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

In re: PUERTO RICO ELECTRIC POWER AUTHORITY RATE REVIEW	Case. No.: NEPR-AP-2023-0003

PREPA'S REPLY BRIEF ON RATE DESIGN

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IN RE: PUERTO RICO ELECTRIC POWER AUTHORITY RATE REVIEW	**CASE NO.:** NEPR-AP-2023-0003 **SUBJECT**: PREPA's Reply Brief on Rate Design

PREPA'S REPLY BRIEF ON RATE DESIGN[1]

TO THE HONORABLE ENERGY BUREAU,

COMES NOW, the Puerto Rico Electric Power Authority ("PREPA"), through its undersigned legal counsel, and, very respectfully, states and prays as follows:

I. INTRODUCTION

PREPA's Reply Brief on Rate Design addresses the arguments advanced by LUMA Energy, LLC, and LUMA Energy ServCo, LLC (jointly "LUMA"), and intervenors National Public Finance Guarantee Corporation, GoldenTree Asset Management LP, Syncora Guarantee, Inc., Assured Guaranty Inc., the Majority Member PREPA Ad Hoc Group, and the PREPA Ad Hoc Group[2] (collectively, the "Bondholders") in support of adopting new rate mechanisms in this proceeding. For the reasons set forth below, LUMA's proposed Outage Recovery Rider and the Bondholders' proposed Legacy Debt Rider should be denied as presented.

[1] The filing of this brief is made without waiver of, and expressly subject to, PREPA's arguments set forth in its *Motion for Reconsideration and in Compliance with Resolution and Order of February 9, 2026*, filed on February 21, 2026. PREPA expressly preserves all rights, positions, and objections asserted therein.

[2] Per the Bondholders, the members of the PREPA Ad Hoc Group are listed in the *Ninth Verified Statement of the PREPA Ad Hoc Group Pursuant to Bankruptcy Rule 2019*, ECF No. 5797, filed in *In re Fin. Oversight & Mgmt. Bd. for Puerto Rico*, Case No. 17-04780-LTS (D.P.R. Aug. 28, 2025).

Alternatively, the consideration of the Bondholders' proposed Legacy Debt Rider should be deferred until the legal and evidentiary predicates required by Puerto Rico law and PROMESA are satisfied.

As will be explained in the ensuing paragraphs, LUMA's request for an Outage Recovery Rider rests heavily on asserted liquidity constraints. However, any determination grounded on that evidence is fundamentally compromised by the manner in which the evidentiary record on liquidity was developed. During the evidentiary hearings, LUMA was permitted to elaborate extensively on its claimed liquidity pressures, including through live questioning by the Hearing Examiner, Commissioners of the Energy Bureau of the Puerto Rico Service Regulatory Board ("Energy Bureau"), and its own counsel. In contrast, PREPA was restricted in its ability to fully confront, contextualize, and rebut those claims during the same evidentiary hearings. Improper limitations were imposed on PREPA's testimony in response to questions from the Energy Bureau and the Hearing Examiner, on its cross examination of LUMA's witnesses, and on its ability to respond to questions from its own counsel on redirect examination. In effect, PREPA's statutory right to present evidence, particularly testimonial evidence, was substantially and materially curtailed.

The result is not a peripheral procedural irregularity; it is a material distortion of the record on a central issue in this case. Section 3.13(b) of the Government of Puerto Rico Uniform Administrative Procedure Act, Act No. 38 of June 30, 2017, as amended ("LPAU"), requires that all parties be afforded the necessary latitude for

full disclosure of the facts, the opportunity to present evidence and argument, conduct cross examination, and submit rebuttal evidence during the evidentiary hearing itself. Puerto Rico case law likewise makes clear that administrative proceedings must be conducted in a fundamentally fair and equitable manner, and that rate determinations, like any other formal administrative adjudication, must rest on a reliable and complete evidentiary foundation. When one party to the rate proceeding is afforded broad latitude to develop and reinforce its evidentiary theory in open hearing, while another party to the same proceeding is materially constrained from meaningfully responding, cross-examining, and presenting rebuttal evidence, the resulting record cannot satisfy those legal standards of fairness and reliability.

Here, the manner in which the proceeding was handled undermined its reliability and rendered the development of the liquidity record fundamentally unfair and inequitable. The asymmetrical treatment during the evidentiary hearings prevented full disclosure of the relevant facts concerning the causes and magnitude of the asserted liquidity constraints. A rate mechanism premised on that incomplete and imbalanced record would not reflect the just and equitable process required by law, and could not render just and reasonable rates. For that reason alone, approval of an Outage Recovery Rider based on the current evidentiary record would be legally improper.

Even setting aside these threshold due process concerns, LUMA's request to recover past outage related expenditures must be denied. Under the Puerto

Rico Energy Transformation and RELIEF Act, Act No. 57 of May 27, 2014, as amended, and the Puerto Rico Energy Public Policy Act, Act No. 17 of April 11, 2019, as amended, LUMA bears the burden of demonstrating that any cost included in rates is just, reasonable, and prudently incurred. The record does not contain the documentation or contemporaneous regulatory scrutiny necessary to support retroactive recovery of historical expenditures incurred outside the approved budgetary framework and without prior authorization. On this record, LUMA has not met its burden.

With respect to a prospective mechanism, PREPA does not oppose in principle the creation of a properly structured, forward looking rider to address extraordinary outage related costs. However, any such mechanism must incorporate clear guardrails, including advance notice, regulatory preauthorization, detailed reporting, objective eligibility criteria, reconciliation procedures, and a formal prudence review by the Energy Bureau. Without these safeguards, the proposed rider would operate as an open-ended pass-through that shifts operational risk to ratepayers and weakens accountability. As proposed, it does not yet provide the protections required to ensure that rates remain just and reasonable.

On their part, the Bondholders ask the Energy Bureau to adopt a placeholder Legacy Debt Rider ("LDR") that has no amount, no structure, no allocation methodology, and no practical purpose. That request should be denied. The Energy Bureau's own expert consultants recommend deferring any

such rider until the Title III court determines the obligation, and the Energy Bureau's Debt Order[3] barred testimony or cross-examination on legacy debt amounts or methodologies in this proceeding. Any consideration of legacy debt recovery must await a confirmed Title III plan of adjustment that defines PREPA's obligations. Until then, PROMESA's framework, the status of PREPA's Title III case, and the certified PREPA Fiscal Plan preclude rate recovery for legacy debt. Adopting a rider now - even at zero - would create legal and practical friction with federal requirements and the certified PREPA Fiscal Plan without advancing any lawful purpose.

The Bondholders advance a range of rationales for acting now, but none survives scrutiny. Their reading of PROMESA § 314(b)(6) misplaces the feasibility determination within this rate case, rather than within the Title III case where Congress mandated it be adjudicated. Their claims of administrative efficiency are speculative, unquantified, and unsupported by evidence specific to Puerto Rico. The record contains no evidentiary foundation for any design choices a legacy debt mechanism would require, and labeling an empty tariff sheet a "placeholder" does not cure that defect.

