 as part of a "cleanup" of historical receivables. These extraordinary write-offs are substantially higher than the amounts approved by the Bureau as "bad debt" and further highlight the inconsistencies in LUMA's reporting. This discrepancy raises a fundamental concern. Bad debt should only reflect actual uncollectible sales. It should not be inflated by old unpurged receivables, poor customer data, or accounts that could still be collected with proper effort. By including legacy write-offs as uncollectible debt, LUMA artificially increased the bad debt factor to 9%, unfairly inflating the revenue requirement and shifting costs onto customers.[25]

(…)

The higher the percentage authorized by the regulator as "bad debt," the less incentive the utility will have to be efficient in its collection practices. For this reason, the Energy Bureau should either cap the bad debt factor at a reasonable level, such as the 1.5% historically applied, or disallow recovery of any inflated amounts tied to legacy write-offs and inefficiencies. This approach ensures that customers are not forced to subsidize poor collections' performance and that the utility remains under pressure to improve its revenue protection practices."[26]

43. On October 6, 2025, PREB's consultant Smith and Daddy submitted its Expert Report, (PC Exhibit 62.0), which agreed with OIPC's position. The consultant concluded that

[24] *Id*, at page 14.
[25] *Id*, at page 14-15.
[26] *Id*, at page 15.

LUMA has inadequately supported its proposed 2.97% bad debt factor. Specifically, Smith and Daddy stated:

> *"OIPC witness Sanabria's testimony makes some valid points about uncollectibles. We agree with his conclusion that LUMA has inadequately supported its proposed uncollectible rate of 2.97%. We also agree with Mr. Sanabria's recommendation that, based on the available evidence, a reasonable rate would be the 1.5% that has been approved by the Energy Bureau for computing the uncollectibles component of the revenue requirement, as well as for purposes of computing provisional rates."*[27]
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> *"LUMA's response to PC-of-LUMA-PROV-39(h) stated that no analysis was conducted, and did not provide any analysis. LUMA's attempt to nearly double the 1.5% Bad Debt Factor used in recent years to 2.97% with the only justification being that 2.97% was used several years ago in the previous rate case, CEPR-AP-2015-0001, without providing updated, data-driven justification is not acceptable. Besides not having adequate support for continuing to use an outdated bad debt factors of 2.97% from the previous rate case, CEPR-AP-2015-0001, in the current case to set permanent rates, we also note that LUMA has claimed that it is improving the collection process and has formed a "Revenue Protection" team."*[28]
>
> *"This raises an expectation that collections will improve over the experience in recent years, and thus suggests that the Uncollectibles factor going-forward could be lower. However, there does not appear to be sufficient experience yet with LUMA's "Revenue Protection" team or its efforts to improve collections from which to reliably quantify an adjustment to the 1.5% Bad Debt Expense Factor that the Energy Bureau approved for the FY 2024 and FY 2025 budgets and used for the calculation of the provisional rate revenue requirement."*[29]

44. Consistent with that analysis, Smith and Daddy made the same core recommendation advanced by the OIPC, given the evidentiary record and the absence of reliable, current support for a higher factor, the Bureau should continue using an uncollectible rate of 1.5%:

> *"Based on currently available information, we recommend that the Energy Bureau use an uncollectible rate of 1.5% for calculations in the base rate revenue requirement. If better information becomes available, the uncollectibles rate to be used should incorporate consideration of such additional information. We also recommend that, effective with quarterly*

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[27] *See*, PREB's Expert Report of Smith and Daddy, dated October 6, 2025, at page 20.
[28] *Id*, at page 21.
[29] *Id*, at page 22.

factor filings that occur after the Energy Bureau's final decision on base rates in the current proceeding, that the Energy Bureau include a similar uncollectible factor in the calculation of the FCA and PPCA rates. The inclusion of a provision for uncollectibles in the FCA and PPCA rates will help address concerns over system cash flow issues related to the undercollection of FCA and PPCA revenues from customers non-payment of billed amounts for such revenues."[30]

45. On November 3, 2025, LUMA filed the Surrebuttal Testimony of Ángel R. Marzán, as an Expert Witness, (LUMA's Exhibit 80.0), in support of LUMA's proposed bad debt factor of 2.97% and in opposition to Mr. Sanabria's Testimony.

> *"LUMA's proposal seeks to maintain a bad debt factor of 2.97%, which represents the portion of billed revenues that is prudently estimated to be uncollectible. This factor is identical to the rate approved by the Energy Bureau in the 2017 PREPA Rate Order and reflects a continuation of established regulatory precedent. The proposal recognizes that, under generally accepted accounting principles, utilities must record an allowance for doubtful accounts to reflect expected credit losses.*
>
> *The 2.97% factor was derived from audited financial data showing historical uncollectible ratios between 1.95% and 3.52%, and a normalized average of approximately 2.86% after adjusting for the extraordinary write-offs of legacy PREPA accounts recorded in fiscal years 2024 and 2025. Those write-offs were one-time accounting corrections to remove aged, time-barred, or inactive balances from PREPA's books and are not part of LUMA's ongoing operational losses.*
>
> *LUMA's proposal therefore distinguishes between legacy adjustments and current operations, ensuring that the bad debt factor used for rate purposes reflects the performance of LUMA's current collection activities. The 2.97% figure represents a prudent, data-based estimate consistent with both accounting standards and the Energy Bureau's prior determinations.*
>
> *(...)*
>
> *I further recommend that the Bureau continue to require LUMA to monitor and report actual collection performance on a periodic basis, so that future rate proceedings can adjust the bad debt factor as new information becomes available. This approach maintains regulatory continuity while promoting transparency and accountability.*

[30] *Id*.

(…)[31]

46. Addressing Mr. Sanabria's Testimony, Mr. Marzán claims that "(…), Mr. Sanabria Hernández relied on incomplete and, in some cases, misinterpreted data sets. His analysis appears to conflate legacy PREPA balances with current LUMA receivables, without distinguishing between the two categories of data. This approach overstates the level of uncollectible accounts and does not accurately represent LUMA's collection performance. In addition, some of the figures he referenced do not correspond to the verified data contained in LUMA's filed exhibits or discovery responses, suggesting that his data sources were not fully reconciled with the official record."[32]

47. On November 6, 2025, LUMA also submitted the Surrebuttal Testimony of Andrew Smit (LUMA's Exhibit 79.0), likewise, supporting the 2.97% factor and contesting Mr. Sanabria's conclusions.

48. Mr. Smith testified that "[t]he data-driven basis for this factor is fully documented in the Support for Bad Debt Proposal, filed on September 3, 2025, (LUMA Exhibit 1.8), which compiles historical ratios from PREPA's audited financial statements. The data shows actual bad debt ratios of 1.95% in FY 2021, 3.52% in FY 2022, and an adjusted multi-year average of approximately 2.86% after normalizing for the extraordinary legacy write-offs recorded in FY 2024. [33]

49. Addressing Mr. Sanabria's statement regarding extraordinary write-offs, Mr. Smith asserted that Mr. Sanabria conflated two distinct accounting concepts, the extraordinary write-offs of legacy balances and the annual bad debt expense associated with current operations and claimed

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[31] *See,* LUMA's Rebuttal Testimony of Ángel Marzán, dated November 3, 2025, at page 5-6.
[32] *Id*, at page 8.
[33] *See,* LUMA's Rebuttal Testimony of Andrew Smith, at page 6-7.

the write-offs in FY2024 and FY2025 were one-time adjustments to remove legacy PREPA accounts that were time-barred or otherwise uncollectible.[34]

50. Mr. Smith further testified that Mr. Sanabria's comparison was misleading because "[a]s documented in the Support for Bad Debt Proposal, the extraordinary write-offs totaled approximately $77 million in FY 2024 and $339 million in FY 2025, but these amounts do not represent operating-period losses or current bad debt expense."[35]

