

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

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CASE NO.: NEPR-AP-2023-0003

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

SUBJECT: RATE DESIGN BRIEF

**RATE DESIGN BRIEF OF THE PREPA EMPLOYEES' RETIREMENT SYSTEM
(SREAEE)**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the *Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica* (“SREAEE”), through its undersigned counsel, and respectfully STATES and REQUEST:

I. INTRODUCTION

In evaluating the proposed pension funding rider and the associated revenue requirement for the Puerto Rico Electric Power Authority (“PREPA”) Employee Retirement System (“ERS”), it is essential to consider the demographic realities of the retiree population that relies on this system for their livelihood. As of March 15, 2025, the ERS supported a total of 12,177 members, including 243 active PREPA employees, 1,908 employees in mobility programs, and a substantial base of 10,026 retirees. These figures reflect a mature and largely dependent beneficiary group, with nearly 82% of the ERS’s participants being retirees whose economic well-being hinges upon the consistent and full funding of the pension system.

Critically, the age distribution of these retirees underscores the urgency and moral weight of ensuring fiscal stability in the system. Over 32% of all retirees are between the ages of 71 and 80, and an additional 38% fall within the 61–70 and 81–90 age brackets. These individuals, often living on fixed incomes and facing increased healthcare and living expenses, are especially vulnerable to disruptions in pension disbursements. About 13 retirees are over 100 years old, further exemplifying the long-term nature of the obligations the system must sustain. Moreover, approximately 18% of the retired population is under the age of 60, reflecting early retirements, many likely due to hazardous or strenuous service, which compounds the importance of securing adequate funding.

The ERS also serves 129 incapacitated children of retirees, who receive survivor benefits and whose financial and medical dependence adds another layer of urgency to the preservation of the full revenue requirement. These dependent beneficiaries often lack alternative sources of support and are uniquely at risk should pension benefits be delayed, diminished, or jeopardized by insufficient funding mechanisms. Moreover, the system supports 2,296 surviving spouses, of which a significant portion—over 90%—are over the age of 70. Notably, 924 surviving spouses are between ages 80 and 89, and an additional 304 are over 90 years old. These figures demonstrate that a substantial share of the system’s obligations are directed toward highly vulnerable populations with limited or no alternative sources of income. Any shortfall or delay in pension funding could have severe and immediate consequences for these dependents, many of whom live at or near the margins of economic insecurity. Thus, rate design decisions must be structured to ensure that this population receives uninterrupted financial support, as the Retirement System serves not merely as a fiscal entity but as a social safety net for the most at-risk segments of Puerto Rico’s former public workforce.

Therefore, any rate design proposed for the collection of the pension rider must ensure that it achieves the objective of maintaining the actuarial and operational integrity of the retirement system. It is not merely a matter of cost recovery; it is a matter of upholding obligations to a specific and vulnerable population who rendered decades of essential public service to Puerto Rico's energy infrastructure. The Energy Bureau must ensure that rate structures facilitate, rather than hinder, the fulfillment of this obligation. Undermining the revenue requirement would not only destabilize the financial viability of the ERS but would also violate principles of equity and social justice embodied in Puerto Rico's regulatory and statutory framework.

In establishing the permanent rate design, the Energy Bureau must guarantee that the amount allocated for pension obligations is protected against any form of underfunding arising from the structure or administration of the applicable rider. Pension costs have been explicitly recognized by the Bureau as a high-priority, non-deferrable obligation, and as such, they must not be subordinated to other tariff mechanisms or exposed to the operational uncertainties of a flawed rate design. *See July 31, 2025 Provisional rates order, page 26*. Whether through a fixed monthly charge or a volumetric methodology, the selected structure must provide revenue certainty, legal compliance under Act 57-2014, and operational transparency. To achieve this, SREAEE respectfully requests that the Bureau adopt robust safeguards to ensure that the full pension amount is billed, collected, and transmitted without delay or dilution, regardless of shifts in consumer behavior, grid participation, or economic conditions.