Nor do analogies to other jurisdictions or programs help. The examples the Bondholders cite arose under different statutory mandates and without the constraints of PROMESA or a certified fiscal plan. And even the utility-bankruptcy experience Bondholders cite shows regulators prudently wait for the outcome of

[3] *See infra* n. 31.

the court process before addressing legacy debt obligations. The Bondholders' Energy Efficiency Rider analogy also fails. Here there is no legislative mandate, no developed evidentiary record, and the scale and complexity of the potential legacy debt recovery are orders of magnitude greater. Lastly, the evidentiary record, including testimony elicited in response to Hearing Examiner remarks, underscores that any "placeholder" would be a piece of paper to be rewritten once facts exist. In the interim, a nominal LDR would risk confusing stakeholders, sending unreliable signals to capital markets, and alarming ratepayers already facing substantial potential increases - without accelerating lawful collections.

Only if the Title III process provides for legacy debt recovery through rates, should the Energy Bureau address a legacy debt rider. Once a confirmed Title III plan of adjustment defines the obligation, the Energy Bureau may address it through a subsequent proceeding, grounded in an evidentiary record, consistent with PROMESA, the certified Fiscal Plan, Title III Court orders, and Puerto Rico law.

II. DISCUSSION

A. The Outage Recovery Rider: Past Costs and Future Costs

LUMA's proposal seeks approval of an Outage Recovery Rider that would permit recovery of both historical outage-related expenditures and prospective costs associated with future events. Before addressing those components, however, PREPA first addresses a threshold argument concerning the legal soundness and fundamental fairness of the Rate Case proceeding itself, particularly as it relates to the development of a complete evidentiary record on

the root causes of PREPA's liquidity constraints, including the factors affecting its ability to replenish, among other accounts, LUMA's Outage Event Reserve Account. The integrity of that record is essential to any determination regarding the necessity and structure of the proposed rider. PREPA will then address, in turn, LUMA's request to recover past costs and its separate proposal to recover future outage-related costs through the rider.

i. Threshold Due Process Concerns Arising from the Disparate Development of the Evidentiary Record on Liquidity During the Evidentiary Hearings

In its Rate Design Brief, LUMA relies heavily on testimony asserting that an outage event recovery rider is necessary to protect the utility's liquidity and financial stability. Citing Mr. Figueroa's testimony, LUMA argues that a dedicated rider would create a mechanism to recover both past and future outage costs, prevent diversion of funds from planned activities, and shield operations from the effects of depleted reserves. LUMA further contends that the rider should apply broadly to all major outages exceeding the reserve balance and is ultimately justified as a response to liquidity pressures affecting its operations.

PREPA respectfully submits that any determination grounded on LUMA's asserted liquidity concerns is fundamentally compromised by the manner in which the evidentiary record was developed, specifically during the evidentiary hearings in this proceeding. The record on liquidity is materially incomplete and procedurally tainted due to the disparate treatment afforded to the parties during those hearings. While LUMA was permitted to present extensive live

testimony regarding the causes and operational impacts of its alleged liquidity constraints, PREPA was not afforded a comparable opportunity to confront, rebut, or contextualize those claims in the same forum.

During the evidentiary hearings, LUMA was allowed to elaborate on its liquidity narrative in response to questioning by the Commissioners, the Hearing Examiner, and its own counsel on redirect examination. In contrast, when PREPA sought to address those assertions, many of which were raised or expanded upon during the live hearings, its witnesses were restricted from fully testifying on the subject, despite having been previously authorized by the Hearing Examiner to appear and provide testimony. PREPA's ability to cross-examine LUMA on its liquidity claims was also curtailed by the Hearing Examiner despite it being a statutory right established by LPAU, and its witnesses were limited in responding to redirect questioning from PREPA's counsel on that very topic as the Hearing Examiner himself precluded PREPA witnesses from answering the questions posed by PREPA's counsel in redirect.[4] The disparate treatment between LUMA and PREPA during the evidentiary hearings was pronounced and consequential.[5]

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[4] *See* Transcript of Evidentiary Hearing Transcript ("Tr. of Evid. Hearing"), December 5, 2025, particularly the afternoon portion.

[5] *See* Tr. of Evid. Hearing, statement of Mr. Scott Hempling, Esq., wherein the Hearing Examiner expressly limited the scope of the panel and instructed PREPA's witnesses as follows: "I do not want to hear anything that even smells like an accusation about anything about anybody's conduct in the past. … Because that is not what this conversation is about. … This conversation is about, at this point in the conversation, methods of signaling a need, methods of ensuring that that need is justified, and methods of after-the-fact auditing that the spending was conducted consistent with efficiency and competence. But I do not want to hear … anything about somebody's suspicions about the past. That is some other fight to have in some other form at some other time." In light of this express limitation—which confined the testimony of PREPA's witnesses (and not LUMA's) to forward-looking considerations concerning implementation mechanisms and future oversight—PREPA was precluded from addressing past actions by LUMA, even if relevant to the asserted liquidity concerns. Accordingly, where the Hearing Examiner explicitly circumscribed the proceeding to

This imbalance is not a peripheral procedural matter; it strikes at the core of adjudicatory fairness and directly violates the requirements that must be satisfied during the evidentiary hearing itself under Section 3.13(b) of the LPAU. 3 L.P.R.A. § 9653(b). The statute expressly provides that the presiding officer, "within a framework of relative informality, shall offer all parties the necessary latitude for a full disclosure of all facts and issues in controversy, the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as may have been restricted or limited by stipulations at the pre-hearing conference." These are not abstract procedural aspirations; they are mandatory safeguards that must be afforded in the course of the evidentiary hearing, where the official record is created and the factual basis for the agency's determination is established.

The evidentiary hearing is the principal vehicle in which these statutory guarantees are effectuated.[6] When one party is permitted to fully develop its theory of the case in open hearing by responding to questioning and elaborating

prospective matters, LUMA's request to recover past costs falls outside the defined scope of the case and must be denied on its face.