> *"The balances that he characterizes as "inflated" are legacy PREPA receivables that were never purged or validated prior to LUMA's commencement. Many of those accounts are inactive, duplicated, or beyond the prescriptive period for collection and therefore must be removed from the books to establish an accurate starting point for ongoing operations. The extraordinary write-offs undertaken in FY 2024 and FY 2025 were precisely the corrective action needed to eliminate those long-standing errors and to prevent them from distorting current bad debt calculations. As shown in the Support for Bad Debt Proposal, the proposed 2.97% factor applies prospectively only to new sales generated under LUMA's management, not to historic or unverified balances.*
>
> *The 9% figure appears in the Support for Bad Debt Proposal only for transparency, to show the total accounting impact of those one-time adjustments during the cleanup of PREPA's legacy receivable portfolio. It was not presented or proposed as the operative rate for recovery. The 2.97% factor proposed by LUMA applies solely to receivables generated under its management, consistent with the percentage approved in the 2017 Rate Order and reflective of current operating conditions."*[36]

51. During the Evidentiary Hearing on December 9, 2025, under cross-examination by the OIPC, Expert Witness, Mr. Marzán, acknowledged that (1) he was retained solely to support LUMA's proposed 2.97% bad debt factor; (2) he was not asked to independently determine what the appropriate bad debt factor should be; (3) he did not evaluate alternative bad debt factors; and

[34] *Id*, at page 8.
[35] *Id*.

[36] *Id*, at page 9.

(4) he did not perform an independent calculation for the bad debt factor.[37] This admissions are critical, Mr. Marzán did not present an independent expert judgement as to the appropriate uncollectibles level, but rather defended a pre-selected number.

52. Mr. Marzán further confirmed that he: (1) did not audit LUMA's financial statements; (2) did not validate the accuracy or completeness of the underlying data; (3) did not request or review PREPA's general ledger; and (4) relied primarily on LUMA's representations and assertions, rather than independently verified data. Accordingly, his testimony doesn't provide the Bureau with neutral, data-driven determination of an appropriate bad debt factor.

53. The record also shows that no clear methodology underlies the 2.97% proposal. During his testimony, Mr. Marzán conceded ambiguity about which years were used. He later stated that 2.97% is not, in fact, an average, while acknowledging that 2.86% is the mathematical average.[38] The witness, also accepted that the 2.97% factor is "not 100% accurate" and confirmed that the 2.97% figure originates from the 2017 Rate Case.[39] Evidently, his admission underscores the absence of a rigorous, defensible methodology.

54. LUMA repeatedly justified the proposed 2.97% bad debt factor solely by reference to the PREB's 2017 Rate Order, an eight-year-old proceeding. This reliance is specifically problematic given LUMA's own repeated assertions throughout this case that legacy rate making determinations no longer reflect the current reality of the electric system or today's consumer conditions.

55. Additionally, the record reflects inconsistencies in how LUMA used the data provided in OIPC's Exhibit 242.1 and LUMA's Exhibit 1.08, Table 1, to calculate the bad debt

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[37] *See*, LUMA's Expert Witness, Ángel Marzán testimony during PREB's Evidentiary Hearing held on December 9, 2025, during the morning session at approximately 2:35:36.
[38] *Id*, at approximately 2:44:40.
[39] *Id*, at approximately 2:48:37-2:52:55.

factor. In fact, Mr. Marzán testified that FY2021 and FY2025 were excluded without analytical justification, notwithstanding that those years reflect bad debt percentages below 2.97%.[40]

56. Mr. Marzán also confirmed that the variances in FY2024 and FY2025 are attributable exclusively to extraordinary write-offs of legacy PREPA debt rather than LUMA era collection performance.[41] Once those extraordinary write-offs are removed, the remaining recorded bad debt results for those years aligned with the budgeted amounts. This converges supports a materially lower implied uncollectibles level and does not support adoption of the highest value in the range proposed by LUMA.

57. Despite acknowledging data insufficiency, LUMA still asks the Bureau to approve the highest number in the range, rather than a conservative or midpoint estimate.

58. Moreover, contrary to what was claimed in the rebuttal testimonies of LUMA, both by Mr. Andrew Smith and by Mr. Marzán himself, the statements made by the latter during the public hearing confirm the testimony of Mr. Sanabria that "this extraordinary write -offs are substantially higher than the amount approved by the Energy Bureau as bad debt and further highlight the inconsistencies in LUMA's reporting. (…) Bad debt should only reflect actual uncollectibles sales. It should not be inflated by old unpurged receivables, (…). By including legacy write-offs as uncollectible debt, LUMA artificially increased the bad debt factor to 9%, unfairly inflating the revenue requirement and shifting costs onto customers."[42]

59. Even though the extraordinary write-offs executed by LUMA in FY2024 and FY2025 were one-time adjustments, that amount artificially increased the bad debt factor for FY2024 and FY2025 to 3% and 9%, respectively. Notwithstanding, LUMA used that overstated

[40] *Id*, at approximately 3:09:08.
[41] *Id*, at approximately 2:42:08.
[42] See, *Direct Testimony* of Mr. Jaime Sanabria Hernández as ICPO's Expert Witness, dated September 8, 2025, at page 15.

FY2024 bad debt factor of 3%, together with the FY2023 (2%) and the FY2022 (4%) to construct an alleged "normalized average" of 2.86% and to justify a return to the legacy 2.97% factor. This approach is not supported by a consistent, transparent methodology.

60. LUMA's witness, Mr. Alejandro Figueroa, further testified that LUMA expects improvements in collections going forward and that those improvements should impact bad debt levels.[43] Nonetheless, LUMA proposes no downward adjustment to the bad debt factor to reflect those anticipated improvements, and provides no quantified analysis demonstrating why the factor should remain at 2.97%.

61. PREB's Expert Witness, Mr. Ralph Smith, supports a lower range, consistent with OIPC's position and recommendation to the Energy Bureau. During the hearing, Mr. Smith testified, based on his experience in hundreds of rate cases, that given the data available in this case a 1.5% bad debt factor better aligns with the evidentiary record.[44]

62. Mr. Ralph Smith also testified that based on his review of other utilities in the U.S. from 2021-2024, bad debt factors ranged from 0.8% to 1.75%. While acknowledging Puerto Rico's unique characteristics, the witness noted that 2.97% is materially above the observed range.[45]

63. In conclusion, the evidentiary record demonstrates: (1) that the 2.97% bad debt factor is not derived from a transparent or consistent methodology; (2) it was not independently validated; (3) it relies on outdated precedent, not current performance; (4) it ignores lower recent realized bad debt levels once extraordinary PREPA write-offs are removed; and (5) it exceeds both expert-supported estimates and comparable utility benchmarks.

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[43] *See*, LUMA's Witness, Alejandro Figueroa's testimony during PREB's Evidentiary Hearing held on December 9, 2025, during the morning session, at approximately 3:22.
[44] *See*, PREBS's Witness, Ralph Smith's testimony during PREB's Evidentiary Hearing held on December 9, 2025, during the morning session at approximately 3:46:28.
[45] *Id*, at approximately 3:53:50.

64. LUMA, as the proponent bearing the burden of proof, has not demonstrated, through substantial evidence, that the proposed bad debt factor of 2.97% is just, reasonable and supported by evidence by a defensible data-driven basis. Accordingly, the Bureau should reject LUMA's proposed 2.97% factor and adopt the 1.5 uncollectibles rate supported by the record.

