

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

NEPR

Received:

Mar 6, 2026

5:54 PM

IN RE: PUERTO RICO ELECTRIC
POWER AUTHORITY RATE REVIEW

Case No.: NEPR-AP-2023-0003

Subject: Motion to Inform the Filing of
Genera's Initial Legal and Policy Issues Brief
and to File Spanish-Language Summary

**MOTION TO INFORM THE FILING OF GENERA'S INITIAL LEGAL AND POLICY
ISSUES BRIEF AND TO FILE SPANISH-LANGUAGE SUMMARY**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW, Genera PR LLC ("Genera"), as agent of the Puerto Rico Electric Power Authority ("PREPA")¹, through its undersigned counsel, and respectfully states and requests as follows:

1. This Motion is filed pursuant to the Hearing Examiner's procedural orders governing post-hearing briefing in the above-captioned proceeding, particularly the *Hearing Examiner's Order on Exhibits, Miscellaneous Post-Hearing Matters, and Legal Issues* dated December 22, 2025 ("December 22nd Order"), which established the briefing structure and identified the legal and policy issues to be addressed by the parties following the close of the evidentiary hearings in this proceeding.
2. The evidentiary hearings were conducted from November 12, 2025 through December 19, 2025, during which Genera presented testimonial and documentary evidence regarding its proposed revenue requirement and related ratemaking issues.

¹ Pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* ("LGA OMA"), dated January 24, 2023, executed by and among PREPA, Genera, and the Puerto Rico Public-Private Partnerships Authority, Genera is the sole operator and administrator of the Legacy Generation Assets (as defined in the LGA OMA) and the sole entity authorized to represent PREPA before the Energy Bureau with respect to any matter related to the performance of any of the O&M Services provided by Genera under the LGA OMA.

3. On February 12, 2025, the Energy Bureau initiated this rate review proceeding and directed LUMA, PREPA, and Genera to submit Optimal and Constrained budgets for Fiscal Years 2026 through 2028 as part of a comprehensive review of revenues, costs, and rate design.
4. Following the close of the evidentiary phase, the Hearing Examiner, through the December 22nd Order, directed the parties to submit post-hearing briefing addressing certain legal and policy issues identified for further analysis.
5. Consistent with the Hearing Examiner's directives, Genera hereby files its *Initial Legal and Policy Issues Brief*, attached hereto as *Exhibit 1*, and respectfully informs the Energy Bureau of such filing.
6. *Genera's Initial Legal and Policy Issues Brief* addresses the legal and policy issues identified by the Hearing Examiner and provides analysis of several matters relevant to this rate review proceeding, including issues related to regulatory enforcement authority, the statutory ratemaking framework, liability considerations, the statutory burden of proof in administrative proceedings, emergency rate authority, and the ratemaking treatment of costs subsequently reimbursed through federal or Commonwealth funding.
7. Genera respectfully requests that the Energy Bureau take notice of the filing of *Genera's Initial Legal and Policy Issues Brief* and incorporate the same into the record of this proceeding.
8. The *Initial Legal and Policy Issues Brief* is being filed electronically through the Energy Bureau's filing platform in accordance with the Hearing Examiner's standing directives.
9. To promote public accessibility of substantive English-language filings and comply with the Energy Bureau's standing directives, Genera also submits a concise Spanish-language summary of its *Initial Legal and Policy Issues Brief*, attached hereto as *Exhibit 2 (Resumen*

en Español del Alegato Inicial de Genera sobre Asuntos Legales y de Política Pública).

10. The attached summary is provided for informational purposes and to facilitate public understanding of *Genera's Initial Legal and Policy Issues Brief*, without prejudice to the arguments, positions, and evidentiary record set forth in the English-language filing.

WHEREFORE, Genera respectfully requests that the Puerto Rico Energy Bureau: (a) take notice of the foregoing; (b) acknowledge and accept *Genera's Initial Legal and Policy Issues Brief*, together with the Spanish-language summary, as timely filed and incorporate both documents into the evidentiary record of this proceeding; and (c) grant such other and further relief as the Hearing Examiner deems just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 6th day of March 2026.