[6] In this case, through the "Hearing Examiner's Order on Agenda for September 4 Conference, Covering Revenue Requirement Questions, Hearing Procedures, and Related Matters," issued on September 3, 2025, the Hearing Examiner determined that the evidentiary hearings would proceed in panel format and that no live direct examination would be permitted. This determination was made after the parties had already submitted their pre-filed testimonies, and the Order and other subsequent directives further provided that such pre-filed testimony would constitute the witnesses' direct examination for purposes of the hearings. Moreover, the decision to deem the pre-filed testimony as direct testimony for purposes of the Rate Case was made in September 2025, after the applicants had submitted their pre-filed testimonies in July 2025. As is evident, the applicable procedural rules were not established through duly promulgated regulations, but rather through orders issued during the course of the proceeding and, in certain instances, applied with retroactive effect to the detriment of the applicants. No Energy Bureau regulation expressly establishes this procedure, and the LPAU, does not contemplate a pre-filed direct testimony format, but instead provides that evidence is to be presented at the evidentiary hearing.

on its claims, while the other party is constrained from meaningfully responding, cross-examining,[7] or presenting rebuttal evidence on the same issues, the "full disclosure of all facts and issues in controversy" required by Section 3.13(b) and the "just and equitable" standard required by the Puerto Rico Supreme Court are not achieved.[8] A rate case, whether framed in terms of revenue requirement or rate design, must rest on a complete and balanced evidentiary foundation. Here, the asymmetry that occurred during the evidentiary hearings prevented the

[7] The Hearing Examiner deprived PREPA of its statutory right to cross-examine through the "Hearing Examiner's Order Clarifying PREPA's Role in the Rate Case Evidentiary Hearing," issued on July 21, 2025, in which he concluded, *motu proprio*, that PREPA could not cross-examine LUMA because cross-examination is reserved for "adversaries." On August 11, 2025, PREPA filed a Motion for Reconsideration. Pursuant to the Resolution and Order of February 12, 2025, that motion was submitted for determination by the Energy Bureau. In yet another procedural anomaly, however, the Hearing Examiner, rather than the Energy Bureau, denied PREPA's Motion for Reconsideration through the "Hearing Examiner's Order Denying PREPA's Motion for Reconsideration," issued on August 12, 2025.

The Hearing Examiner's assertion that cross-examination is "inherently adversarial" finds no support in the legal framework. The procedural and evidentiary rules recognize the right of all parties, simply by virtue of being parties, to cross-examine witnesses, regardless of whether a formal adversarial relationship exists. Rule 604 of Evidence provides that every witness shall be subject to examination by all parties present, while Rule 607(B) defines cross-examination as the first examination conducted by a party other than the one who called the witness. This explains why, as a matter of routine, co-defendants or parties aligned in certain respects cross-examine witnesses presented by others, even in the absence of a direct controversy between them. It bears noting that the distinguished evidence scholar McCormick explains that the right to cross-examine is not only fundamental to the parties, but is also an essential tool to ensure complete and accurate testimony. 1 McCormick on Evidence § 19 (9th ed.) ("for two centuries, common law judges and lawyers have regarded the opportunity for cross-examination as an essential safeguard of the accuracy and completeness of testimony") (citations omitted).

The Hearing Examiner's conclusion that the T&D OMA prevents PREPA from cross-examining LUMA rests on an incomplete and erroneous reading of the contract. The T&D OMA does not impose upon PREPA an absolute duty to support LUMA's rate proposals. To the contrary, Section 5.6(g) expressly conditions such support on the proposed rates being "reasonable and customary." The exercise of cross-examination is precisely the mechanism through which PREPA may fulfill both its contractual duty to assess the reasonableness of proposed rates and its statutory obligations to protect the public interest.

[8] The protections of due process of law apply, in their procedural dimension, to the actions of administrative agencies. See Almonte et al. v. Brito, 156 D.P.R. 475, 481 (2002); Rivera Rodríguez & Co. v. Lee Stowell, etc., 133 D.P.R. 881 (1993). Although there is some flexibility in the application of due process in the administrative context, see Román Ortiz v. Office of Permit Management, 203 D.P.R. 947, 954 (2020); López Vives v. Puerto Rico Police, 118 D.P.R. 219, 230–31 (1987); Pérez Ríos v. Hull Dobbs, 107 D.P.R. 834, 841 (1978), the procedure must at all times be "a fair and equitable proceeding." Almonte et al., 156 D.P.R., at 481. "[T]he administrative adjudicative procedure must be fair at all its stages and must adhere to the minimum guarantees of due process of law, in accordance with the interest involved and the nature of the proceeding at issue." Almonte et al., 156 D.P.R., at 481.

development of such a foundation and resulted in a record that does not reflect the fair and comprehensive disclosure mandated by the LPAU.

The Energy Bureau's statutory mandate is not limited to procedural regularity; it must ensure that all rates and rate mechanisms are just and reasonable under Act 57-2014 and Act 17-2019. A determination that rests on an incomplete and procedurally imbalanced evidentiary record cannot, as a matter of law, satisfy that mandate. Where the factual predicate for a proposed rider has not been developed through the full and fair disclosure required by Section 3.13(b) of the LPAU, the Energy Bureau lacks a reliable foundation upon which to conclude that the resulting rate is just, reasonable, and in the public interest.

The resulting prejudice extends beyond PREPA as a litigant; it directly affects ratepayers. By limiting PREPA's ability during the evidentiary hearings to present testimony concerning the root causes of the asserted liquidity constraints, the record was deprived of material evidence bearing on whether additional rate recovery is warranted. PREPA sought to demonstrate, among other matters, that liquidity pressures are linked to LUMA's failure to timely secure federal reimbursements and Working Capital Advances, mechanisms successfully utilized by PREPA and Genera, as well as to LUMA's extensive use of the Outage Event Reserve Account without sufficient oversight or transparent reporting to either the P3A or the Energy Bureau to evaluate the prudence or propriety of the expenses

at issue. Because the evidentiary hearings did not permit full development of this testimony, the record now reflects a one-sided presentation of the issue.

Compounding this concern is the fact that the Energy Bureau had already initiated a separate investigation into Puerto Rico's electric system cash flow and cash position concerns in Case No. NEPR-IN-2024-0004, titled *In re: Puerto Rico's Electric System Cash Flow and Cash Position Concerns*, on November 8, 2024, prior to the evidentiary hearings in this Rate Case and even prior to the filing of the Rate Case itself. Although the Hearing Examiner indicated that liquidity issues would be addressed in a separate proceeding, that investigation has been stayed since February 2025.[9] Approving new rates or authorizing new riders premised on alleged liquidity constraints, while the evidentiary record on those constraints was restricted during the hearings and the dedicated investigative docket remains unresolved, undermines the factual and legal foundation required to determine just and reasonable rates and charges.

[9] Even more troubling, PREPA has recently learned that, in Case No. NEPR IN 2024 0004, *In re: Puerto Rico's Electric System Cash Flow and Cash Position Concerns*, which is presided over by the same Hearing Examiner as this Rate Case, the Hearing Examiner reportedly transmitted a document to the Energy Bureau that was not served on PREPA, and it remains unclear whether it was served on any other party. That document does not appear in the public docket of the case. The unexplained stay of that investigative proceeding, combined with the apparent transmittal of a document to the Energy Bureau that is not reflected in the docket and was not served on PREPA, and potentially not served on other parties, raises serious concerns regarding transparency and due process.

