GOVERNMENT OF PUERTO RICO
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:** Joint Reply Brief in Connection with the Independent Consumer Protection Office's Objection to Hosting-Capacity Transmission and Distribution Upgrades

JOINT REPLY BRIEF IN CONNECTION WITH THE INDEPENDENT CONSUMER PROTECTION OFFICE'S OBJECTION TO HOSTING-CAPACITY TRANSMISSION AND DISTRIBUTION UPGRADES

TO THE HONORABLE ENERGY BUREAU:

COME NOW, the Solar and Energy Storage Association of Puerto Rico ("SESA") and Solar United Neighbors ("SUN") by and through undersigned counsel, and respectfully states as follows:

I. Introduction

On January 23, 2026, the Independent Consumer Protection Office ("OIPC") submitted its Legal Brief On Revenue Requirement. Therein, the OIPC asks the Bureau to exclude from LUMA's revenue requirement certain nonfederal capital investments identified in LUMA Energy, LLC and LUMA Energy ServCo, LLC's (collectively, "LUMA") long-term investment plan as "Distribution System Improvement (DER)"[1] and "DG

[1] See Exhibit 2.05, under 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 FY 2026, FY2027, and FY2028.

Interconnect & Net Metering,"[2] which OIPC contends are "strictly tied to enabling the interconnection of distributed generation systems"[3] and therefore must be paid by project proponents under Section 9 (c) Act 114 of August 16, 2007, 22 L.P.R.A. § 1011 *et seq.* ("Act 114-2007").

OIPC further argues that, because LUMA has not disaggregated these investments at the feeder or project level, their recovery through rates would be unlawful, arbitrary, and unsupported by substantial evidence.

That position materially misstates the evidentiary record and misreads Act 114-2007. Firstly, the cited testimony does not establish that the challenged investments are exclusively, or even primarily, project-specific feeder upgrades of the type contemplated by Act 114-2007. Rather, the record shows that these expenditures are broad, system-level transmission and distribution ("T&D") upgrades necessary to operate the grid safely and reliably given the cumulative impact of more than 150,000 already interconnected distributed generation customers. Secondly, OIPC's argument depends on equating the presence of feeder-related components within a larger portfolio of upgrades with a finding that the entire category constitutes individualized "feeder improvements" that must be assigned to particular project proponents. The transcript does not support that conclusion. Act 114-2007 assigns responsibility for discrete, applicant-specific feeder upgrades. It does not prohibit recovery of system-wide infrastructure that benefits the entire network.

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[2] See Exhibit 2.05, under 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 same three-year rate period.

[3] See item 69 on page 23 of the *Independent Consumer Protection Office's Legal Brief On Revenue Requirement*, dated January 23, 2026.

Most critically, OIPC's proposed remedy—categorical exclusion—would leave necessary reliability and safety upgrades without any recovery mechanism, directly conflicting with the operator's obligation to maintain safe and reliable service and with the Bureau's duty to set just and reasonable rates.

Additionally, the Legislature has now provided explicit guidance regarding how distributed-generation-related grid improvements are to be treated procedurally. Joint Resolution No. 5 of January 7, 2026 addresses the "costs related to modifications or improvements that may be required […]" and further provides that the "methodology for determining the allocation of such costs shall be established by the Energy Bureau through regulation." (Unofficial translation).[4] This directive makes clear that methodologies for allocating the costs of grid modifications or improvements must be established prospectively by regulation—not retroactively through exclusions in an individual rate case. OIPC's request would therefore place this Bureau in direct tension with express legislative instruction.

SESA respectfully submits that the Bureau should reject OIPC's request for exclusion, approve recovery of prudent and used-and-useful system upgrades, as requested by LUMA in this rate case, and address any broader, forward-looking allocation questions prospectively through rulemaking or policy proceedings.

II. DISCUSSION

[4] The original text in Spanish reads: "Los costos relacionados con modificaciones o mejoras, que puedan ser requeridas […] La metodología para determinar la distribución de costos se establecerá por el Negociado de Energía mediante reglamento."

A. THE TRANSCRIPT DOES NOT SUPPORT OIPC'S CLAIM THAT THE COSTS ARE "STRICTLY TIED" TO DER INTERCONNECTION

OIPC asserts that "the record reflects that these expenditures are strictly tied to enabling the interconnection of distributed generation systems." The transcript does not support that claim.