B. LUMA's Revenue Requirement on Distribution System Improvements:

65. As part of the documents filed in support of its *July 3rd Rate Review Petition* in conjunction with LUMA's Exhibit 2.05, entitled "*Non-Federal Capital (NFC) Long-Term Investment Plan (LTIP) FY2026–2035 (Unconstrained)*", LUMA submitted a detailed list of projects and their associated unconstrained costs for FY 2026, FY2027, and FY2028.

66. Among the projects in Exhibit 2.05, is included the project named Distribution System Improvement (DER), at line 155. For this project, LUMA proposes to recover funds from ratepayers in the amounts of $46,000.000, over the three-year rate period. That is, $11,500,000 for FY2026, $17,250,000 for FY2027, and $17,250,000 for FY2028.

67. Also, included is the project named DG Interconnect & Net Metering, at line 73. For this project, LUMA proposes to recover funds from ratepayers in the amounts of $ 12,831,306 over the three-year rate period. That is, $3,824,360 for FY2026, $4,260,521 for FY2027, and $4,746,425 for FY2028.

68. During the Evidentiary Hearing on December 13, 2025, questions were posed to LUMA's witness Pedro Meléndez regarding the nature and purpose of the improvements proposed under Exhibit 2.05. In particular, the inquiry focused on whether the requested Non-Federal Capital expenditures, identified as "Distribution System Improvement (DER)", were intended to primarily facilitate the interconnection of distributed generation resources and benefit customers

participating in net metering program, rather than providing system-wide benefits to all ratepayers.[46]

69. In response to questions from both the Energy Bureau's consultant and the Hearing Examiner, the record reflects that these expenditures are strictly tied to enabling the interconnection of distributed generation systems.

70. This raises a threshold question that must be addressed by this Energy Bureau before allowing such expenditures to be included in the revenue requirement. This will be whether any of these proposed improvements constitute feeder or system upgrades of the type expressly contemplated under Act 114-2007, known as *Puerto Rico's Net Metering Act*, as amended, for which the statute assigns cost responsibility to the project proponent rather than to the general body of ratepayers.

71. Specifically, Section 9 (c) of the aforementioned Act 114-2007, states:

> *(…)*
>
> *(c) The fact that the feeder exceeds its capacity shall not constitute an obstacle for the interconnection of photovoltaic or renewable energy systems with a generation capacity that does not exceed 25 kilowatts. In such cases, the necessary improvements and/or changes to be made to the feeder shall be defrayed by the requesting company.*

72. Therefore, the issue before this Energy Bureau concerns whether the whole or part of the amounts requested by LUMA, as contemplated at lines 73 and 155 of Exhibit 2.05, are in contravention of the Law.

73. From the Evidentiary Hearing and from the documental and testimonial evidence submitted in the instant case, there is no sufficient information to conclude documentation compliance with Act 114-2007, which expressly provides at Section 9 – Public Policy on

[46] *See*, LUMA's Witness, Pedro Meléndez's testimony during PREB's Evidentiary Hearing on December 13, 2025, during the morning session at approximately 1:53:45.

Interconnection, that any system upgrades, improvements, or infrastructure investments required to interconnect a distributed generation project must be borne by the project proponent and not recovered from the general body of electric ratepayers through the revenue requirement.

74. It is the OIPC's position that LUMA's proposed revenue requirement is legally deficient because it fails to disaggregate capital expenditures, driven by distributed generation (DER) interconnection, from general system reliability, resilience, or safety upgrades. This failure deprives the Energy Bureau of the ability to make the findings required by law to approve recovery of those costs from ratepayers.

75. This Energy Bureau must determine whether each category of costs included in the revenue requirement is prudent and appropriately allocated to the customers from whom recovery is sought. Due determination cannot be made where the utility has aggregated fundamentally different categories of investment into a single line item without identifying the underline cost drivers, the beneficiaries of the investment, or the causal relationship between the expenditures and the customer asked to pay for it.

76. The evidentiary record shows that LUMA has lumped DER-specific investments together with general distribution investments, without providing the granularity necessary for regulatory review.

77. Exhibit 2.05 (NFC Long-Term Investment Plan, FY2026–2035) identifies Project PBUT4 and related initiatives under broad categories such as "Distribution System Improvement (DER)" and "Distribution Line Rebuild," without distinguishing upgrades required solely to enable interconnection of distributed generation projects, from upgrades that would be required absent DER interconnection, from upgrades undertaken for system reliability, resilience, or safety reasons.

78. LUMA has not provided feeder-level analysis identifying which upgrades are triggered by DER projects, nor project-level cost breakdown separating DER-driven work from general system needs, nor cost-allocation study demonstrating how these expenditures should be assigned among customer classes.

79. Because LUMA failed to disaggregate these costs, the Bureau cannot determine whether the proposed expenditures are used and useful for all ratepayers, cannot evaluate whether the costs are caused by and benefit the customers being charged, nor assess compliance with Act 114-2007, which assigns responsibility for interconnection-related upgrades to project proponents, and make a reasoned finding that recovery of these costs through base rates would be just and reasonable.

80. In short, the lack of disaggregation frustrates the Bureau's statutory duty and renders approval of these costs arbitrary and unsupported by substantial evidence.

81. Accordingly, the Energy Bureau should exclude DER-driven capital expenditure from the revenue requirement, absent clear and convincing evidence that such costs are not triggered by distributed generation interconnection.

82. Finally, in January 2026, Joint Resolution No. 005-2026 was enacted, under which the Governor of Puerto Rico prohibited LUMA from charging certain fees to consumers, including the $300 fee previously required under Regulation 9028 for supplemental studies. That Joint Resolution broadly prohibits the imposition of charges on consumers and directs the promulgation of a new regulation.

83. Notwithstanding the Joint Resolution beforementioned, Act 114-2007, *supra*, remains fully in force, and its statutory mandate has not been repealed or superseded. Act 114-2007 clearly establishes that the costs of system improvements necessary to interconnect

distributed generation facilities must be borne by the project proponents, not socialized across all customers through rates.

84. In conclusion, OIPC's position is that any portion of LUMA's proposed revenue requirement that seeks to recover from ratepayers costs associated with distributed generation interconnection for feeder related upgrades is unlawful, contrary to Act 114-2007, *supra*, and therefore cannot be approved by the Energy Bureau.

C. <u>LUMA's Revenue Requirement on Third-Party Pole Attachment:</u>

85. Third-party pole attachments represent a significant and stable source of revenue that directly offsets the amounts to be collected from ratepayers.

86. The Energy Bureau has repeatedly recognized the critical importance of effectively managing and monetizing TPA revenues. As the Bureau previously found:

> *"The Energy Bureau recognized the importance of effectively managing and monetizing third-party attachments ("TPA") to PREPA's infrastructure, particularly distribution poles. During the June 21 Technical Conference, it became clear that there are significant opportunities to improve the collection from rents from TPA's, both from past use and moving forward. LUMA reported that since 2017, there had been limited or no collection of fees from third-party attachers. This is a substantial loss of revenue for the utility and, by extension, a burden on ratepayers. The Energy Bureau finds this situation unacceptable and directs LUMA to take immediate and comprehensive action to address this issue. The Energy Bureau emphasize the critical importance of capturing this revenue stream. As discussed in the June 21 Technical Conference, LUMA estimated about 450,000 attachments from the telecommunication companies alone. The potential revenue from these attachments is substantial and should be realized to benefit ratepayers."* [47]

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[47] *See*, Case NEPR-MI-2021-0004/*Review of LUMA's Initial Budgets*, *Resolution and Order* dated June 26, 2024, at page 8.