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

A courtesy copy of the present Motion will also be notified to the following:

mvalle@gmlex.net; arivera@gmlex.net; jmartinez@gmlex.net; jgonzalez@gmlex.net;
nzayas@gmlex.net; Gerard.Gil@ankura.com; Jorge.SanMiguel@ankura.com;
Lucas.Porter@ankura.com; mdiconza@omm.com; golivera@omm.com; pfriedman@omm.com;
msyassin@omm.com; msyassin@omm.com; 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; hrivera@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; 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; Julia@londoneconomics.com; Brian@londoneconomics.com;
luke@londoneconomics.com; juan@londoneconomics.com; mmcgill@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.

PREB Consultants: shempling@scotthemplinglaw.com kbailey@acciongroup.com
RSmithLA@aol.com; dawn.bisdorf@gmail.com; msdady@gmail.com; mcranston29@gmail.com;
ahopkins@synapse-energy.com; clane@synapse-energy.com; MWhited@synapse-energy.com;
kbailey@acciongroup.com; PREBconsultants@acciongroup.com; zachary.ming@ethree.com;
tara.hamilton@ethree.com; justo@maxetaenergy.com; guy@maxetaenergy.com;

@maxetaenergy.com; gc@maxetaenergy.com; ralph@maxetaenergy.com; jorge@maxetaenergy.com; jaypgriffin5@gmail.com; roger@maxetaenergy.com; tim@maxetaenergy.com; rafael@maxetaenergy.com; chris@pluggedinstrategies.com; elrc@rclopr.com.

Counsels for GENERA PR LLC.



Vázquez & Vilanova
LAW FIRM

**VÁZQUEZ & VILANOVA LAW FIRM
LLC**

563 Calle C. H Alverio Unit 2
San Juan, PR 00918
Tel.: (787) 519-7063
Fax. (260) 234-3410

/s/ Maralíz Vázquez-Marrero

Maralíz Vázquez-Marrero
mvazquez@vvlawpr.com
RUA NÚM. 16,187

/s/ Giuliano Vilanova Feliberti

Giuliano Vilanova-Feliberti
gvilanova@vvlawpr.com
RUA NÚM. 22,718

/s/ Damaris Billoch-Colón

Damaris Billoch Colón
dbilloch@vvlawpr.com
RUA NÚM. 19,151

CERTIFICATE OF COMPLIANCE WITH WORD-COUNT LIMIT

Genera hereby **CERTIFIES** that this document has 13,145 words, excluding the caption, table of contents, signature blocks, and certificates of service information, in compliance with the word limit established by the *Hearing Examiner's Order on Exhibits, Miscellaneous Post-Hearing Matters, and Legal Issues*, issued on December 22, 2025.

/s/ Maralíz Vázquez-Marrero

Exhibit 1

GENERA'S INITIAL LEGAL AND POLICY ISSUES BRIEF

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

IN RE:

PUERTO RICO ELECTRIC POWER
AUTHORITY RATE REVIEW

CASE NO.: NEPR-AP-2023-0003

SUBJECT: Genera's Initial Legal and Policy
Issues Brief

GENERA'S INITIAL LEGAL AND POLICY ISSUES BRIEF

March 6, 2026

Table of Contents

<i>I.</i>	<i>INTRODUCTION</i>	3
<i>II.</i>	<i>STATUTORY BACKGROUND</i>	3
	A. Puerto Rico Energy Bureau	3
	B. Funding Sources	4
	C. Genera	7
<i>III.</i>	<i>LEGAL AND POLICY ISSUES</i>	8
	A. Issue 1 – Energy Bureau Fines Applied to Genera	8
	B. Issue 7 – Negligence Liability	15
	C. Issue 8 – “Burden of Proof”	16
	D. Issue 10 – Emergency Rate	22
	E. Issue 11 – Refund of Ratepayer Payments for Nonfederal Capital Expenditures	26
<i>IV.</i>	<i>CONCLUSION</i>	29

I. INTRODUCTION

Over the past several years, Puerto Rico’s electric system has undergone significant operational, financial, and structural changes, including the transition to third-party operation of key utility functions, the restructuring of the Puerto Rico Electric Power Authority (“PREPA”) under federal oversight, and the accelerated integration of renewable resources. These developments bear directly on the legal and policy questions presently before the Puerto Rico Energy Bureau (“PREB” or “Energy Bureau”) in this rate review proceeding.