These concerns are further compounded by the Energy Bureau's and the Hearing Examiner's decision in this Rate Case to permit LUMA to present evidence supporting its claim that PREPA faces liquidity constraints warranting a rate increase or the adoption of a new rider, while simultaneously precluding PREPA from presenting evidence that any such liquidity issues are attributable to LUMA's past actions. Such actions include its underperformance in securing federal funds and its expenditure of hundreds of millions of dollars under asserted emergency conditions without adequate oversight. Had PREPA been permitted to present this evidence, it would have demonstrated that the alleged liquidity constraints were overstated, avoidable, or self-inflicted, which would have reduced or potentially eliminated the need for a rate increase or the adoption of a new rider. Taken together, these circumstances significantly undermine confidence in the fairness and reliability of this proceeding.

Under these circumstances, any determination, whether concerning rate design or revenue requirement, premised on LUMA's asserted liquidity challenges risks resting on an incomplete and procedurally imbalanced record. The disparate treatment that occurred during the evidentiary hearings irreparably affected the development of the evidence on this central issue and, in doing so, compromised the fairness and reliability of the proceeding as a whole. In allowing the foregoing, the Hearing Examiner and the Energy Bureau violated both the statutory due process required under the LPAU, and the transparency mandated required by the Puerto Rico Energy Public Policy Act, Act. No. 17 of April 11, 2019, as amended and Puerto Rico Energy Transformation and RELIEF Act, Act No. 57 of May 27, 2014, as amended

ii. LUMA's Request to Recover Past Costs Must Be Denied

LUMA expressly seeks to recover past outage-related costs under the guise of "reimbursement" or "reserve replenishment." That request is legally unsustainable on the present record.

The Puerto Rico Energy Transformation and RELIEF Act (Act No. 57-2014), Act No. 57 of May 27, 2014, as amended, and the Puerto Rico Energy Public Policy Act, Act. No. 17 of April 11, 2019, as amended, require that the Energy Bureau ensure that energy costs are just and reasonable. This statutory mandate applies to any cost included in rates, whether embedded in base rates or imposed through a rider. The burden rests squarely on LUMA to demonstrate that the specific costs it seeks to recover are just, reasonable, and prudently incurred.

LUMA has not met that burden with respect to the past costs at issue. The record is fundamentally devoid of the evidence necessary for the Energy Bureau to determine whether these historical expenditures were prudently incurred and reasonable in amount. LUMA has not provided detailed documentation demonstrating the necessity of the expenditures, the reasonableness of the pricing, the procurement processes followed, the alternatives evaluated, or the mitigation efforts undertaken. Nor has it sufficiently established whether and to what extent these past costs were offset by insurance recoveries, FEMA reimbursements, or other funding sources.

The deficiency is particularly acute because LUMA seeks recovery of costs that were already incurred and paid with ratepayer funds. These are not projected expenses subject to prospective regulatory scrutiny; they are historical expenditures for which recovery is now sought after the fact. If LUMA believed that extraordinary circumstances necessitated expenditures beyond its approved revenue requirement, the appropriate and lawful course would have been to seek timely regulatory guidance or a budget modification at the time the need arose. Instead, LUMA unilaterally incurred and absorbed the expenditures and now attempts to obtain retroactive recovery through a rider, without having developed a contemporaneous evidentiary record capable of supporting a finding that such costs were prudent, reasonable, and necessary.

Under the applicable legal framework, the Energy Bureau approves annual budgets, and both PREPA and the private operators are bound to operate within

those approved parameters unless and until an authorized modification is granted. LUMA nevertheless elected to expend funds outside its approved budget and now characterizes those expenditures as subject to "reimbursement," despite the absence of prior regulatory approval or oversight. Compounding this deficiency, the record contains no evidence that these historical outage-related costs were timely disclosed to or reviewed by the P3A in accordance with the contractual and governance structure. In short, the expenditures were incurred outside the established regulatory and oversight framework. On this record, LUMA has not met its burden to demonstrate that these past costs were lawfully incurred, prudently managed, and properly subject to recovery. Its request for recovery of historical outage-related costs should therefore be denied.

iii. LUMA's Request to Cover Future Costs

PREPA addresses separately LUMA's proposal to use the Outage Recovery Rider as a mechanism for the recovery of future outage-related costs.

Unlike the historical "reimbursement" requested by LUMA, the proposal to establish a prospective funding mechanism warrants a different analysis. PREPA does not oppose, as a matter of principle, the creation of a properly structured and transparently administered mechanism to address extraordinary outage-related costs. Indeed, the record demonstrates that the absence of a defined and approved funding mechanism has created operational and regulatory tension that should be corrected going forward. However, any such mechanism

must be designed with clear guardrails and safeguards to ensure that all costs recovered through the rider are prudent, just, reasonable, and subject to meaningful regulatory oversight.

As PREPA established in its Reply Brief on Revenue Requirement, the current funding deficiency associated with the Outage Event Reserve Account ("OERA") does not stem from any failure by PREPA to meet its contractual obligations. The record reflects that the OERA was funded with $30 million at inception and replenished twice with the same amount, for a total of $90 million, before being fully drawn down by LUMA. PREPA satisfied its contractual funding obligations. The shortfall identified by LUMA arose from its failure to timely seek and obtain an Energy Bureau-approved budgetary mechanism authorizing further collections and allocations to the OERA, not from any nonperformance by PREPA. Both PREPA's witnesses and LUMA's own Chief Financial Officer acknowledged on the record that there is currently no rate mechanism through which additional funds may be lawfully directed to the OERA. Thus, the issue has been caused by LUMA's failure to timely seek and secure an approved funding mechanism within rates.

In that context, PREPA recognizes that a forward-looking rider --if carefully structured--, could provide the lawful mechanism that is currently lacking. However, the experience reflected in the record underscores the necessity of strict oversight. As PREPA demonstrated, more than $300 million in outage event costs had not been previously budgeted or reported to the Energy Bureau. PREPA witness Lucas Porter identified accountability and reporting of outage event costs

as a material concern and emphasized the need to create a structure that includes preapproval, reporting, oversight, and control of how ratepayer funds are expended. These concerns are not theoretical; they are grounded in the evidentiary record of how outage-related expenditures have been incurred and presented to date.

Accordingly, if the Energy Bureau determines that an Outage Recovery Rider is appropriate on a prospective basis, it must incorporate robust safeguards. At a minimum, the mechanism should require advance notice by LUMA or Genera of anticipated outage event costs; preliminary review and authorization by the Energy Bureau prior to the use of rider funds; detailed, periodic reporting of expenditures; and a final prudence review to determine whether the costs actually incurred were reasonable and necessary, or disallowed costs under the respective OMAs. The rider should also include clearly defined eligibility criteria, objective thresholds for qualifying events, spending caps, and reconciliation procedures to prevent over-collection and to ensure that only properly supported costs are recovered from ratepayers. The Energy Bureau should adopt a formal regulation, pursuant to the rulemaking requirements of the LPAU, establishing clear, binding criteria and procedural requirements that private operators must satisfy in order to activate and utilize the rider.