87. Consistent with this directive, the *February 12 Order* required LUMA to submit, as part of the Rate Case Filing Requirements Schedules A-1 and A-2: Budgets in the Financial Costs category, budgeted amount related to third-party pole attachments collection efforts.[48]

88. The same *Order* also required LUMA to submit Schedule B-7, identifying all revenues and income other than revenues from the sale of electricity, including, without limitation, revenues from pole attachments.[49]

89. LUMA's Witness, Pedro Meléndez addressed, in his Direct Testimony (LUMA's Exhibit 5.0), the TPA's administrative cost. In explaining the FY2026 Technical and Professional Services proposed budget of \$10.9 million and the initial \$8.8 million increase over the FY2025 approved budget, for the O&M included in the Optimal Budget, the witness explained:

> *"The primary contributors to this portion of the budget include outside services to support the initiatives around Third-Party Attachments – "TPAs" (\$8.7 million in FY2026 vs. \$2.0 million in FY2025 for a net increase of \$6.7 million) and obtaining legal services to support responses to legal challenges that can be anticipated on an annual basis (\$2.0 million in FY2026 vs. no such budgeted costs in FY2025 for a net increase of \$2.0 million). In analyzing the TPA costs, this is a budgeted item that will be reduced commensurate to LUMA's success in obtaining payment from these other parties, and as such, are not included in the rate base calculations. Regarding the legal services costs, they are based on historical trends, assuming the same level of challenges that have been experienced in FY2025, costs for which are adjusted for inflation."*[50]

90. With the *July 3rd Rate Review Petition*, LUMA also included Schedule B-7, titled *Revenues Excluding Sales of Electricity* (OIPC's Exhibit 53.10). Regarding the TPA's, LUMA reported revenues projections of \$392,748 for FY2026, \$392,748 for FY2027 and \$418,391 for FY2028.

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[48] *See* PREB's *Resolution and Order* dated February 12, 2025, at page 18.
[49] *Id*, at page 29.
[50] *See*, LUMA's Witness, Pedro Meléndez's Direct Testimony dated July 1, 2025, at page 40, lines 870-879.

91. On August 13, 2025, during the discovery process, OIPC served LUMA the Request of Information OIPC-of-LUMA-NONPHYS_OPS-50 (OIPC's Exhibit 236), requesting detailed information about: (1) the actions, if any, that LUMA has taken to improve the collection of rent from TPA's, both for past amounts owed and for future payments, in compliance with the PREB orders in case NEPR-MI-2021-0004 / LUMA's Initial Budget and Related Terms of Service since June 2021; (2) the total amount LUMA has collected from TPA's from June 2021 to the present; and (3) the exact amount currently owed by TPA's.[51]

92. LUMA responded that they "has developed a plan for collecting all past-due rents from third-party attachers. This plan includes a method for calculating past due amounts, a timeline for issuing invoices and collecting payments, and proposed actions regarding non-compliant attachers and that LUMA has established a process to bill for annual fees since commencement."

93. However, LUMA also admitted that as of August 15, 2025, it had collected only $444,903, while outstanding amounts owed by TPA's totaled $11,277,933.34.

94. As explained by OIPC's Expert Witness, Mr. Jaime Sanabria:

> *"This precedent makes clear that TPA revenues must not only be recognized but aggressively pursued and quantified in this rate review, because failing to do so unfairly increases the revenue requirement borne by consumers.*
>
> *In Case NEPR-MI-2020-0019, Review of the Puerto Rico Electric Power Authority's System Remediation Plan (SRP), LUMA filed its Quarterly Report for the Period Between April 1 and June 30, 2025. In that report, LUMA informed the Energy Bureau that it had billed $4,697,061 for FY2025, $4,653,827 for FY2023, and $4,424,013 for FY2022 as TPA's Rental Fees. These figures demonstrate that TPA revenues are material and recurring and therefore must be fully reflected in this rate review to offset the revenue requirement borne by customers.*
>
> *In Schedule B-7, Revenues Excluding Sales of Electricity, under item 3 for TPA's, LUMA included only $392,748 for FY2026, the same amount for FY2027, and $418,931 for FY2028. This means that LUMA is projecting revenues only about 8% of what it has billed historically.*

[51] *See*, OIPC's Exhibit 236, ROI #OIPC-of-LUMA-NONPHYS_OPS-50.

> *These amounts are clearly understated. They do not reflect the true potential of this revenue stream, nor do they account for the efficiencies that LUMA is expected to achieve in billing and collecting from TPA's.*
>
> *Given the nature of the service provided to telecommunications companies, and the remedies available to LUMA, including the removal of attachments for non-payment, the Bureau should reasonably expect a recovery rate of 95%–100%. Yet, the evidence provided by LUMA shows a recovery rate of only 3%, which is a explicit indicator of persistent inefficiencies in this area.*
>
> *LUMA's failure to properly quantify third-party pole attachment revenues results in an overstated revenue requirement and unjustifiably higher rates for customers. The Bureau should not accept LUMA's understated projections. Instead, it should increase the projected TPA's revenues based on, none less than the amounts historically billed in FY2022, FY2023, and FY2025, incorporate the outstanding balance of $11,277,933 owed, and establish clear efficiency benchmarks for billing and collection. Only by enforcing these requirements can the Bureau ensure that TPA's revenues are fully credited to the benefit of ratepayers and that customers are not unfairly burdened by LUMA's inefficiencies."*

95. On September 27, 2025, PREB served LUMA ROI #PC-of-LUMA-DST-84, (LUMA's Exhibit 905), doing reference to the information submitted by LUMA on Schedule B-7 and noting that the projected amounts represent only about 10% of what PREPA historically collected, despite PREPA having fewer resources, fewer pole attachments, and fewer telecommunications companies.

96. The PREB requested LUMA to: (a) explain in detail why LUMA projects such low TPA revenues; (b) describe and quantify how these projected revenues affect customer rates; (c) identify and describe the actions, processes, or resources LUMA requires to increase TPA revenues; (d) explain how LUMA intends to make TPA activities profitable, as it has previously stated should be the case; and (e) produce all supporting analyses, correspondence, or documents (including communications with telecommunication companies) relied upon by LUMA in preparing its TPA revenue projections.

97. In response, LUMA witness Ángel Rotger Sabat acknowledged that the initial projections were based on historical collections rather than billing potential and subsequently revised the forecast upward to $3.5 million per year for FY2026-FY2028:

> *"At the time of filing this rate petition, LUMA had projected revenues consistent with historical actual collections, with the limited data available as to accurate inventory of poles with attachments, rather than projected possible collections. This was due to ongoing challenges with contracting and collecting from the telecom companies. Since this time, some progress has been made, both in terms of amounts collected and in terms of advancing the development of a standardized rate, in compliance with applicable law and regulations. As such, LUMA updates its forecast for Third Party Attachment revenue from $392,748 for FY2026, $392,748 for FY2027 and $418,391 for FY2028 to $3.5 million for each fiscal year within the rate period."*

98. Mr. Rotger Sabat further conceded that "Third Party Attachment (TPA) revenues offset the amount of funding that is required to be collected from customers."

99. LUMA's witness Sarah Hanley confirmed that TPA billings for FY2025 alone totaled approximately $4.7 million.

100. LUMA identified multiple actions necessary to improve TPA revenues including: (1) finalize pole attachment annual rate negotiation with telecommunication carriers to ensure regulatory compliance; (2) review and update pole attachment agreements to ensure uniformity and a fair pole attachment rate, maintenance costs, and usage patterns; (3) prevent revenue loss by conducting pole audits and completing TPA inventory to identify third party attachments unreported, unauthorized, and enforce compliance, penalties or require retroactive payments; (4) increase enforcement and compliance with applicable standards by requiring and tracking permits and monitoring regularly for standards of compliance and safety; (5) review annual application fees based on actual costs accrued; (6) establish penalties for unauthorized and non-compliant

attachments; and (7) legal and regulatory support with external and internal resources familiar with telecommunication and electric utilities regulation, among others.