In evaluating the revenue requirements for the FY2026–FY2028 Rate Period, PREB must determine the utility's reasonable costs to carry out its obligations, including "costs that give each company a reasonable opportunity to meet the metrics that trigger a company's respective incentive fee."¹ It also must interpret and apply statutory provisions governing its enforcement authority, the meaning of the just and reasonable standard, the allocation of regulatory burdens, the permissible treatment of negligence related costs, the scope of emergency rate authority, and the proper handling of costs later reimbursed through federal funding. These questions arise against a record that reflects (among other things) the complex interaction between rate recovery and federal funding pipelines, including cost-share and liquidity constraints, and the need to make determinations based on obligated funding rather than high-likelihood projections alone. At the same time, the Energy Bureau’s legal and policy determinations must reflect the operational realities of running a legacy thermal fleet during a transition period. As applicable to Genera, the record reflects that project prioritization and budgeting are driven by reliability considerations, including efforts to prevent recurring outage and derate events, sustain unit availability, and manage emergent needs that are not tied to specific planned projects.

Genera PR, LLC (“Genera”), as PREPA’s generation operator pursuant to the *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement* (“LGA OMA” or “Agreement”), submits this brief in compliance with the *Hearing Examiner's Order on Exhibits, Miscellaneous Post-Hearing Matters, and Legal Issues* dated December 22, 2025, and, among other matters, discusses: (i) treatment of fines and penalties imposed on the operator; (ii) affordability and practicability issues in consideration of applicable statutes; (iii) negligence liability in response to the Puerto Rico Supreme Court case; (iv) burden of proof; (v) emergency rate authority; and (vi) refund of ratepayer payments for non-federal capital expenses.

II. STATUTORY BACKGROUND

A. Puerto Rico Energy Bureau

Act 57-2014² established the Energy Bureau as an independent technical regulatory body to promote and enable the transparent implementation of Puerto Rico’s energy policy through

¹ Resolution and Order, Case No. NEPR-AP-2023-0003, *Order Establishing Scope and Procedures for Rate Case*, February 12, 2025, p. 5.

² *Puerto Rico Energy Transformation and RELIEF Act*, as amended, 22 L.P.R.A. §1051, *et seq.*

oversight of the electric system, including the review and approval of rates. The broader legislative framework includes: the *Puerto Rico Electric Power Authority Act* (Act 83-1941), the *Puerto Rico Net Metering Program* (Act 114-2007), the *Green Energy Incentives Act of Puerto Rico* (Act 83-2010), the *Public Policy on Energy Diversification by Means of Sustainable and Alternative Renewable Energy in Puerto Rico Act* (Act 82-2010), the *Puerto Rico Electric Power System Transformation Act* (Act 120-2018), and the *Puerto Rico Energy Public Policy Act* (Act 17-2019). Collectively, these statutes reinforce PREB's central role in ensuring that Puerto Rico's electric system advances public policy goals while remaining operationally and fiscally viable.

Act 57-2014 further assigns PREB responsibility for promoting prudent investment practices, assuring increased quality of service, and incorporating industry trends and technological advancements into Puerto Rico's energy system.³ The Act's core ratemaking mandate requires that rates be just and reasonable, as well as consistent with sound fiscal and operational practices which result in reliable service at the lowest reasonable cost.⁴ The Act also establishes (i) enforcement authority, including the imposition of administrative fines; (ii) procedural requirements applicable to rate reviews; and (iii) provisions governing temporary or emergency rate adjustments.