Without such guardrails, the rider risks becoming an open-ended pass-through that shifts operational risk entirely to ratepayers and diminishes the incentives embedded in the existing regulatory structure. With appropriate

oversight and accountability measures, however, a prospective mechanism could resolve the acknowledged funding gap while preserving the Energy Bureau's statutory mandate to ensure that rates remain just and reasonable.

For these reasons, PREPA submits that the Outage Recovery Rider, as currently proposed by LUMA, should not be approved absent substantial structural modifications that embed preapproval, reporting, and prudence-review safeguards. Properly designed, such a mechanism may serve a legitimate regulatory purpose. As proposed, it does not yet provide the protections that the law and the evidentiary record require.

B. The Bondholder's Asserted Administrative Efficiencies of Adopting a Placeholder LDR are Speculative and Unsupported.

The Bondholders' central claim is that adopting a placeholder LDR now will generate administrative efficiencies by reducing the gap between Title III resolution and commencement of debt collections. This argument is circular: the resources spent on this proceeding regarding the LDR cannot justify adopting an unlawful and premature rider. The asserted "administrative efficiencies" of inserting a placeholder are speculative and unquantified, with no evidence specific to Puerto Rico.[10]

First, the claim that establishing the LDR advances "recovery of lawful costs" presupposes that legacy debt is a lawful cost recoverable through rates at this

[10] Bondholders' Initial Post-Hearing Brief on Rate Design, *In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau Feb. 17, 2026) ("BH Mot.") at 3–4 (claiming a placeholder will save time, boost operational efficiencies, avoid unnecessary costs, and reduce time to collect funds for legacy debt once the Title III case concludes).

stage—but that is precisely the question reserved for the Title III court and not yet resolved.[11] The Energy Bureau's own expert consultants, Ralph C. Smith and Mark Dady, agree, recommending that developing a LDR surcharge "would be more appropriately done after the Title III Court has determined what PREPA's Legacy Debt Obligation is."[12]

Second, the Bondholders' expert's, Dr. Susan Tierney, testimony on the supposed efficiencies is directly undermined by her own admissions on cross-examination.[13] When asked whether she was offering any testimony on when the costs of servicing PREPA's existing debt will begin or resume, she answered, "No."[14] When asked whether she was making any recommendation or proposal about what types, categories, or classes of PREPA's legacy debt should be repaid via a legacy debt rider, she again answered, "No."[15] And when asked whether she conducted any research about how Puerto Rico ratepayers might react to a legacy debt rider without an amount included in it, as she proposed in this case, she answered, "No, I did not."[16] On cross-examination, she also admitted she had not proposed any structure for the legacy debt rider in her written testimony and

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[11] *Id.* at 1.
[12] Expert Report of Ralph C. Smith & Mark Dady, *In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau Oct. 6, 2025) (Smith and Dady together, the "Energy Bureau Experts" and their report, the "Smith & Dady Expert Report") at 27.
[13] The Bondholders' cite as evidence of efficiencies the Hearing Examiner's summary of Dr. Tierney's conclusory position that establishing an LDR now would "reduce[] the gap in time between (a), when a final decision comes, and (b) the money can start to flow" when the Title III process concludes. *See* BH Motion at 4, n.7. But the Hearing Examiner summary does not constitute a finding that such a gap-reduction benefit would actually materialize, or that it provides a sufficient basis to adopt the LDR. Rather, Dr. Tierney's inability to ground her timeline speculation in facts renders any claimed time savings illusory.
[14] Dec. 9, 2025 Hr. Tr. at 373:15–20; 396:12–17 (Dr. Tierney acknowledging the placeholder cannot be filled until "[a]fter the amount is known. So, that would be after the Title III Court makes its decision.").
[15] *Id.* at 375:18–23.
[16] *Id.* at 417:9–14.

had not described how she suggests a legacy debt rider could or should work.[17] A witness who cannot identify the structure, allocation, customer categories, or ratepayer reaction cannot provide a credible foundation for the administrative efficiency argument she advances.[18]

Third, if the Title III proceeding results in no rate recovery for legacy debt, the Energy Bureau would have expended valuable administrative effort creating and maintaining a rider for no purpose—it will be "a sunk cost at that point, administratively."[19] Dr. Tierney herself conceded that there will need to be another rate case following the conclusion of PREPA's Title III case regardless—meaning any purported administrative efficiency of establishing a placeholder LDR now evaporates entirely.[20]

Fourth, the LDR's timing is entirely contingent on extrinsic events outside of the Energy Bureau's control, which is precisely why the Energy Bureau should defer consideration of the LDR until the Title III process has concluded.[21] The

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[17] *Id.* at 377:20–378:5.

[18] Dr. Tierney admits she has no understanding of when the Title III case may conclude, and her only purported benefit—a possible reduction in time between a Title III decision and the commencement of collections—remains entirely speculative. *Id.* at 387:20–391:15 (admitted she does not "have any understanding of when the Title III case may be forecasted to conclude."). When Commissioner Torres-Miranda asked Dr. Tierney whether the alleged six-month savings would actually materialize, Dr. Tierney admitted: "I don't know which provision of your laws this would come under, or whether there is a time limit on your review of a compliance filing after a Title III decision." *Id.* at 435:17–437:18.

[19] *Id.* at 427:22–428:7.

[20] *Id.* at 91:24–92:16 ("There would need to be a rate case, and the Bureau would need to consider the extent to which there is adequate working capital to signal to capital markets and cover working capital needs [] . . .").

[21] LUMA witness Sam Shannon's assertion that the LDR could "start sooner" is unsupported and provides no legitimate basis for adopting the rider at this stage. Dec. 16, 2025 Hr. Tr. at 317:13–20. As he acknowledged, the placeholder tariff sheet would have to be updated consistent with the Energy Bureau's eventual decision before any collections could begin. *See* Dec. 15, 2025 Hr. Tr. at 418:20–25 (acknowledging allocation of legacy debt can only occur after the Title III court establishes the amount of debt). Mr. Shannon's estimate that collections could begin as early as 2027 is not grounded in any established facts about the Title III proceeding's schedule or likely outcome; rather, it is based solely on his own assumptions about when Title III might be resolved. *See* BH Mot. at 3 (citing Ex. 20, p.37; Dec. 16, 2025 Hr. Tr. at 316:11–317:2; 317:6–14).