II. PROCEDURAL BACKGROUND

On July 31, 2025, the Honorable Energy Bureau issued a Resolution and Order establishing Fiscal Year 2026 provisional rates and budget ("July 31 Order"), wherein it authorized the

recovery of pension costs associated with the Puerto Rico Electric Power Authority (“PREPA”) Employee Retirement System. This amount, totaling \$307,475,422, was provisionally accepted, subject to further review during the permanent rate phase. In response, LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly “LUMA”) filed a Revised Motion on November 25, 2025, proposing the conversion of the pension funding rider from a volumetric (per-kWh) charge to a fixed monthly per-customer charge, to take effect on January 1, 2026.

On December 1, 2025, the Solar and Energy Storage Association of Puerto Rico (“SESA”) and Solar United Neighbors (“SUN”) filed a Joint Motion to Request Deferral of Decision on the Proposed Fixed Charge. In said motion, the movants expressed serious concerns regarding the distributional, procedural, and legal implications of shifting the charge structure without full evidentiary development and stakeholder input. They argued that the proposed change would significantly raise fixed charges, disproportionately impacting low-income residential customers, and that implementing the fixed charge without due process could be regressive and destabilizing for consumers.

Later, on December 3, 2025, LUMA submitted its response defending the proposed methodology and asserting that the fixed charge is more equitable and aligns with the Energy Bureau’s directives. They argued that the fixed charge is fairer, ensuring all customers contribute to pension cost recovery. On December 12, 2025, SESA responded, expanding on their legal concerns, particularly those related to Section 4 of Act 114-2007 and Act 57-2014, and emphasizing that implementation of the fixed rider would disproportionately burden low-usage, low-income, and solar-generating customers, absent a complete evidentiary record.

That same day, SREAE filed its *Motion to Protect Statutory Pension Contributions and to Object to any Methodology or Rides Structure that Endangers the Full and Timely Funding of Pensions*. In the aforementioned, SREAE explained the potential adverse effects of a rate design that fails to account for the priority and mandatory nature of pension payments, emphasizing that the integrity of those payments must not be compromised by the structure of the rate design applied to the bill. In this brief, the SREAE will present to and request from the Energy Bureau the implementation of all necessary safeguards to ensure that, regardless of the rate design adopted, the integrity of the pension payments remains protected, and consumers are not adversely affected.

III. THE AMOUNT ALLOCATED BY THE ENERGY BUREAU TO PENSIONS MUST NOT BE SUBJECT TO UNDERFUNDING AS A RESULT OF THE RATE DESIGN

The July 31, 2025, Order approved PREPA's requested FY2026 pension cost of \$307,475,422 for purposes of provisional rates. In that same Order the Bureau determined that Pension costs constituted a "high-priority, no controversial, and non-deferrable expense..." See *July 31, 2025 Provisional rates order, page 26*. Therefore, SREAE emphasizes that pension contributions must retain priority over any newly proposed riders, such as those intended to replenish OMA accounts. These competing mechanisms, if not properly structured, could compromise the integrity and precedence of pension funding. Therefore, SREAE requests that the Energy Bureau implement clear safeguards to preserve the superior claim of pensions within the rate design framework.

In determining the rate design, the Bureau must ensure that rates are apportioned fairly among the consumers as well as ensure that the rate methodology allows the operator to reconcile

costs for customers in a way that there is no underfunding when the adjustment is made retroactively pursuant to Section 6.25(f) of Act 57-2014. Reconciliation under Act 57-2014 cannot alter PREPA's total pension obligation since the pension funding requirement is determined by actuarial need and statutory obligation, not by the level of collections or cash-flow performance.