Notwithstanding the above, Act 17-2019 rules of construction⁵ clearly emphasize the Legislative Assembly's intent of reaffirming the Government of Puerto Rico's commitment to the public policy established in both Act No. 29-2009 and Act No. 120-2018 regarding Partnership Contracts executed in a PREPA Transaction (including the LGA OMA). These contracts are fully protected under Puerto Rico's constitutional framework, including protections for property rights, due process of law, and the prohibition against laws impairing contractual obligations.

Accordingly, no provision of Act 17-2019, or of any other law, regulation, or administrative action of the Government of Puerto Rico (including regulatory orders) can be interpreted or applied in a manner that diminishes, limits, or modifies the contractual rights of a contractor under Partnership Contracts like the LGA OMA. In carrying out its responsibilities under Act 57-2014, the Energy Bureau must recognize the commitments of the P3 and PREPA under the LGA OMA, implement public policy consistent with the governing legal principles established by law, act in a manner that is neither arbitrary nor capricious, and ensure that rates and other decisions honor the policy and agreements with the private operators reflected in Partnership Contracts.

B. Funding Sources

i. Rates

³ *Id.*, §§ 6.3 and 6.25, 22 L.P.R.A. §§ 1054b and 1054x (b).

⁴ *Id.*, § 6.25, 22 L.P.R.A. § 1054x (a).

⁵ See Section 8.3 of Act 17-2019.

PREPA's ongoing operations are financed primarily by rates paid by consumers. PREB determines the total revenue needed to provide service, allocates that revenue among customer classes, and establishes rates designed to recover that revenue over the applicable rate period. This framework is inherently forward-looking: the Bureau sets rates to fund the expected utility's prudently incurred costs of providing service and meeting legal and operational obligations during the rate period.

Act 57-2014 requires PREB to consider, among other factors, the condition of PREPA's infrastructure, the costs incurred in providing service, debt and debt-service responsibilities, operational improvements, conservation measures, the impact of subsidies and grants on revenue needs, and public input. The current rate structure was established by PREB's Resolution and Order in Case No. CEPR-AP-2015-0001 dated January 10, 2017, following nearly three decades without a comprehensive rate restructuring. That structure remained in effect until the implementation of the provisional rate on September 1, 2025, as part of the current proceeding.⁶

In the present rate case, the needed revenue requirement must be determined in a system where third-party operators perform key utility functions under contracts that allocate responsibilities among PREPA, the administrator, and operators, and where federal oversight and fiscal and liquidity constraints affect both the timing and availability of funding. The record in this proceeding reflects that external funding, particularly federal programs and related initiatives, has become a central component of Puerto Rico's grid recovery and modernization efforts, but that such funding is neither automatic nor unlimited, that not all categories of work are eligible, and that there are cost-share responsibilities that create recurring liquidity gaps that can interrupt execution unless a recovery mechanism exists to bridge them. The practical result is that, even in a system where federal funding is pursued intently, the establishment of sufficient rates that reflect the real costs of carrying out the utility's obligations and contract responsibilities remains essential to ensure continuity of safe and reliable service.

ii. Federal Funds

In response to Hurricanes Irma and María and the 2019–2020 earthquakes, the federal government authorized substantial recovery funding for Puerto Rico. As of June 2023, FEMA had awarded approximately \$23.4 billion in Public Assistance for permanent recovery work,⁷ with approximately \$11 billion specifically earmarked for the energy sector.⁸ Federal funding has therefore become a central pillar of Puerto Rico's grid recovery and generation modernization efforts, and when available and properly obligated by the federal entity, can offset costs that would otherwise be borne through rates. Federal recovery funding is administered through multiple

⁶ Case No. NEPR-AP-2023-0003.

⁷ *Puerto Rico Disasters Progress Made, but the Recovery Continues to Face Challenges*, United States Government Accountability Office, Report to Congressional Requesters dated February 2024: <https://www.gao.gov/assets/gao-24-105557-highlights.pdf>.