Committee amplifies these points, highlighting that Dr. Tierney "only qualitatively" weighed the drawbacks of delaying against the benefits of implementing a placeholder rider now, and her inability to ground her speculation in facts or any source "should be alarming."[22]

C. The Bondholders Misapply PROMESA § 314(b)(6) to Justify Premature Regulatory Action.

The Bondholders attempt to invoke PROMESA §314(b)(6)—which requires a plan of adjustment to be "feasible"—to justify the Energy Bureau's adoption of a placeholder LDR.[23] The Bondholders invert the relationship between PROMESA §314(b)(6) and this rate proceeding. Section 314(b)(6) requires a plan of adjustment to be feasible—but that feasibility determination is made by the Title III court, not by the Energy Bureau preemptively through a rate mechanism.[24]

D. Act 57-2014 Does Not Impose an Obligation on the Energy Bureau to Include a Placeholder Rider.

PROMESA's integrated framework preempts any effort to require rate recovery for legacy debt at this stage.[25] Specifically, PROMESA Titles II and III together establish a comprehensive federal framework governing the treatment

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Significantly, Mr. Shannon is a rate-design witness for LUMA, not a Title III bankruptcy expert, so his opinion on the timing of the proceeding is speculative and carries little evidentiary weight.

[22] Initial Brief on Rate Design of Official Committee of Unsecured Creditors of PREPA, *In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau Feb. 17, 2026) ("Committee Br.") at 20–21.

[23] *See* BH Mot. at 2, 5.

[24] *See* PROMESA § 314(b)(6).

[25] *See* PREPA's Motion to the Energy Bureau to Vacate Hearing Examiner's Orders Regarding Consideration of Legacy Bond Debt in Rate Case, *In re Puerto Rico Electric Power Authority Rate Review*, Case No. NEPR-AP-2023-0003 (P.R. Energy Bureau Nov. 10, 2025).

of legacy debt that is "so pervasive as to warrant an inference that Congress did not intend the states to supplement it."[26]

Title III reserves the determination and treatment of legacy debt claims to the Title III court[27] and the automatic stay currently in place in PREPA's Title III proceeding prevents Bondholder efforts to collect legacy debt.[28] The PREPA Fiscal Plan developed under PROMESA Title II bars additional rate increases for debt service beyond amounts necessary for fuel, purchased power, and maintenance –expressly providing that "PREPA will not be able to impose any additional rate increases for debt service above the rates necessary to pay for the F&PP costs and maintenance costs."[29] And the Energy Bureau's Debt Order confirmed that consideration of legacy debt is not warranted at this time, explicitly barring testimony or cross-examination on any amount of legacy debt or methods for determining such amount.[30]

Based on the foregoing, it is clear that there is currently no "obligation to bondholders" that the Energy Bureau must guarantee under Act 57-2014. Any

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[26] *Centro de Periodismo Investigativo v. Fin. Oversight and Mgt. Bd. for Puerto Rico*, No. CV 17-1743 (JAG), 2018 WL 2094375, at *9 (D.P.R. May 4, 2018); *see also Centro de Periodismo Investigativo*, 2018 WL 2094375, at *11 ("Field preemption is reserved for areas of the law and public administration where the federal government has traditionally held exclusive authority like, for example, . . . *bankruptcy*.") (emphasis added).
[27] *See generally* 48 U.S.C. § 2166 (discussing Title III court jurisdiction); *see* 48 U.S.C. § 2103 (concluding that PROMESA's provisions "shall prevail over any general or specific provisions of territory law, State law, or regulation that is inconsistent with" PROMESA); *see generally* PROMESA Title III.
[28] *See* 11 U.S.C. § 362; *see also* Resolution and Order on Establishment of Fiscal Year 2026 Provisional Rates and Fiscal Year 2026 Provisional Budget, *In re Puerto Rico Electric Power Authority Rate Review*, No. NEPR-AP-2023-0003 (P.R. Energy Bureau July 31, 2025)(the "July 31 Provisional-Rate Order") at 31–32 (finding that "[i]n the current legal context, with PREPA in bankruptcy under Title III of PROMESA, PREPA is under a stay of debt payments and currently has no enforceable obligation to pay its legacy debts.").
[29] LUMA Ex. 1.01 ("PREPA Fiscal Plan") at 118.
[30] *See* Resolution and Order, *In re Puerto Rico Electric Power Authority Rate Review*, Case No. NEPR-AP-2023-0003 (P.R. Energy Bureau Nov. 13, 2025) ("Debt Order") at 2 ("No testimony or cross-examination shall be permitted on any amount of legacy debt, nor on any principle or method for determining such amount.").

obligation under Act 57-2014 cannot be exercised in a manner that conflicts with federal law. Moreover, the Bondholders' claim that the Energy Bureau's Puerto Rico-law obligations "continue to apply" during Title III cannot be squared with the Supremacy Clause and PROMESA's framework, including the automatic stay.[31] As PREPA has briefed throughout this proceeding, the Energy Bureau may not lawfully include any amount for legacy debt in the revenue requirement now, nor may it adopt a rider, placeholder, or other mechanism aimed at funding such debt prior to a Title III determination and plan of adjustment confirmation. Imposing an LDR—even at zero—is not required under Act 57-2014 and would force PREPA into an intolerable position of being stuck between a state regulatory entity demanding it act in a manner inconsistent with its certified fiscal plan, putting it at risk of Oversight Board legal action.

E. The Evidentiary Record Does Not Support Even a "Placeholder" Mechanism.

The evidentiary record contains no support for any defined placeholder rider for legacy obligations. The Bondholders highlight the issues with creating a placeholder rider without a Title III Court determination setting forth the contours of any rate-funded payment of legacy debt. They baldly state that

> Bondholders do not oppose [the Energy Bureau] considering and making targeted affordability accommodations in structuring the LDR, provided they are consistent with applicable law, supported by the record, and do not impair LDR collections, *i.e.*, that any shortfall from exempted or subsidized groups is reallocated among other

[31] BH Mot. at 1.

> customer classes. For non-exempted/subsidized customers, the LDR should be non-bypassable.[32]

But there is no evidentiary record to support this or any other treatment and/or structures.

The Energy Bureau is prohibited under Section 6.25 of Act 57 from fabricating the contours of an LDR without any opportunity for: "(i) cross-examination on the novel, alternative designs [or] structures; (ii) panel [or] expert testimony about those alternatives; (iii) public comment; (iv) allocation between customer classes and whether to use a fixed, variable, hybrid, or bypassable/non-bypassable charge; or (v) other attributes or pitfalls."[33] Under 22 L.P.R.A. § 1054x(c), "[a]ny modification to a rate proposed, . . . whether to increase or decrease the same, shall undergo an evidentiary and a public hearing process to be held by the Commission 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."[34] Accordingly, absent full compliance with these statutory procedural safeguards and a properly developed record, the Energy Bureau must decline to adopt the LDR.