When questioned whether the improvements include feeders, LUMA witness Pedro Meléndez testified only that: "The improvement could include some level of changes to the feeders."[5]

He further explained that the portfolio covers multiple items identified in a broader list: "there's an ROI that has a list of the items in it… that would include."[6] Later, when pressed about feeder costs, he clarified:

> "MR. PEDRO VÁZQUEZ-MELÉNDEZ: I'm asking you because you said between the costs that are included in those $11.5 million for fiscal year 2026 includes feeders costs, right?
>
> MR. PEDRO MELÉNDEZ-MELÉNDEZ:
>
> Like I said, I answered that includes impacted assets. Just to make it easier for you, it includes feeder costs. It is very broad... When you're saying that, I'm struggling, right, because it's a broad statement."[7]

[5] Evidentiary Hearing Transcript, November 13, 2025, page 380.
[6] *Id.*
[7] *Id.*, pages 382 to 383

Describing the category as “very broad” is inconsistent with OIPC’s characterization that the costs are “strictly tied” to DER interconnection. Moreover, Mr. Meléndez expressly distinguished between discrete interconnection “projects” and the system-wide impacts at issue here: “The proponent of the project, which is correct when it's a project. In this, we're not talking about a project. We're talking about interconnection of DER, which is automatic, according to the law.”[8]

He also testified that the identified upgrades arise from conditions created by already-connected customers: “already identified issues of the over 150,000 customers that have been connected”,[9] “we're adding about 40,000 of these a year… we're going to continue having to do these repairs unless there is another mechanism to recover the cost.”[10]

These statements describe cumulative, system-level reinforcement—not project-specific feeder work assignable to an individual proponent. Finally, when asked whether the amounts violate Act 114-2007, Mr. Meléndez declined to provide legal conclusions, explaining that allocation is a regulatory matter: “that’s more of a regulatory question.”[11] Thus, the record does not establish noncompliance with Act 114-2007. OIPC is supplying that legal conclusion itself.

Moreover, the evidentiary record demonstrates that the challenged investments are not tied to any discrete interconnection applicant. Rather, they reflect upgrades required

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[8] *Id.*, on page 380.
[9] *Id.*, on page 384.
[10] *Id.*
[11] *Id.*

because of the cumulative level of distributed generation already interconnected to the system.

The direct testimony of Andrew Smith, Chief Financial Officer of LUMA, identifies approximately $51 million in upgrades, including roughly $40 million in distribution system improvements and $11 million in transmission system improvements, specifically described as upgrades required to accommodate increase in net-metering ("NEM") customers.[12]

Similarly, in response to SESA's interrogatories, LUMA explained that the rapid growth of net metering participation, more than three thousand new enrollments per month, has created significant system upgrade needs that were not contemplated in prior engineering budgets and that, once customers are already interconnected, there is no practical or enforceable mechanism to recover such network reinforcement costs from individual customers after the fact. For that reason, LUMA seeks recovery of these upgrades through its non-federal capital plan.[13]

These descriptions are consistent with system-wide hosting capacity and reliability investments, not individualized interconnection facilities. Once upgrades are necessary to maintain feeder or transmission reliability for thousands of existing customers, the resulting assets serve the entire network. They provide voltage stability, protection coordination, thermal capacity, and operational safety for all users of the system.

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[12] See Exhibit 2.0, Direct Testimony of Andrew Smith, dated July 2, 2025 as amended on October 22, 2025, on pages 14-15, Table 5-4.
[13] *Id.*, on page 14.

B. ACT 114-2007 DOES NOT PROHIBIT RECOVERY OF SYSTEM-WIDE INFRASTRUCTURE COSTS

Section 9(c) of Act 114-2007, 22 L.P.R.A. § 1019, provides that where a feeder exceeds capacity, "the necessary improvements… shall be defrayed by the requesting company." That language addresses discrete, applicant-specific interconnection upgrades, such as a service transformer upgrade nearest to a solar customer's house.

It does not address network-wide reinforcement required to maintain reliability after thousands of automatic interconnections. Nothing in Act 114-2007 addresses, much less prohibits, recovery of general system infrastructure needed to operate a grid that already serves thousands of interconnected DG systems. The statute does not require after-the-fact billing of customers who are already interconnected, nor does it mandate that the operator absorb system-wide reliability costs without recovery.

OIPC's reading would leave necessary upgrades without any recovery source. Statutes should not be interpreted to create impracticable or reliability-threatening outcomes. The reasonable construction is that individualized interconnection facilities may be assigned to the applicant, while broader hosting capacity and reliability upgrades remain shared system costs.

C. THE BUREAU'S STATUTORY DUTY IS TO SET JUST AND REASONABLE RATES AND ALLOW RECOVERY OF PRUDENT, USED-AND-USEFUL COSTS

The Bureau's task here is straightforward: determine whether the investments are prudent, necessary, and used and useful. The record demonstrates they are necessary to safely operate the network given existing DG penetration.[14]

OIPC's approach would require the Bureau to deny recovery of assets that are concededly necessary for system safety simply because they relate in part to DER penetration. That outcome would conflict with the Bureau's core ratemaking duty.