⁸ See “*Moción en cumplimiento de Orden y Sometiendo Plan Preliminar de Estabilización del Sistema Eléctrico*”, Case No. NEPR-MI-2024-0005, July 8, 2024, p. 31.

programs and frameworks that carry distinct eligibility rules, review procedures, and timing constraints. A portion of these funds is administered under the Section 404 Hazard Mitigation Grant Program (“HMGP”), defined as sustained action taken to reduce long-term risk to people and property from natural hazards.⁹ In February 2020, FEMA issued the Public Assistance Alternative Procedures Guide (Section 428 Guide), which applies to large permanent works projects in Puerto Rico and establishes a cost-estimation and validation process, including review by independent expert panels such as the U.S. Army Corps of Engineers Cost Engineering Center of Expertise.¹⁰ These processes can be resource and time sensitive, and they affect not only whether a project is eligible, but also when it can be obligated, how costs are validated, and when reimbursements may flow.

Critically, the record in this proceeding reflects that federal funds are not automatic and are not unlimited, and that not all activities necessary to keep the legacy fleet reliable are eligible for federal reimbursement. The practical reality is that many recurring operational needs, such as certain inspections, operating costs and maintenance, certain spare parts, and ongoing support services, may be ineligible even when a related capital project may qualify. In addition, even where eligibility is plausible, funding availability and program constraints can prevent, limit or delay obligation, and the operative trigger for removing costs from a rate-based request is the funding obligation, not merely a likelihood of funding. This matters because reliability-driven work cannot be paused indefinitely while awaiting uncertain or delayed federal obligation: if critical projects are deferred and funding does not materialize, the resulting risk is borne by the system and, ultimately, by ratepayers in the form of forced outages or reduced system adequacy.

Federal funding also involves cost-share and liquidity mechanics that are directly relevant to ratemaking. Under current structures described in the record, programs may reimburse only a portion of eligible costs and require a local match, and continued eligibility for subsequent disbursements can depend on documented proof of payment of invoices in full, including the state cost-share portion, before reimbursement is processed. These timing requirements can create recurring liquidity gaps that threaten to interrupt project execution unless the operator has lawful access to interim funding. In a system where PREPA’s financial condition limits its ability to provide match or working capital, PREB’s ratemaking prerogatives (including prospective rates and properly designed riders) remain essential to avoid forfeiting access to federal funds due to preventable delays, while also ensuring uninterrupted project execution that supports reliability and compliance. As a result, the presence of federal funding does not eliminate the need to adjust the current rates to ensure adequate, safe, reliable, efficient, and nondiscriminatory electric service.

⁹ *Federal Emergency Management Agency (FEMA) Hazard Mitigation Assistance*, Congressional Research Service, Updated December 28, 2023, pp. 1-2.

¹⁰ Section 428, Guide for Permanent Work (FEMA-4339-DR-PR) (February 2020).

C. Genera

On January 24, 2023, PREPA, the Puerto Rico Public-Private Partnerships Authority (“P3A”), and Genera entered into the LGA OMA, under which Genera serves as the operator responsible for the operation and maintenance of certain generation units designated as Legacy Generation Assets (“LGAs”).¹¹

The Agreement allocates distinct responsibilities among the Owner (PREPA), the Administrator (P3A), and the Operator (Genera), and exists within a regulatory structure in which PREB retains statutory and rate-setting authorities and P3A maintains contract oversight functions. Within that framework, Genera’s responsibilities necessarily intersect with contract performance as well as regulatory determinations.

Genera was selected through a competitive bidding process for a ten-year agreement covering the management, operation, and maintenance of the LGAs, including fuel supply coordination and decommissioning where applicable. This process included months of negotiation among Genera and various government entities, including P3A and PREPA, eventually resulting in specific agreements approved by PREB and FOMB, which cemented the contractual rights and public policy in respect of Genera and the LGAs. The final contract terms (whether, e.g., service account funding to perform necessary repairs and maintenance, compensation, limitations on liability, indemnities, dispute resolution, and others), and the expectation that the government as a whole would honor them in good faith, were fundamental to Genera accepting the operator role and developing its operations in Puerto Rico. The LGA OMA requires Genera to provide services toward stabilizing and optimizing the operations of Puerto Rico’s LGAs until cleaner, more efficient replacement energy sources, including baseload, are available and the legacy units are decommissioned. It also provides specific service account funding obligations on government entities, as well as metrics, incentives, penalties, and protections for Genera to ensure that this work can get done.