The Committee reinforces these evidentiary deficiencies, noting that the Supreme Court of Puerto Rico requires decisions issued by administrative forums,

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[32] *Id.* at 5 n.8.
[33] Committee Br. at 23.
[34] *Id.* (quoting 22 L.P.R.A. § 1054x(c)).

akin to the Energy Bureau, must have "a rational basis supported by substantial evidence that sustains the decision."[35] The Committee catalogs precisely what is missing from the evidentiary record, which would need to be resolved before the LDR could ever be "populated": (i) the amount and treatment of Legacy Debt to be repaid, as determined exclusively within PREPA's Title III Case; (ii) the attributes, characteristics, applicability, and exemptions from such a Legacy Debt Rider; (iii) the repayment period and whether the monthly recovery from ratepayers changes over time; (iv) true-ups, resets, or reconciliations; and (v) allocations across customer classes, e.g., residential (both subsidized and not), commercial, and industrial customers.[36] As the Committee concludes, "PREB cannot claim to have 'checked the box' of holding an evidentiary hearing by relying on the inadequate record in this rate case."[37]

The Hearing Examiner observed during the hearing, in reference to the LDR, that his understanding was that "putting this piece of paper here was not a heck of a lot more than just putting a piece of paper here, which on which possibly every single word would have to be changed when more facts arose."[38] LUMA witness, Mr. Shannon, agreed.[39] The Hearing Examiner's own words characterize the proposed LDR as the equivalent of a document where the applicable field

[35] *Id.* at 4.
[36] *Id.* at 23–24.
[37] *Id.* at 23; Dec. 16, 2025 Hr. Tr. at 45:1-20; Committee Br. at 21–24 (observing that "the people of Puerto Rico, they need stability" and expressing concern that a fluctuating or uncertain rider would add to that instability).
[38] Dec. 16, 2025 Hr. Tr. at 265:14–266:11.
[39] *See id*. at 265:20–21.

simply reads "player to be named later"—hardly the foundation for a regulatory order.[40]

F. The Examples of Other Jurisdictions and the Puerto Rico Energy Efficiency Rider Do Not Support the Bondholders' Position.

The rate case examples from California (wildfire fund) and Massachusetts (stranded costs) that the Bondholders cite are materially distinguishable—those proceedings did not involve a federally certified fiscal plan prohibiting additional rate increases and the regulator was not at risk of violating federal law or conflicting with a federal oversight board by adopting the rider. Both the CPUC and MDPU were implementing clear, specific legislative mandates; the Energy Bureau is not. The Hearing Examiner questioned Dr. Tierney on this very issue, stating that there is "a specific mandate in California, for example, to have a specific rider" but "there's not in the Puerto Rico situation a specific mandate to have your specific rider"—and Dr. Tierney agreed: "That's right."[41]

Dr. Tierney undertook no comprehensive search for similar situations in past utility bankruptcies, admitting she "did not otherwise do a comprehensive search, but I was aware of those two cases."[42] She expressly did not look for prior instances where a utility filed for bankruptcy and a regulator made a determination about whether to have ratepayers pay for the utility's pre-petition debts.[43] Moreover, both "examples" served the inverse purpose of the proposed LDR—they were

[40] Committee Br. at 25 (citing Dec. 16, 2025 Hr. Tr. at 265:14–266:11).
[41] Dec. 9, 2025 Hr. Tr. at 404:5–11.
[42] *Id.* at 410:5–6.
[43] *Id.* at 410:7–17.

aimed at saving ratepayers money, whereas the LDR can only materially increase bills.[44]

The Committee provides directly on-point precedent from two electric utility bankruptcy cases that the Bondholders do not address: Entergy New Orleans (2007) and PG&E (2020).[45] In Entergy New Orleans ("ENO"), following Hurricane Katrina, the New Orleans City Council ("NOCC")—as the utility's regulator—did not develop a "rider" while ENO's bankruptcy case remained underway; instead, the NOCC indicated that any storm costs in excess of allocated government funds would be addressed in a later base rate case, and let the bankruptcy court determine the legacy debt amount.[46] In PG&E, the CPUC—after confirming the plan of reorganization—did not adjust the total amount of legacy debt restructured through PG&E's plan; instead, the CPUC directed PG&E to pursue a rate-neutral securitization to refinance the legacy debt.[47] Critically, the CPUC did not implement a "rider" for the Wildfire Fund prior

[44] Committee Br. at 7–9 (discussing the NOCC sought to collect funds "to remediate the system, while not burdening ratepayers," and the CPUC "focused its efforts on optimizing recovery . . . to pursue a rate-neutral securitization to refinance the legacy debt.").
[45] *Id.*
[46] *Id.* (citing Fourth Amended Disclosure Statement for the Fourth Amended Chapter 11 Plan of Reorganization of Entergy New Orleans, Inc., As Modified, *In re Entergy New Orleans, Inc.*, Case No. 05-17697, ECF No. 1676 at 5–9, 18–48 (Bankr. E.D. La. Feb. 5, 2007); Findings of Fact and Conclusions of Law Regarding the Confirmation of the Fourth Amended Chapter 11 Plan of Reorganization of Entergy New Orleans, Inc., As Modified, *In re Entergy New Orleans, Inc.*, Case No. 05-17697, ECF No. 1989 at 1 (Bankr. E.D. La. May 7, 2007); Addendum 2, The New Orleans City Council, R-06-459, Resolution and Order Approving Agreement in Principle (Oct. 27, 2006) at 5–6; Entergy Corporation Form 10-k for the Fiscal Year Ended December 31, 2007).
[47] *Id.* (citing CPUC, Pacific Gas and Electric Company's (U 39 E) Reply Brief Regarding Evidentiary Hearing and Assigned Commissioner Proposal Comments (Mar. 26, 2020); Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization, Case No. 19-30088, ECF No. 5590 at 46 (Bankr. N.D. Cal. Jan. 31, 2020); Addendum 3, CPUC, Decision Approving Reorganization Plan (May 28, 2020) at 4–7, 10–11, 78, 110–12; Debtors' Motion . . . for Entry of an Order . . . Approving Case Resolution Contingency Process . . ., Case No. 19-30088, ECF No. 6398 at 10–11 (Bankr. S.D. Ca. Mar. 30, 2020)).

to the resolution of PG&E's bankruptcy case.[48] As the Committee observes: "both cases instructively demonstrate how other regulators prudently chose to await the outcome of a utility's bankruptcy case."[49] Dr. Tierney had actual knowledge of at least these two bankruptcies but chose not to research their procedural histories before submitting her testimony.[50]