This rate case is not the forum for deciding broad, forward-looking policy questions about how future DER-related costs should be allocated across customer classes. Those questions are appropriately addressed through rulemaking or separate policy proceedings where the Bureau can adopt prospective standards. Attempting to resolve such issues retroactively in this case would delay needed infrastructure and exceed the proper scope of this docket.

This procedural separation between ratemaking and prospective policy design is now expressly reflected in Joint Resolution No. 5 (2026), § 2, which, as noted above, provides that the "methodology for determining the allocation of such costs shall be established by the Energy Bureau through regulation." Accordingly, even if the Bureau determines that a subset of grid modifications or improvements should be prospectively allocated in a particular manner, that methodology must be established through regulation, not by disallowing prudent, used-and-useful system upgrades in this case.

D. FEEDER-LEVEL DISAGGREGATION IS NOT REQUIRED

[14] *Id.*

OIPC's demand for feeder-level or project-level disaggregation has no basis in Act 114-2007 or general ratemaking law.

Distribution assets are inherently multi-driver. Reconductoring, protection upgrades, and substation improvements are commonly undertaken for overlapping reasons, including reliability, safety, resilience, load growth, and DER penetration. These drivers cannot be separated with mathematical precision, nor does the law require such forensic attribution.

Once an upgrade is necessary to operate the system safely for all users, it becomes a shared system asset. The proper inquiry is prudence and necessity, not exclusive causation.

Requiring project-by-project segregation would impose an impracticable standard that would effectively bar recovery of legitimate distribution investments and discourage timely reliability improvements.

E. APPROVING RECOVERY NOW WHILE ADDRESSING FUTURE ALLOCATION POLICY THROUGH RULEMAKING IS THE MOST LEGALLY SOUND AND ADMINISTRATIVELY APPROPRIATE COURSE

Joint Resolution No. 5 (2026), § 2, confirms that the appropriate mechanism for establishing methodologies to allocate Costs related to modifications or improvements is rulemaking by this Bureau, not retroactive adjudication within a rate proceeding. SESA respectfully submits that the Bureau can address OIPC's concerns without jeopardizing reliability by separating present recovery from future policy, by including the approximately $51 million in prudent system upgrades in the revenue requirement now,

while expressly reserving for a separate rulemaking or policy proceeding any broader questions concerning prospective allocation of DER-related system costs.

This approach properly separates two distinct functions. Ratemaking ensures the utility can recover prudent investments needed today. Rulemaking establishes forward-looking policy for tomorrow.

Nothing in Act 114-2007 requires the Bureau to settle those broader policy questions here as a precondition to approving necessary infrastructure, and doing so would not be prudent during the rate case.

SESA does not advocate shifting individualized interconnection or customer-specific expenses to general rates. The testimony of E. Kyle Datta explains that customer-related costs should be limited to those necessary to enable connection, including meters, billing, account management, and service drops, and warns against assigning broader distribution assets or overhead to customers under that label.[15]

In his testimony, Dr. Ahmad Faruqui similarly states that fixed charges are intended to recover only metering, billing, customer care, and in some cases a portion of the line to the nearest transformer, and cannot be used to recover all fixed costs of the utility.[16]

These principles reinforce that individualized interconnection facilities may properly be assigned to connecting customers, while feeder, substation, and

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[15] Exhibit 55.0, E. Kyle Datta Direct Testimony, page 5 lines 6-21; page 26 lines 11-16; page 27 lines 19-26; page 28 lines 4-10

[16] Exhibit 56.0, Dr. Amhad Faruqui Direct Testimony, page 11 lines 199-201; page 12 lines 205-211. See also Exhibit 68, Rebuttal Testimony by Dr. Amhad Faruqui, page 1 lines 18-22.

transmission reinforcements that enhance overall system hosting capacity are shared system assets appropriately recovered through rates.

III. CONCLUSION

OIPC's request for categorical exclusion is unsupported by Act 114-2007, inconsistent with the record, and would leave necessary reliability investments without recovery. The record shows that the challenged expenditures are broad, system-level upgrades necessary to maintain safe and reliable service. They are not discrete interconnection projects subject to Act 114's applicant-payment provision.

WHEREFORE, SESA and SUN respectfully request that the Bureau deny OIPC's request for categorical exclusion, approve inclusion of the prudent hosting capacity and reliability upgrades in LUMA's revenue requirement, and address any broader DER-related allocation questions prospectively through rulemaking.

RESPECTFULLY submitted today, February 9, 2026.

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

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

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