Section 6.25(b)(9)(i) requires the Bureau to approve sufficient rates to recover all prudently incurred operating and statutory costs, including mandatory pension contributions. Section 6.25(c) further provides that any modification to the approved revenue requirement or rate design must be addressed through a formal rate review proceeding, with discovery and public hearings. Accordingly, any adjustment to the pension funding component of rates would require a new rate review under Section 6.25 and may not be implemented through a reconciliation mechanism. Reconciliation mechanisms are limited to correcting over- or under-recoveries or reallocations among customer classes and may not be used to revise fixed, non-discretionary operating expenses such as pension obligations or to defer their timely payment.

Accordingly, in fixing a permanent rate the Bureau must determine that the total required pension contribution:

1. Is not subject to modification through rate design or tariff methodology;
2. Cannot be reduced based on projected collection levels; and
3. Must be funded in full regardless of the outcome of rider implementation.

IV. SREAEE'S POSITION ABOUT THE TRANSITION FROM A VOLUMETRIC RIDER TO A FIXED CUSTOMER CHARGE

SREAEE does not object to transitioning from a volumetric rider to a fixed customer charge, as long as the change does not result in under-collection or delays in pension payments.

Whether is a customer fixed fee or a volumetric one, the Bureau must ensure that the SREASEE receives the full amount granted in the Order. The rate design cannot be a justification for underfunding. The Final Order must ensure that the Operator bears the responsibility of assuring that the tariffs will cover the amount needed for the pensioners.

Nonetheless, the proposed structural shift presents operational risks that must be addressed, particularly the risk that projected revenues may fall short due to fluctuations in customer accounts or billing inaccuracies. Since PREPA's obligation to fund pensions remains constant, SREAE E urges the adoption of a formal revenue-guarantee mechanism to ensure that any shortfall in collections is promptly covered.

In addition, the Bureau must account for affordability and the practicability of the proposed rate level, because an excessive increase can impair customers' ability (or willingness) to pay, drive higher arrearages and delinquencies, and ultimately reduce net collections—thereby jeopardizing the very cash-flow priority the rate design is supposed to protect for timely pension payments. Accordingly, the rate and bill design should include safeguards that mitigate rate shock and avoid demand and collection erosion, so that expected revenues remain durable and sufficient to fund pensions without interruption.

V. THE RATE DESIGN MUST BE ACCOMPANIED BY SAFEGUARDS THAT ENSURE THAT, REGARDLESS OF THE METHODOLOGY EMPLOYED, THE RETIREMENT SYSTEM WILL RECEIVE THE FULL AMOUNT REQUESTED.

To ensure that the pension system receives the full \$307,475,422, regardless of whether the pension cost rider is structured as a flat fee or based on kilowatt-hour (kWh) consumption, it is essential to implement robust financial and operational safeguards.

A per-consumer charged based fee mitigates the variability of consumption-related revenue, but it does not fully insulate the system from structural risks like grid defection, delinquency, or demographic decline. Therefore, even under a flat fee structure, complementary safeguards, such as a reserve fund, revenue assurance mechanisms, or flexible adjustments, remain essential to protect the integrity of pension funding and ensure long-term financial sustainability.

One of the most pressing structural challenges facing Puerto Rico's electric system is the sustained population decline and customer migration over the past decade. According to demographic data, the island has experienced a significant reduction in its population due to factors such as economic stagnation, natural disasters, and outmigration to the mainland United States. As residential and commercial customers leave the island or close operations, the total number of active accounts connected to the grid diminishes. This trend erodes the rate base, particularly under a volumetric rate design, where revenue is closely tied to the number of consumers and their energy consumption. A shrinking customer base places upward pressure on rates for those who remain, increasing the likelihood of financial strain on the system.

Compounding this issue is the persistent problem of non-payment and delinquency, particularly in economically vulnerable communities. High electricity rates, combined with general economic hardship, often result in a substantial portion of PREPA's customer base falling behind on bill payments or defaulting entirely. These uncollected amounts represent a direct loss in revenue, especially critical when pension obligations and other fixed costs remain constant.