The Committee also thoroughly dismantles the Bondholder's energy efficiency rider analogy. First, the Energy Efficiency Rider was a mandate of public policy established by Puerto Rico's Legislature through Act 57-2014 and Act 17-2019, and the Energy Bureau implemented that rider to fulfill those legislative mandates.[51] There is no analogous legislative mandate for the LDR. Second, the simplicity of the Energy Efficiency Rider (a straightforward division of $13 million by projected kWh sales to yield a $0.001121/kWh factor) is entirely unlike the LDR, which would require complex allocation among customer classes and resolution of countless structural attributes, for which no evidentiary foundation exists.[52] Third, there is an order of magnitude difference: the "initial Energy Efficiency fund" was a mere $13 million, whereas the legacy debt has the potential of being consequentially higher—if the Bondholders have their way it would be billions of dollars.[53] As the Committee concludes, "Dr. Tierney's suggestion that a Legacy

[48] *Id.*
[49] *Id.* at 7 (referencing *In re Entergy New Orleans, Inc.*, Case No. 05-17697, ECF No. 1676 (Bankr. E.D. La. Feb. 5, 2007); CPUC, Decision Approving Reorganization Plan (May 28, 2020)).
[50] *See* Dec. 9, 2025 Hr. Tr. at 409:19–410:17 (despite her noted reliance on the California Wildfire Non-Bypassable Charge that was intertwined with PG&E's emergence from bankruptcy in 2020).
[51] *See* Committee Br. at 14 (citing Resolution and Order, NEPR-AP-2018-0003, at 8–9 (Sept. 27, 2019)).
[52] *Id.* at 15 (citing Resolution and Order, NEPR-AP-2018-0003, at 9 (Sept. 27, 2019)).
[53] *Id.* (citing Ex. 39, Schedule B-3).

Debt Rider could simply 'begin to flow' after the resolution of PREPA's Title III Case is a gross oversimplification."[54]

G. **A Placeholder LDR Sends No Credible Market Signal.**

Creating a placeholder LDR further risks confusion among ratepayers and stakeholders. Assertions that early inclusion of an LDR would signal timely recovery of funds to capital markets are speculative and risk misleading investors if Title III outcomes differ. Such a signal would be pure conjecture and might not reflect PREPA's actual post-Title III outcomes. Relying on such hypothetical signaling risks potentially misleading investors, distorting market expectations, and undermining confidence if a rate-funded recovery fails to materialize. A market signal premised on a regulatory action that is preempted by federal law, and that is inconsistent with the position of the Oversight Board cannot provide meaningful reassurance to capital markets.

Turning to the impact on ratepayers, the existing rate proposals already impose enormous burdens on ratepayers: LUMA's Mr. Shannon confirmed his analysis showed roughly 400,000 customers would experience a 70%–90% bill impact (increase) under the proposed rates.[55] Shannon also agreed his histogram showed more than 500,000 customers would experience a 50%–60% increase in their bill.[56] Shannon testified he was not aware of a U.S. electric utility commission

[54] *Id.* at 14.
[55] *See* Dec. 16, 2025 Hr. Tr. at 83:22–84:17 (Q: "Can you confirm that according to your own analysis, nearly 400,000 ratepayers would experience a range of impact between 70 and 90 percent as a result of the proposed rates?" A: "Yes.").
[56] *See id.* at 90:10–15 (Q: "So, again, your histogram shows that more than 500,000 customers will experience a 50 to 60 percent increase in their bill." A: "Correct.").

granting a 50%+ increase in rates for an electric utility.[57] Against this backdrop, introducing even a placeholder debt mechanism in the tariff—in this environment of extraordinary rate increases—creates a real risk of alarming ratepayers about future costs.

Dr. Tierney acknowledged—when pressed—that it would not be "wrong" for the Energy Bureau commissioners to decide to wait until there is a known outcome of the Title III case.[58] If the acknowledged proper regulatory path is to defer action, then there is no credible "signal" that can be sent by adopting a placeholder LDR that even its proponents concede need not go into effect until after future events occur.

H. The Record Contains No Evidence Supporting Bondholders' Allegations Regarding a "Depressed" Load Forecast

Lastly, Bondholders' suggestion that LUMA's load forecast was "manipulated" to serve the Oversight Board's litigation strategy in the Title III proceeding is unsupported and improper. As the Hearing Examiner expressly ruled, "We are not going to debate in this case who bested whom in the Title III case."[59] Having been expressly excluded from this proceeding, arguments about litigation strategy or perceived outcomes in Title III are irrelevant as a matter of law and should not be revived indirectly through briefing rhetoric.

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[57] *See id.* at 90:16–91:7 (Q: "Are you aware of any public utility commission that has granted an increase of 50 percent or more in rates in the U.S.?" A: "Power electric utility? No, I'm not aware.").
[58] Dec. 9, 2025 Hr. Tr. at 385:24–386:9 ("If you are asking me, if when I articulate the many advantages of doing it now, the Bureau decides on its own as it can, to not do it now, I don't think I could say that's wrong . . . .").
[59] Hearing Examiner's Order on Objections to Testimony and on Miscellaneous Prehearing Matters, *In re Puerto Rico Electric Power Authority Rate Review*, NEPR-AP-2023-0003 (Nov. 3, 2025).

Moreover, there is no evidence on the record supporting the claim that the load forecast was "depressed" or otherwise manipulated to increase rates or advance the Oversight Board's interests. Bondholders cite no record testimony, data, or analysis to substantiate that accusation; their only citation is to their own brief. Argument of counsel is not evidence. Absent record support, these assertions cannot form a basis to reject LUMA's load forecast. The load forecast before the Energy Bureau must be evaluated on the evidentiary record developed in this case—not on speculation about Title III proceedings or unsubstantiated claims of strategic motive.

III. CONCLUSION

For the foregoing reasons, PREPA respectfully requests that the Energy Bureau:

a. deny LUMA's proposed Outage Recovery Rider as presented. The evidentiary record on which the proposed rider rests, particularly with respect to alleged liquidity constraints, was developed under conditions that materially curtailed PREPA's right to cross-examine, present testimony, and offer rebuttal evidence, in contravention of the procedural guarantees embodied in the LPAU and applicable Puerto Rico law. A rate mechanism grounded on such an incomplete and asymmetrical record cannot satisfy the statutory requirement that rates be just, reasonable, and supported by a reliable evidentiary foundation.

b. deny LUMA's request to recover alleged past outage-related costs. LUMA has not met its burden of demonstrating that such costs were just, reasonable, and prudently incurred, and the record lacks the contemporaneous documentation and regulatory scrutiny necessary to support retroactive recovery through rates.

c. in the event that the Energy Bureau decides to establish a new outage-related rider, PREPA respectfully requests that the Energy Bureau condition any such approval on the inclusion of strict and clearly defined safeguards. Any forward-looking mechanism must be narrowly tailored and incorporate clear guardrails, including advance notice, regulatory preauthorization, detailed reporting, objective eligibility criteria,

reconciliation procedures, and a formal prudence review by the Energy Bureau; and

d. deny the Bondholders' motion and confirm that the Energy Bureau will not adopt any Legacy Debt Rider in this proceeding.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 3rd day of March 2026.

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