101. First, the evidence clearly demonstrates that, under LUMA's proposal, ratepayers are required to fund costs that primarily benefit private telecommunications companies. LUMA's own testimony, provided by witness Pedro Meléndez, confirms significant budget increases for initiatives related to TPA's and associated legal services. For outside services for TPA's initiatives, LUMA requested \$8.7 million for FY2026, compared to \$2.0 million in FY2025, representing a \$6.7 million increase. For legal services, LUMA requested \$2.0 million for FY2026, whereas no such costs were budgeted in FY2025, adding another \$2.0 million increase.[52]

102. LUMA's own testimony shows a more than fivefold increase in TPA related expenses, from \$2.0 million in FY2025 to approximately \$10.7 million in FY2026. This results in a total increase of \$8.7 million, bringing the combined budget for these activities to \$10.7 million in FY2026, compared to \$2.0 million in FY2025, a more than fivefold increase.

103. These expenditures are not directly tied to improving electric service for consumers but rather to facilitating telecommunications companies' access and compliance with attachment agreements. Therefore, the additional costs are effectively being passed on to ratepayers, forcing them to subsidize services that primarily benefit private telecommunications entities. This raises serious concerns about fairness and the appropriate allocation of costs, as electric consumers should not be responsible for funding initiatives that do not enhance their electric service reliability or affordability.

104. Even assuming full collection, revenues do not cover operational costs, which shows that the current model is financially unsustainable. The gap between revenues and costs

[52] *See*, LUMA's Witness, Pedro Meléndez's Direct Testimony dated July 1, 2025, at page 40, lines 870-879.

confirms that additional measures are required, whether tariff adjustments, expense optimization, or new sources of income, to ensure the viability of the service.

105. LUMA should implement concrete measures to increase revenues from TPA's. For example: (1) review and adjust the application fee, which is currently $90.00; (2) evaluate and update the current rates applied to third parties to ensure they are aligned with the market and operational costs; (3) implement stricter verification and collection processes to ensure compliance with payments by third parties; (4) establish additional charges for delays or non-compliance in payment, encouraging punctuality; (5) adopt technological tools that streamline billing and payment tracking, reducing administrative costs, and (6) implement an annual review mechanism to adjust rates according to inflation, costs, and market conditions.

106. Second, the updated forecast for TPA's revenues, from $392,000 to $3.5 million annually, is compelling evidence that LUMA has significant untapped potential to increase collections. This tenfold increase demonstrates that prior low collections were not the result of unavoidable circumstances, but rather a lack of prioritization and enforcement.

107. Importantly, these measures do not require extraordinary operational effort. LUMA could have implemented them earlier without imposing major strain on resources. The fact that such a dramatic improvement is now projected underscores that LUMA has always had the ability to achieve higher revenues if it chose to act decisively.

108. This shift undermines any argument that previous performance was constrained by external factors. Instead, it reveals that stronger enforcement and proactive management can deliver substantial financial gains. The revised forecast is a clear indicator that when LUMA prioritizes collection, results follow. Therefore, they should be held accountable for maximizing this potential going forward, as it directly benefits ratepayers.

109. In conclusion, LUMA shall update Schedule B-7 to reflect revenues associated with Third-Party Attachments (TPAs) based on a collection rate of no less than ninety-five percent (95%) of amounts billed. Furthermore, with respect to the administrative expenses requested by LUMA to support TPA's operations, no amount shall be passed on to ratepayers unless they are fully offset by revenues generated from TPA activities. Lastly, LUMA shall submit quarterly reports to the Energy Bureau demonstrating compliance with these requirements, including actual collection rates, revenues, and administrative costs incurred.

D. <u>LUMA's Revenue Requirement on Efficiencies:</u>

110. The *February 12 Order* expressly required LUMA, as part of the Rate Case Filing Requirements, to submit Schedules A-1 and A-2, including within the Miscellaneous section, quantifiable amounts associated with "improved efficiencies and resulting savings."

111. Specifically, those schedules required LUMA to identify and quantify, among other items, efficiencies related to contracting of services, revenue collections, reductions in system technical and non-technical losses, unbilled or improperly billed customers, and other operational efficiencies expected to impact the revenue requirement.[53]

112. In its *July 3rd Rate Review Petition*, LUMA requested a waiver from this requirement, asserting that it lacked a credible basis to provide the quantified data mandated by the Energy Bureau. LUMA justified this request by claiming that "there is no credible basis for LUMA to provide the requested estimate" and that it would be "premature" to calculate rate impacts from efficiencies. In support, LUMA relied on the Direct Testimony of the Expert Witness, Mr. Eduardo Balbis (LUMA Exhibit 3.00).[54]

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[53] *See*, PREB's *Resolution and Order,* dated February 12, 2025, at page 20.
[54] *See*, LUMA's Expert Witness, Ed Balbis's Revised Direct Testimony dated December 9, 2025, at page 17.

113. This position directly conflicts with the Energy Bureau's explicit directives in this case, and in multiple prior proceedings, requiring that efficiencies be quantified and reflected in the revenue requirement. The Energy Bureau has consistently rejected the notion that efficiencies may be acknowledged narratively while deferred indefinitely for ratemaking purposes. LUMA's assertion of uncertainty does not excuse compliance with an affirmative filing requirement, particularly where the PREB has made clear that efficiencies must be translated into measurable, rate relevant impacts.

114. Rather than complying with the PREB's directive, LUMA, through Mr. Balbis' testimony, urged the Energy Bureau to accept the existing quarterly and annual performance reporting as a substitute for quantified efficiency adjustments.

115. Specifically, the witness requested that the Energy Bureau deem "LUMA's quarterly reporting on more than 594 performance metrics and continued annual reporting on stated efficiencies and cost savings, sufficient to satisfy the Energy Bureau's Efficiencies and Cost Savings reporting requirement. This eliminates the need for additional burdensome tracking and data analyses requiring additional resources and technology upgrades that would reduce the efficiencies and cost savings LUMA is trying to achieve."[55]

116. This position effectively asks the Energy Bureau to replace a rate-setting requirement grounded in quantifiable financial impacts with generalized performance reporting, notwithstanding the Energy Bureau's explicit instruction that efficiencies be measured, monetized, and reflected in the revenue requirement borne by ratepayers.

117. During the Evidentiary Hearing on November 24, 2025, under cross-examination by the PREB's Consultants, Mr. Balbis testified that LUMA has implemented various efficiencies.

[55] *Id*.

However, Mr. Balbis repeatedly acknowledged that such efficiencies were not quantified for ratemaking purposes.[56]

118. This position reveals a fundamental contradiction. LUMA consistently asserts that it has implemented best practices, improved operational processes, and achieved measurable operational improvements, yet LUMA did not apply any numerical reduction to its FY2026-FY2028 revenue requirement attributable to those claimed efficiencies.

119. LUMA further asserts that the claimed efficiencies are already embedded in the proposed revenue requirement. The evidentiary record, however, demonstrates otherwise. No schedule itemizes the asserted efficiencies, no dollar values are assigned to any efficiency gains, no corresponding offsets appear in Schedule A or in the revenue requirement, and no ratemaking mechanism exists to ensure that ratepayers receive the benefit of the claimed improvements.

120. Instead, efficiencies are presented solely in narrative form, without monetization, verification, or translation into measurable reductions in costs or revenues to be recovered from ratepayers. As a result, the Energy Bureau lacks any factual or quantitative basis upon which to conclude that efficiencies have been reflected in LUMA's revenue requirement proposal.