In this rate case, Genera implemented a budget development process to comply with the revenue requirement applicable to the FY2026–FY2028 Rate Period, as ordered by PREB. That process followed the Energy Bureau and Hearing Examiner directives, was built through a bottom-up methodology, and was structured to address, among others, forecasted maintenance needs and foreseeable contingencies, including forced outages, force majeure-type events, cascading failures, and liquidity timing gaps associated with federally funded projects.

As part of the costs necessary for Genera to operate, the LGA OMA also contemplates an O&M Fixed Fee (escalating for CPI) paid as compensation for performance of O&M services and also establishes a contractual Reserve Account to fund certain defined categories of costs, including costs related to Forced Outages, Force Majeure Events, Owner Fault, approved Capital Spare Parts, and in certain cases shortfalls in required funding of other service accounts. The Reserve Account

¹¹ 2023 *Certified Fiscal Plan for the Puerto Rico Electric Power Authority*, p. 63.

is a contractual mechanism with defined triggers and replenishment provisions, and it is distinct from any system-wide emergency reserve construct discussed in this docket. Likewise, the LGA OMA grants Genera the right to have sufficient funding to incentivize the Operator to meet certain targets in performing the O&M Services, including funds that will allow Genera to pursue operational cost efficiencies, higher equivalent availability factor (EAF), better safety, environmental and reporting obligation compliance, as well as allowing for fuel savings.¹²

These contractual rights are significant because they inform the Bureau of the minimum revenue requirement needed for Genera to comply with its O&M Services responsibilities, and they inform how PREB should address the practical consequences of liquidity constraints (availability of reserves) in a system operating under Title III conditions and dependent on time sensitive federal funding pipelines.

III. LEGAL AND POLICY ISSUES

With the foregoing statutory and contractual background, Genera addresses below those legal and policy issues identified by the Hearing Examiner that are relevant to Genera and to the LGA OMA framework under which it operates.

A. Issue 1 – Energy Bureau Fines Applied to Genera

Issue 1 concerns the scope of the Energy Bureau’s statutory authority to impose administrative penalties on electric power service operators, the jurisdictional limits of that authority, and the procedural requirements governing the imposition and enforcement of such penalties. It further requires examination of (i) the permissible source of payment of any fine imposed and (ii) the extent to which regulatory sanctions interact with, yet remain distinct from, the contractual performance framework established under the LGA OMA.

i. Scope of Statutory Authority, Jurisdictional Reach, Notice, and Enforcement

Act 57-2014 vests the Energy Bureau with regulatory and supervisory authority over electric power service companies operating in Puerto Rico.¹³ Section 6.3 of the Act establishes the Bureau’s powers and duties, including the authority to ensure compliance with the statute, duly promulgated regulations, and lawful orders.¹⁴ Section 6.36 expressly authorizes the imposition of administrative fines for violations of the Act, regulations adopted thereunder, or orders issued by the Bureau.¹⁵

This authority is statutory and regulatory in nature. It is designed to deter and sanction noncompliance with legal requirements imposed by the regulator. It does not, however, convert

¹² See LGA-OMA, Annex II, *Compensation*.

¹³ Act 57-2014, § 6.3, 22 L.P.R.A. § 1054b.

¹⁴ *Id.*

¹⁵ *Id.*, § 6.36 (a), 22 L.P.R.A. § 1054jj (a).

PREB into the administrator of contractual performance standards established under a separately executed public contract that was sanctioned by both the Government of Puerto Rico and PREB.