Furthermore, delinquency undermines cash flow stability, making it more difficult to forecast and allocate revenue for essential obligations such as retirement system contributions. Any rate design that does not factor in this risk of non-payment may overestimate the actual funds available for priority expenses.

Additionally, economic contraction across key sectors reduces overall commercial and industrial electricity demand. Puerto Rico's economy has been marked by periods of stagnation and volatility, exacerbated by natural disasters and fiscal crises. When businesses scale down operations, reduce hours, or shut down entirely, their energy consumption decreases accordingly. Since commercial users typically account for a significant share of electricity revenue, a decline in commercial activity can have a disproportionately negative impact on collections. A robust rate design must therefore consider the fragility of the economic environment and its downstream effects on consumption patterns and revenue generation, particularly when stable pension funding is at stake.

In the other hand, a consumer kWh-based rate design introduces significant revenue volatility because it directly ties pension funding to aggregate electricity consumption. Fluctuations driven by seasonal patterns, weather conditions, and consumer behavior such as conservation in response to high rates or economic pressure, can materially reduce total kWh sales. These consumption changes are difficult to forecast with precision and may result in cumulative under-collection over the fiscal year, even where the approved rate appears adequate at the time of adoption.

This risk is further exacerbated by structural changes in how consumers obtain electricity. An increasing number of residential and commercial customers are reducing their reliance on the

centralized grid through self-generation, including rooftop solar and battery storage, or exiting utility service altogether in pursuit of more reliable energy. As a result, the total volume of electricity sold continues to decline while fixed obligations—such as pension costs—remain unchanged. This growing disconnect between grid dependence and volumetric consumption undermines the reliability of kWh-based funding mechanisms and highlights the need for rate designs that account for sustained reductions in electricity sales.

Notwithstanding, the Provisional Rate Order explicitly directed LUMA to notify the Bureau “as soon as it is feasible and cost-effective to implement the necessary billing-system modifications to convert the pension cost recovery from a per-kWh charge to a per-customer charge”. See *Provisional Rate Order*, page 37. This Order imposed a critical operational responsibility on the operator to align the billing system with the fiscal needs of the Retirement System. This transition entails that LUMA must evaluate, plan, and implement the necessary technical modifications to its billing infrastructure, enabling the uniform imposition of a fixed monthly charge per customer account. Such a change would stabilize revenue collection by decoupling pension funding from variable energy consumption patterns. To comply with the Bureau’s order, LUMA must also ensure that this new charge is integrated seamlessly into customer bills, is clearly itemized, and is accurately tracked through internal accounting systems. Furthermore, LUMA must develop and deploy monitoring mechanisms to verify that the amounts billed and collected under the fixed charge model are consistently meeting the pension funding targets approved by the Bureau. In doing so, LUMA, or any later operator, plays a central role in guaranteeing the continuity and integrity of pension contributions, thereby fulfilling both regulatory and moral obligations toward the thousands of current retirees and beneficiaries dependent on these funds.

Given the complexity of the rider mechanism regardless of the Rate design, SREAEE requests that the Bureau impose the following accountability safeguards:

A. Monthly reporting of amounts billed, amounts collected, arrears, and any discrepancies.

To maintain transparency and oversight, LUMA should be required to submit comprehensive monthly reports to both the Energy Bureau and SREAEE. These reports must detail (i) the total amount billed under the Pension Rider, (ii) the actual amount collected, (iii) any outstanding arrears or uncollected amounts, and (iv) a reconciliation analysis identifying any discrepancies between forecasted and actual revenue. Such reporting must follow standardized formats and be delivered within a fixed period, for example no later than the 15th of each subsequent month. This allows for prompt tracking of revenue performance and early detection of collection issues before they escalate into structural underfunding.