121. To exemplify this point, the OIPC will address the various areas in which LUMA has claimed the existence of operational efficiencies. In each instance, the OIPC will examine the specific claims advanced by LUMA, as well as the absence of any economic quantification of those efficiencies and the failure to reflect them in the proposed revenue requirement.

122. Regarding Collections and Customer Arrears, LUMA has reported significant achievements in collections since assuming operations, including the recovery of millions of

[56] *See*, LUMA's Expert Witness, Ed Balbis's testimony during PREB's Evidentiary Hearing on November 24, 2025, during the morning session at approximately 1:12:18.

dollars in customer payments, the establishment of hundreds of thousands of payment plans, and a downward trend in Days Sales Outstanding (DSO). These outcomes necessarily reflect improvements in cash flow and reductions in uncollectible balances.

123. Despite these reported improvements, LUMA did not forecast higher net collections in its revenue requirement, did not reduce its proposed bad debt allowance, and did not credit ratepayers with any portion of the financial gains resulting from improved collections performance.

124. Mr. Balbis Direct Testimony addressed Missing or Malfunctioning Meters. Specifically, the witness asserts that "[a]s described in its FY2024 Annual Report, LUMA states it has replaced over 16,900 meters and repaired another 3,900 through its Distribution Meter Replacement and Maintenance Improvement Program. This will improve the ability for LUMA to measure and bill for electricity that is used."[57]

125. Further, Mr. Balbis establishes that meter remediation is a concrete, quantifiable efficiency that directly affects billed revenues. In particular, the witness stated that "the average residential customer's annual bill was approximately $1,147. Therefore, replacing one non-functional meter can lead to $1,147 in additional revenue in a forecasted test year. This reduces the calculated revenue insufficiency and rate increase request by the same amount."

126. Using LUMA's own assumptions and performance data, and assuming performance in future years consistent with FY2024, LUMA could reasonably forecast the replacement of at least 16,900 non-functional meters in a test year.

127. Applying Mr. Balbis's stated average annual residential bill of $1,147 per meter, this level of meter remediation corresponds to incremental billed revenue of approximately $19.4

[57] *See*, LUMA's Expert Witness, Ed Balbis's Revised Direct Testimony dated December 9, 2025, at page 15, footnote 8.

million per year from replaced meters alone. When repaired meters are considered, the incremental revenue impact would be even greater. Conservatively, this represents at least $20 million in additional revenue that was not previously billed to customers.

128. Despite this clear and quantifiable relationship between meter remediation and increased revenues, LUMA did not forecast any incremental billed revenue associated with meter remediation in its FY2026-FY2028 revenue requirement. Nor did LUMA apply any offset to reduce the revenue requirement by the amount of revenue that these efficiency gains are expected to generate.

129. Instead, LUMA acknowledges the existence and effectiveness of meter remediation as an operational improvement while refusing to monetize the resulting benefits for ratemaking purposes. This omission results in ratepayers being required to fund the revenue requirement as if the additional billed revenues did not exist, thereby allowing LUMA to retain the full financial benefit of improved billing accuracy as unaccounted, without passing any portion of that benefit to customers.

130. The record therefore demonstrates that meter remediation is not an “early stage” or speculative efficiency. It is a mature, measurable, and monetizable improvement that LUMA has already implemented at scale. LUMA’s refusal to quantify this efficiency and reflect it in the revenue requirement is inconsistent with just and reasonable ratemaking and with the Energy Bureau’s directive to identify and quantify efficiency related savings and revenue impacts.

131. Regarding Energy Theft Mitigation, LUMA asserts progress in identifying and eliminating illegal connections. Theft mitigation increases billed energy, reduces system losses, and improves revenue realization. Yet LUMA quantified program activity without quantifying its

dollar impact, provided no forecast of increased billed revenue attributable to theft reduction, and applied no offset to the revenue requirement reflecting those gains.

132. With respect to Third-Party Pole Attachments (TPA's), which are addressed in greater detail elsewhere in this brief, LUMA asserts that it has improved enforcement and identification of unauthorized third-party attachers. According to LUMA's testimony, these efforts include enhanced inventory controls, audits of existing attachments, and enforcement actions designed to identify previously unbilled.

133. By LUMA's own logic, these actions should necessarily result in increased attachment revenues and a reduction in unrecovered or improperly allocated costs. Improved identification of attachers expands the billing base, while enhanced enforcement should improve compliance and collection rates. Both outcomes are inherently quantifiable and directly relevant to the revenue requirement.

134. However, despite claiming operational improvements in TPA's oversight, LUMA did not forecast any corresponding increase in TPA's revenues in its FY2026-FY2028 revenue requirement. Nor did LUMA apply any offset or adjustment to reflect reduced unrecovered costs attributable to improved enforcement. Instead, LUMA proposed TPA's related expenses to be recovered from ratepayers while forecasting limited or understated TPA revenues, thereby creating a structural imbalance between costs and revenues.

135. As a result, ratepayers are asked to bear the full cost of administering and enforcing the TPA program without receiving the benefit of the revenues that such enforcement is expected to generate. This outcome is inconsistent with cost-causation principles and with just and reasonable ratemaking, particularly where the underlying activity, third-party attachments by

private telecommunications and cable companies, does not directly relate to the provision of electric service.

136. The evidentiary record thus shows that, as with other claimed efficiencies, LUMA references improvements in TPA administration narratively but fails to monetize those improvements or reflect them in rates. Absent quantified revenue impacts and corresponding offsets, the Energy Bureau lacks a factual basis to conclude that TPA related efficiencies have been incorporated into the proposed revenue requirement or that ratepayers will receive any benefit from the claimed improvements.

137. LUMA argues that efficiencies are still in "early stages" and therefore cannot yet be reflected in rates. That position is untenable and contradicted by the evidentiary record. On the one hand, LUMA repeatedly relies on measured outcomes, such as improved collections, declining Days Sales Outstanding (DSO), recovery of past-due balances, meter remediation results, theft mitigation efforts, and enforcement of third-party pole attachments, to defend its operational performance and management decisions. These outcomes are presented as evidence that LUMA has implemented best practices and achieved meaningful improvements.

138. On the other hand, LUMA asserts that those same outcomes are too preliminary, uncertain, or immature to be quantified for ratemaking purposes.

139. This internal inconsistency cannot be reconciled. If outcomes are sufficiently measured, tracked, and reliable to support claims of improved performance, they are necessarily capable of being quantified in dollars. Results that are measurable enough to justify management performance are measurable enough to adjust rates. LUMA cannot simultaneously rely on these outcomes to defend its operations while insulating them from ratepayer benefit.

140. By failing to quantify efficiencies and reflect them in the revenue requirement, LUMA produces a structurally inflated rate proposal. Specifically, costs are overstated because efficiency driven cost reductions are not recognized, revenues are understated because improvements in collections, billing accuracy, theft reduction, and enforcement are not forecast, and ratepayers bear the full risk of operational improvements that are within LUMA's control.

141. Absent quantified efficiencies, the Energy Bureau cannot lawfully conclude that the proposed revenue requirement reflects LUMA's actual cost of service, claimed operational improvements provide any measurable benefit to customers, or the proposed rates are just, reasonable, and supported by substantial evidence.

142. Narrative descriptions of efficiencies, standing alone, do not satisfy the Energy Bureau's prior directives or the evidentiary standard required for ratemaking. Without dollar impacts, offsets, or reconciliation mechanisms, the PREB is left without a factual basis to determine whether efficiencies have been incorporated into rates or whether ratepayers will ever receive the benefit of the claimed improvements.

143. To cure these defects, the Bureau should require one or more of the following remedies: (1) mandatory quantification of efficiencies, with itemized dollar impacts tied to specific programs and operational improvements; (2) an efficiency adjustment factor that reduces the revenue requirement to reflect demonstrated improvements; (3) a tracker or reconciliation mechanism to return realized savings and incremental revenues to customers; and (4) exclusion of unsupported cost components from the revenue requirement until efficiencies are properly quantified.