The LGA OMA, executed pursuant to Act 120-2018¹⁶ and related enabling statutes, establishes a distinct governance and accountability structure applicable to Genera's performance as PREPA's generation operator. The Agreement designates the P3A as "Administrator" and assigns to it defined oversight and enforcement responsibilities, including review and approval of O&M Budgets, review and exclusive approval of Incentive Payments based on performance with respect to Incentives and Penalties, exercise of oversight in relation to compliance (including Pass-Through Expenditures), declaration of Events of Default, and exercise of contractual remedies.¹⁷ The LGA OMA further establishes provisions governing Disallowed Costs, Incentive Payments and Penalties, and Dispute Resolution.¹⁸

The distinction between P3A's and PREB's scope of jurisdiction is particularly important in this case because Genera operates as PREPA's generation operator under the LGA OMA, executed pursuant to Puerto Rico's energy transformation framework. Under Act 17-2019, the LGA OMA establishes a governance architecture in which the P3A serves as the Administrator and is vested with defined oversight and enforcement responsibilities tied to contract performance, including review and approval functions, compliance and reporting structures, and contractual remedies. No other law diminishes the rights, protections, and agreements of Genera under the LGA OMA. The statutory authority to impose fines under Act 57-2014 operates independently from those contractual enforcement mechanisms administered through P3A under the LGA OMA. The LGA OMA does not prevent PREB from imposing procedurally-adequate fines or creating separate incentives, but likewise the authority of the PREB under said act does not alter the LGA OMA. A failure to comply with a provision of Act 57-2014 may constitute a regulatory violation subject to sanction under the Act. In parallel, disputes concerning Disallowed Costs, performance metrics, Incentive Payments, or Events of Default are governed by the Agreement's contractual governance framework, as are Genera's limitations on liability and indemnities that together limit the reach of fines and the party ultimately responsible for their payment.¹⁹ This separation preserves the legislative intent of both government entities: it prevents the regulatory forum from becoming a generalized contract-disputes tribunal or completely setting aside government contracts, while also ensuring that genuine violations of regulatory obligations remain enforceable.

Further, any imposition of administrative fines must comply with the procedural safeguards required by Act 38-2017.²⁰ That statute requires adequate notice of the alleged violation, identification of the statutory or regulatory provisions under which liability is asserted, a meaningful opportunity to respond, and a written adjudication supported by substantial evidence

¹⁶ *Puerto Rico Electric Power System Transformation Act*, 22 L.P.R.A. § 1111, *et seq.*

¹⁷ LGA OMA, § 6.2(a)(i)–(iv), (viii), (x); § 6.3(a).

¹⁸ *Id.*, § 7.1 and § 7.7; Annex II; Art. 14.

¹⁹ *Id.*, Art. 15.

²⁰ *Government of Puerto Rico Uniform Administrative Procedure Act*, 3 L.P.R.A. §9601, *et seq.*

in the record.²¹ These safeguards reflect the guarantees of procedural due process embodied in the Fourteenth Amendment to the United States Constitution and Article II, Section 7 of the Constitution of Puerto Rico.²² Because an administrative fine is a punitive governmental action, absent these predicates, the exercise of sanctioning authority risks arbitrariness, collateral litigation, and undermining public confidence in the Bureau's adjudicatory process.

The Bureau's enforcement reach is limited to the mechanisms authorized by statute. If an operator disputes or refuses payment, the Bureau's recourse lies in the mechanisms provided by Act 57-2014 and applicable administrative law—administrative orders within the Bureau's jurisdiction and, where necessary, judicial enforcement. The Bureau's sanctioning jurisdiction does not expand by implication to entities that are not parties to the proceeding or that are not the regulated operator, and it cannot be used to adjudicate or enforce contractual remedies that the LGA OMA assigns to the Administrator or to remove protections, including risk or cost allocations, set out in the agreement. In short, Issue 1 requires the Bureau to apply its authority with attention to statutory scope, procedural safeguards, and institutional role—ensuring that regulatory sanctions remain tethered to regulatory violations, that the LGA OMA's contractual rights and protections are honored, and that the LGA OMA's enforcement architecture remains the proper channel for operational and contractual performance disputes.

ii. Source of Payment and Jurisdiction over Owners

Section 6.36(c) of Act 57-2014 addresses the source of payment for any administrative fine imposed by PREB. It provides that administrative fines “shall be paid by the Operator out of its own funds,” shall be treated as disallowed costs, and “shall not be paid with revenues from the consumer fee.”²³ As a matter of statutory text, therefore, fines imposed pursuant to Section 6.36 are not a recoverable component of the operator's revenue requirement and cannot be charged—directly or indirectly—to ratepayers through PREPA's consumer-funded revenues. This statutory allocation is categorical: it requires the operator to bear the sanction from its own funds and prevents the fine from being socialized through rates under the guise of ordinary operating costs.