B. Immediate corrective action if variances between billed and collected amounts create risk to full funding.

Where monthly reports reveal material variances between the amounts billed and collected that pose a risk to full pension funding, the Bureau must require immediate remedial action. Corrective measures may include automatic upward rate adjustments, temporary surcharges to recover deficiencies, or activation of a dedicated reserve fund. Importantly, the permanent rate order should pre-authorize these interventions to allow for swift implementation without requiring an amendment proceeding. The goal is to insulate the pension system from cash flow interruptions that could otherwise jeopardize monthly disbursements to retirees.

C. Periodic Audits

The Energy Bureau has clear authority and regulatory discretion to require periodic audits as part of any final rate order or rider approval resolution, particularly when the funds in question support non-discretionary, legally mandated obligations such as public employee pensions. By embedding audit requirements within the tariff order itself, the Bureau creates an enforceable compliance mechanism that obligates PREPA, LUMA, or any other relevant party to provide transparent, documented evidence that all funds billed and collected under the Pension Fund Rider are being accurately calculated, properly allocated, and promptly transmitted to the Retirement System. The audit scope should be detailed and prescriptive, encompassing verification of the amounts billed on consumer invoices, actual collections received, reconciliation of discrepancies, timing and method of transmission to the pension fund, and final confirmation of application for the intended statutory purpose. This degree of specificity ensures that no procedural gaps allow for delay, diversion, or mismanagement of funds that are critical to the retirement security of thousands of beneficiaries.

To reinforce the integrity of this oversight function, the Bureau should go further and require the designation of an independent auditor, a third-party professional with specific experience in public pension finance or utility revenue administration. Independence is essential to avoid any appearance of conflict or impropriety, especially given the high stakes involved. The auditor's selection must be subject to prior approval by the Bureau, and the engagement terms should mandate unrestricted access to all relevant financial and operational records, including internal ledgers, reconciliation files, and fund transfer confirmations.

D. Notice requirements, obligating LUMA to inform SREAEE and the Bureau immediately upon detecting any deficiency in collection.

The rider mechanism must include a formal notification protocol requiring LUMA to notify both SREAEE and the Energy Bureau within a specified timeframe upon detecting any deficiency or shortfall in collections that could impair full pension funding. This obligation ensures that the parties are informed in real time and can evaluate the situation before it escalates. The notice should include the nature of the deficiency, its estimated impact, and proposed mitigation steps. By institutionalizing proactive communication, the Bureau reinforces the principle of fiduciary duty and ensures continuous monitoring of the rider's performance.

E. Oversight, compliance, and collections due diligence

As part of the measures necessary to enforce full compliance with all payment requirements owed to the Retirement System, the Bureau should exercise the full scope of its supervisory and coercive authority to prevent any deviation, deferral, or diversion of the collections indispensable to the timely payment of pensions. The Bureau should further direct LUMA, and any current or future operator of the electric system, to employ all reasonable and diligent collection efforts to protect revenue integrity, including (i) strengthening billings and collections for all customer classes; (ii) aggressively addressing unbilled and uncollected accounts; (iii) detecting, deterring, and prosecuting energy theft; and (iv) maximizing the efficiency and timeliness of FEMA reimbursement recovery. These directives are necessary to preserve a stable and predictable revenue stream and to safeguard the priority cash flow required to fund pension obligations without interruption.

VI. CONCLUSION

Given the critical importance of safeguarding pension obligations, the Energy Bureau must adopt a rate design that ensures the full and timely recovery of the \$307,475,422 approved for FY2026 pension funding. As emphasized in the Bureau's July 31, 2025 Order, these contributions represent a non-controversial, high-priority, and non-deferrable expense, grounded in statutory and actuarial obligations. Accordingly, no aspect of the rate design—whether volumetric or fixed—may operate to reduce or delay the pension amounts owed. The reconciliation provisions under Act 57-2014 cannot be used to alter these obligations post hoc, as they are not subject to collection variability or cash-flow performance.