144. Absent these measures, approval of LUMA's proposed revenue requirement would improperly shift economic benefits away from consumers and undermine the regulatory obligation to ensure that rates reflect actual, prudently incurred costs.

E. PREPA's Revenue Requirement on Hydroelectric Facilities

145. The *February 12 Order* required PREPA to submit, as part of the Rate Case Filing Requirements Schedules A-1 and A-2, the following information regarding HydroCo: (1) maintenance corrective (generation); (2) maintenance preventive (generation); (3) labor physical operations; (4) safety equipment; (5) tools: repair and management; (6) vehicles: repair and maintenance; and (7) FEMA grants cost share.

146. As part of PREPA's proposal for this Rate Review they included the reallocation of $1.3 billion from the FAASt Program to fund projects associated with hydroelectric facilities (hereinafter, "hydro")

147. On September 8, 2025, National Public Finance Guarantee Corporation, GoldenTree Asset Management LP, Syncora Guarantee, Inc., Assured Guaranty Inc., and the PREPA Ad Hoc Group2 (collectively, the "Bondholders") submitted the Direct Testimony of their Expert Witness, Mr. Anthony Hurley.

148. Mr. Hurley identified PREPA's Consolidated Project Plan for dam rehabilitation as one of the projects he considered unnecessary from an electric system perspective. He noted:

> *"As identified by PREB in an order warning of non-compliance with the Priority Stabilization Plan, PREPA has requested almost $1.3 billion in the Consolidated Project Plan for dam rehabilitation, rather than grid improvement in the near-term. Notably, hydroelectric power was not included in the Priority Stabilization Plan approved by the Energy Bureau on March 28, 2025, and PREPA itself has stated that the hydroelectric generation hazard mitigation project was not guided by a need determination made by LUMA, the system operator. LUMA's Electrical System Resource Adequacy Analysis Report disclosed that Puerto Rico's small fleet of hydroelectric power plants have "a nameplate capacity of*

> *approximately 100 MW," which represents only approximately 1.5 percent of total generation capacity. However, most of these hydroelectric power plants date back to the 1930s and 1940s, meaning they are either not operational or experience outage rates greater than 50 percent. After accounting for long-term outages and capacity reductions due to damage, the effective capacity is roughly 104 MW, or only approximately 0.15 percent of total generation capacity. Given the lack of need identification by the system operator LUMA, and the extremely high cost per MW of restoring this small source of generation, funding for this project is not a prudent use of the available federal funds, which could be used for other purposes that improve grid reliability."*[58]

149. On October 17, 2025, PREB's Consultant, Eng. Justo González, submitted its Expert Report (PC's Exhibit 64.0) addressing generation issues, including PREPA's hydro proposal.

150. Mr. González concurs with Mr. Hurley's assessment, concluding that PREPA's consolidated project plan misdirects critical funds away from electric system recovery. He testified that nearly $1.3 billion in requested federal funding is allocated primarily to dam rehabilitation and dredging activities that would have a negligible impact on dependable electric generation capacity.

> *"The proposed consolidated project plan prepared by PREPA misdirects critical funds that should be allocated to electric system recovery. Nearly $1.3 billion in requested federal funding is allocated primarily to dam rehabilitation and dredging, activities that will have a negligible impact on increasing the electric system's dependable generation capacity. While dam and reservoir maintenance is important for flood control and water management, such work should not displace funds urgently needed to resolve the electric system's core reliability deficiencies. Prioritizing these projects for FAASt funding displaces capital from the primary and intended purpose of the federal grant, which is to restore and improve the reliability of the electric supply. The costs for such non-electric supply projects, however necessary, should not be borne by the electric ratepayer, either directly through rates or indirectly through the misapplication of funds designated for grid reconstruction.*[59]

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[58] *See*, Bondholders's Answering Testimony of Anthony Hurley, at page 66-67.
[59] *See*, PREB's Expert Report of Justo González, dated October 17, 2025, at page 13.

151. Mr. González estimated the hydroelectric fleet effective and available capacity around 15 MW, representing a negligible fraction of island-wide generation, and concluded that the proposed expenditures would yield minimal electric reliability benefits.[60]

152. He further testified that "[r]edirecting these substantial funds to other federally eligible projects that directly improve grid reliability would be a far more effective and responsible strategy for Puerto Rico's energy future."[61]

153. Accordingly, Mr. González recommended that the Energy Bureau reject PREPA's proposed hydro rehabilitation initiative, not because dam, or reservoir work lacks merit, but because such investments should be funded through mechanism other than electric ratepayers supported recovery programs and should not displace expenditure intended to restore core electric system reliability.[62]

154. On November 13, 2025, PREPA submitted Rebuttal Testimony through witnesses Fernández Osorio and William Sullivan (PREPA's Exhibit 84.01), challenging both Mr. González's conclusions and Mr. Hurley's framing.

155. First, PREPA disputes the characterization of hydro as a "tiny" contributor, asserting that the actual dependable contribution is approximately 25 MW of renewable baseload capacity, rather than the roughly 0.15 percent figure cited by the consultant through another witness.[63]

156. Second, PREPA reframes a substantial portion of the questioned expenditures. It emphasizes that much of the $1.3 billion portfolio is primarily associated with high hazard dam

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[60] *Id*, at page 14.
[61] *Id*, at page 15.
[62] *Id.*
[63] *See*, *PREPA's Rebuttal Written Testimony to the Puerto Rico Energy Bureau's Consultant Eng. Justo González Expert Report on the Matter of Generation*, dated October 17, 2025, at page 3.

safety, irrigation infrastructure, reservoirs, and potable water supply functions, not merely generation upgrades. PREPA notes that these "water assets" were foundational components of the original FEMA FAASt package and form part of a broader, multi-agency recovery strategy.[64]

157. Third, PREPA argues that reallocating FAASt funds away from these projects risks triggering the loss or de-obligation of significant companion federal investments. PREPA cites more than $700 million in co-investment tied to these water asset projects through HUD CDBG-MIT, FEMA Hazard Mitigation Grant Program (HMGP), FEMA Section 406, and other aligned funding sources.[65]

158. Finally, PREPA underscores the risks associated with non-completion. These include increased public safety exposure from high hazard dams, heightened legal and regulatory liabilities, and potential jeopardy to future FEMA Public Assistance eligibility if assets are not repaired or mitigated to required standards. PREPA provides concrete examples, such as the downstream population and potable water reliance associated with the Guajataca facility, and notes instances where hydro plant rehabilitation may avoid substantially higher decommissioning or removal costs, as discussed in the case of Río Blanco.[66]

159. During the evidentiary hearing on November 20, 2025, in response to questions posed by the Energy Bureau's consultant, Mr. González acknowledged that addressing the condition of Puerto Rico's reservoirs and dams is necessary and implicates important public safety considerations. He recognized that certain interventions related to dam and reservoir maintenance are required to ensure structural integrity and to mitigate safety risks.[67]

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[64] *Id*, at page 3-5.
[65] *Id,* at page 6.
[66] *Id,* at page 9.
[67] *See*, PREB's Expert Witness, Justo González's testimony during PREB's Evidentiary Hearing held on November 20, 2025, during the morning session at approximately 2:41:30.

160. Mr. González cautioned that the electric power system cannot afford to sacrifice critical investments needed for its core functions. He testified that the electric system itself requires approximately $1.3 billion in funding that is currently being proposed for reallocation to hydroelectric-related projects. In other words, while dam and reservoir safety must be addressed, doing so at the expense of the broader electric system's reliability, resilience, and operational needs would be imprudent.

161. From a strictly electric system perspective, Mr. González's argument has some merit. If the objective is to maximize near term dependable megawatts for the bulk power system, hydro represents a small fraction of island wide demand, and large dam rehabilitation and dredging packages appear expensive on a dollars per megawatt basis. When hydro expenditures are evaluated solely on incremental generation capacity, Mr. González's claim of misallocation and its recommendation to reject the $1.3 billion initiative follow logically.

162. PREPA's rebuttal testimony, however, introduces a critical distinction. A significant portion of the proposed hydro spending consists of mandatory dam safety, flood control, and water infrastructure obligations embedded in the FAASt recovery framework.

163. Under this broader framing, characterizing the spending as an electric system misallocation is incomplete. These projects address high hazard facilities that must be made safe and diverting FAASt funds, risks collapsing matching and companion funding streams or undermining future FEMA eligibility, potentially resulting in higher long-term costs and risks that ultimately fall on ratepayers and the public.

164. For these reasons, outright rejection of the $1.3 billion hydro initiative, as proposed by Mr. González, is overly blunt. The evidence showed that some of these projects are not

discretionary generation enhancements, but rather safety and compliance obligations embedded within the federal recovery architecture.

165. Nevertheless, Mr. González's critique remains instructive. It underscores the need to clearly separate mandatory safety and compliance work from discretionary generation upgrade investments and to impose significantly tighter value for money controls on the generation related components.

166. The central challenge is therefore determining how hydro-related spending can be reduced or re-sequenced on a project-by-project basis without jeopardizing FAASt compliance, federal co-investment, public safety, or asset viability, while still improving hydroelectric performance where cost-effective.

167. Accordingly, OIPC recommend PREB to revisit PREPA's $1.3 billion project proposal for hydro.

168. First, the project portfolio should be divided into two tiers. Tier 1 would include high hazard dam safety measures, spillway upgrades, seismic risk reduction, and any scope explicitly tied to eligibility requirements, regulatory standards, or federal matching obligations. Tier 2 would consist of hydro generation restorations and add-ons that can be staged, redesigned, or competitively procured without threatening life safety or federal compliance.

169. Second, dredging scopes, often the primary cost driver, should be re-scoped into "minimum necessary now" actions and longer-term sediment management strategies. Near-term funding should be limited to dredging required to meet immediate safety and operability thresholds, while broader reservoir capacity restoration should be deferred to later phases only if grant eligibility and matching timelines are preserved. In parallel, greater emphasis should be

placed on upstream sediment control and watershed management measures that reduce future dredging needs, lower lifecycle costs.

170. Third, hydro investments should prioritize upgrades that deliver the highest megawatt hours per dollar. These include controls and automation, governors, excitation systems, trash rack and auxiliary equipment refurbishments, and turbine generator efficiency improvements that increase availability and reduce forced outages, often at far lower cost than major civil works. Priority should also be given to projects where rehabilitation avoids significantly more expensive alternatives, such as decommissioning or removal, as illustrated by PREPA's Río Blanco example.

171. Throughout this process, FAASt funded safety scopes should remain intact. Where legally and administratively feasible, clearly nonelectric community water functions should be shifted to the most appropriate non ratepayer funding streams or partner agencies, while preserving required matching funds and maintaining transparent cost allocation.

III. CONCLUSION

172. OIPC fully recognizes the fragile and complex conditions of Puerto Rico's electric system, and it would therefore be unrealistic, and contrary to the public interest, to expect meaningful improvements in service quality without corresponding investment. It would be unreasonable to expect the utility to improve service quality without making the necessary investments to do so.

173. At the same time, OIPC is acutely aware that Puerto Rico's consumers already face significant economic pressures. While the ideal outcome would be a rate structure that imposes no additional financial burden on customers, the evidentiary record in this case makes clear that some level of rate increase is unavoidable.

174. The central question before this Energy Bureau is not whether rates will increase, but whether the increases proposed are supported by evidence, appropriately allocated, and limited to costs that are prudent, used and useful, and legally recoverable from ratepayers.

175. It is precisely at this intersection between necessary investment and consumer protection that OIPC's statutory responsibility lies. OIPC does not oppose justified expenditures that demonstrably improve electric service for the benefit of all customers.

176. However, OIPC strongly objects to the inclusion in the revenue requirement of costs that are unsupported, overstated, improperly allocated, or insulated from meaningful scrutiny. The record in this proceeding reveals some instances where costs have been proposed without adequate quantification, efficiencies have been claimed but not monetized, revenues have been understated, and expenses have been shifted to consumers without a showing of causation or benefit.

177. A just and reasonable rate must reflect actual cost of service, net of efficiencies and offset by all available revenues. It must not require customers to subsidize inefficiencies, legacy deficiencies, or activities that primarily benefit third parties. Nor should it permit the utility administrators to retain the upside of operational improvements while assigning the full risk of underperformance to ratepayers.

178. For these reasons, OIPC urges this Honorable Energy Bureau to exercise its regulatory authority to ensure that the permanent rates approved in this proceeding are grounded in substantial evidence, aligned with statutory mandates, and structured to minimize the economic impact on consumers while still supporting the investments necessary to stabilize and improve Puerto Rico's electric system.

WHEREFORE, it is respectfully requested that this Honorable Bureau take notice of the aforementioned for the purpose of the evaluation and determination of the provisional rate.

RESPECTFULLY submitted today, January 23, 2026.

I HEREBY CERTIFY that on this date a copy of this motion has been electronically filed with the Clerk of the Puerto Rico Energy Bureau and that I have emailed a copy of this motion to the following email addresses: Scott Hempling, shempling@scotthemplinglaw.com; and to the attorneys of the parties of record: mvalle@gmlex.net; arivera@gmlex.net; jmartinez@gmlex.net; jgonzalez@gmlex.net; nzayas@gmlex.net; Gerard.Gil@ankura.com; Jorge.SanMiguel@ankura.com; Lucas.Porter@ankura.com; mdiconza@omm.com; golivera@omm.com; pfriedman@omm.com; msyassin@omm.com; msyassin@omm.com; katiuska.bolanoslugo@us.dlapiper.com; Yahaira.delarosa@us.dlapiper.com; margarita.mercado@us.dlapiper.com; carolyn.clarkin@us.dlapiper.com; andrea.chambers@us.dlapiper.com; regulatory@generapr.com; legal@generapr.com; mvazquez@vvlawpr.com; gvilanova@vvlawpr.com; dbilloch@vvlawpr.com; ratecase@generapr.com; jfr@sbgblaw.com; victorluisgonzalez@yahoo.com; Cfl@mcvpr.com; nancy@emmanuelli.law; jrinconlopez@guidehouse.com; Josh.Llamas@fticonsulting.com; Anu.Sen@fticonsulting.com; Ellen.Smith@fticonsulting.com; Intisarul.Islam@weil.com; alexis.ramsey@weil.com; kara.smith@weil.com; rafael.ortiz.mendoza@gmail.com; rolando@emmanuelli.law; monica@emmanuelli.law; cristian@emmanuelli.law; luis@emmanuelli.law; jan.albinolopez@us.dlapiper.com; Rachel.Albanese@us.dlapiper.com; varoon.sachdev@whitecase.com; javrua@sesapr.org; Brett.ingerman@us.dlapiper.com; brett.solberg@us.dlapiper.com; agraitfe@agraitlawpr.com; jpouroman@outlook.com; epo@amgprlaw.com; loliver@amgprlaw.com; acasellas@amgprlaw.com; matt.barr@weil.com; Robert.berezin@weil.com; Gabriel.morgan@weil.com; corey.brady@weil.com; lramos@ramoscruzlegal.com; tlauria@whitecase.com; g

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