The shift from a volumetric rider to a fixed customer charge may offer certain benefits in terms of revenue predictability, but it does not eliminate structural risks such as customer migration, billing inaccuracies, non-payment, energy theft, FEMA reimbursement delays, or broader economic contraction. Critically, the Bureau must also account for affordability and the practicability of the proposed rate level, because excessive increases can impair customers' ability (or willingness) to pay, accelerate delinquencies and arrearages, and thereby reduce net collections—creating precisely the kind of revenue shortfall that threatens the priority cash flow required for pension payments. For that reason, the rate and bill design must include safeguards that mitigate rate shock and prevent demand and collection erosion, so that expected revenues remain durable and sufficient to fund pensions without interruption.

Therefore, SREAAE urges the Bureau to adopt accountability and enforcement measures that include monthly reporting, audit rights, notification requirements upon detection of any deficiencies, and immediate corrective action when collections deviate from projections. In

addition, as part of the measures necessary to ensure full compliance with all payment requirements owed to the Retirement System, the Bureau should exercise the full scope of its supervisory and coercive authority to prevent any deviation, deferral, or diversion of the collections indispensable to the timely payment of pensions. The Bureau should further direct LUMA, and any current or future operator of the electric system, to employ all reasonable and diligent collection efforts to protect revenue integrity, including strengthening billings and collections for all customer classes; aggressively addressing unbilled and uncollected accounts; detecting, deterring, and pursuing energy theft; and maximizing the efficiency and timeliness of FEMA reimbursement recovery. These mechanisms are not only prudent but necessary to ensure financial integrity, transparency, and revenue adequacy in the administration of the Pension Fund Rider.

Ultimately, the Energy Bureau bears the legal and fiduciary responsibility to implement a rate design that preserves the full value and integrity of pension contributions. This includes ensuring that all billed amounts are collected and transmitted in accordance with the statutory mandate, that a formal revenue-guarantee or backstop mechanism exists to promptly cure any under-collection, and that no competing rider or revenue mechanism is permitted to compromise the primacy of pension funding. Only through rigorous oversight, meaningful enforcement, and clear regulatory safeguards can the Bureau fulfill its statutory obligations under Act 57-2014 and ensure the continued protection of the thousands of retirees who depend on this funding for their financial security.

WHEREFORE, the *Sistema de Retiro de los Empleados de la Autoridad de Energía Eléctrica*, through its undersigned legal representatives, **respectfully submits** the foregoing **Legal**

Brief on Rate Design, and requests that the same be **taken into consideration** by the Puerto Rico Energy Bureau as part of the record of these proceedings.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on February 9, 2026.

WE HEREBY CERTIFY that pursuant to the Hearing Examiner's Order dated December 22, 2025, that this Brief is part of the undersigned party's affirmative briefing in this proceeding and that the **total word count across all three affirmative briefs**, taken together, **does not exceed the maximum of 52,000 words** authorized by the Hearing Examiner.

WE HEREBY CERTIFY that this Motion was filed using the electronic filing system of this Energy Bureau and that electronic copies of this Notice will be sent to: Hearing Examiner, Scott Hempling, shempling@scotthemplinglaw.com ; and to the attorneys and advisers of the parties of record.

Parties and Intervenors:

mvalle@gmlex.net; alexis.rivera@prepa.pr.gov; 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; katuska.bolanos-lugo@us.dlapiper.com; Yahaira.delarosa@us.dlapiper.com; margarita.mercado@us.dlapiper.com; carolyn.clarkin@us.dlapiper.com; andrea.chambers@us.dlapiper.com; regulatory@genera-pr.com; legal@genera-pr.com; mvazquez@vvlawpr.com; gvilanova@vvlawpr.com; dbilloch@vvlawpr.com; ratecase@genera-pr.com; jfr@sbgblaw.com; hriviera@jrsp.pr.gov; gerardo_cosme@solartekpr.net; contratistas@jrsp.pr.gov; 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; lindsay.greenbaum@analysisgroup.com; harrison.holtz@analysisgroup.com; charles.wu@analysisgroup.com; Brian.Gorin@analysisgroup.com; Bhumika.Sharma@analysisgroup.com; Rachel.Anderson@analysisgroup.com; lramos@ramoscruzlegal.com; tlauria@whitecase.com; gkurtz@whitecase.com; ccolumbres@whitecase.com; isaac.glassman@whitecase.com; tmacwright@whitecase.com; jcunningham@whitecase.com; mshepherd@whitecase.com; jgreen@whitecase.com; hburgos@cabprlaw.com; dperez@cabprlaw.com; howard.hawkins@cwt.com; mark.ellenberg@cwt.com; casey.servais@cwt.com;

bill.natbony@cwt.com; zack.schrieber@cwt.com; thomas.curtin@cwt.com;
escalera@reichardescalera.com; riverac@reichardescalera.com;
susheelkirpalani@quinnemanuel.com; erickay@quinnemanuel.com;
dmonserrate@msglawpr.com; fgierbolini@msglawpr.com; rschell@msglawpr.com;
eric.brunstad@dechert.com; Stephen.zide@dechert.com; David.herman@dechert.com;
Isaac.Stevens@dechert.com; James.Moser@dechert.com; michael.doluisio@dechert.com;
Kayla.Yoon@dechert.com; mfb@tcm.law; lft@tcm.law; arosenberg@paulweiss.com;
pbrachman@paulweiss.com; swintner@paulweiss.com; kzeituni@paulweiss.com;
Julia@londoneconomics.com; Brian@londoneconomics.com; luke@londoneconomics.com;
juan@londoneconomics.com; mmc Gill@gibsondunn.com; LShelfer@gibsondunn.com;
jcasillas@cstlawpr.com; jnieves@cstlawpr.com; pedrojimenez@paulhastings.com;
ericstolze@paulhastings.com; arrivera@nuenergypr.com; apc@mcvpr.com;
ramonluisnieves@rlnlegal.com; kbailey@acciongroup.com;

PREB Consultants:

shempling@scotthemplinglaw.com; rsmithla@aol.com; guy@maxetaenergy.com;
jorge@maxetaenergy.com; rafael@maxetaenergy.com; dawn.bisdorf@gmail.com;
msdady@gmail.com; mcranston29@gmail.com; ahopkins@synapse-energy.com;
clane@synapse-energy.com; kbailey@acciongroup.com; zachary.ming@ethree.com;
PREBconsultants@acciongroup.com; carl.pechman@keylogic.com;
bernard.neenan@keylogic.com; tara.hamilton@ethree.com; aryeh.goldparker@ethree.com;
roger@maxetaenergy.com; Shadi@acciongroup.com; MWhited@synapse-energy.com;



Ortiz Mendoza & Farinacci Fernós,
LLC
Edificio Banco Cooperativo Plaza
623 Ponce de León Ave.
Suite 806-B
San Juan, PR 00917-4820
Tel: 787-963-0404

/s/ Rafael A. Ortiz-Mendoza
Rafael A. Ortiz-Mendoza, Esq.
USDC-PR: 229103
rafael.ortiz.mendoza@gmail.com

Co-counsel to SREAEE



72 Ave. Tito Castro
Edificio Marvesa, Suite 106
Ponce, Puerto Rico 00716
Tel: (787) 848-0666
Fax: (787) 841-1435
notificaciones@bufete-emmanuelli.com

s/ Lcdo. Rolando Emmanuelli Jiménez
Lcdo. Rolando Emmanuelli Jiménez
RUA: 8509 CA: 9755
rolando@emmanuelli.law

s/ Mónica Camuy-Natal
Lcda. Mónica Camuy-Natal
RUA: 23,170 CA: 21306
monica@emmanuelli.law

s/ Lcdo. Cristian Pozo Torres
Lcdo. Cristian Pozo Torres
RUA: 23348
cristian@emmanuelli.law