Notwithstanding the above, the LGA OMA includes a cap related to how much Genera is required to pay for penalties or sanctions during the term of the contract related to failure to perform pursuant to the measurement parameters of the Equivalent Availability Factor, safety, environmental, and reporting obligations, as well as for decommissioning services in Annex II of the LGA OMA. The LGA OMA also includes limitations on Genera's aggregate liability and indemnities given by PREPA to Genera, which allocate ultimate funding responsibility for fines and other claims.

²¹ *Id.*, 3 L.P.R.A. §§ 9641-9655.

²² US Const. amend. XIV; PR Const. Art. II, § 7.

²³ *Id.*, 22 L.P.R.A. § 1054jj (c).

The Energy Bureau’s enforcement authority under Act 57-2014 runs to the regulated entity itself—i.e., the operator subject to supervision under the Act.²⁴ Nothing in that statutory framework confers jurisdiction to compel capital contributions or indemnification payments from private equity sponsors, parent entities, or other non-party affiliates solely by virtue of their ownership status. In other words, Act 57-2014 authorizes the Bureau to impose a fine on the regulated operator and to require that the operator pay it from its own funds; it does not create a separate, derivative enforcement jurisdiction over non-party owners or affiliates who are not themselves the regulated operator in the proceeding.

The LGA OMA reinforces this separation through its contractual non-recourse structure. Section 21.18 provides that “no Persons other than the Parties shall have any obligation hereunder” and that “no recourse... shall be had against” any director, officer, Affiliate, manager, stockholder, member, or controlling Person of a Party, including “by virtue of any statute, regulation or other Applicable Law.”²⁵ Whatever the scope of PREB’s statutory authority under Act 57-2014, the Agreement confirms that contractual performance risk and payment obligations are allocated to the contracting parties themselves and are not intended to become an indirect vehicle for imposing monetary liability on ownership level entities through contract based recourse theories or on the operator beyond the limits set by the LGA OMA. Thus, while PREB may regulate and sanction the operator for violations of the Act and regulations, the Agreement’s nonrecourse structure confirms that disputes over performance, disallowed costs, and contractual remedies are not a basis to seek payment from nonparty owners or affiliates. This structure preserves the distinction between regulatory sanctions and contractual enforcement, while protecting ratepayers from bearing the cost of statutory administrative penalties, subject to the contractual cap.

Issue 3 – Affordability and Practicability

Issue 3 concerns the extent of the Energy Bureau’s statutory duty and discretion to use affordability as a criterion in determining the revenue requirement, revenue allocation, and rate design. It further requires examination of what the governing statutes establish regarding the distinction between affordability and practicability, and the relationship between those concepts within the just and reasonable framework.

i. Statutory Duty and Discretion to Use Affordability in Determining the Revenue Requirement, Revenue Allocation, and Rate Design

Act 57-2014 establishes the governing ratemaking standard. Section 6.25 provides that “[t]he Energy Bureau shall ensure that all rates are just and reasonable and consistent with sound fiscal and operational practices that provide for a reliable and adequate service at the lowest reasonable cost.”²⁶ The same section requires that, in establishing rates, the Energy Bureau

²⁴ *Id.*, § 6.3 and § 6.36, 22 L.P.R.A § 1054b, § 1054jj.

²⁵ LGA OMA, § 21.18.

²⁶ Act 57-2014, § 6.25 (a), 22 L.P.R.A. § 1054x (a).

consider the costs incurred in providing service, the efficiency and suitability of infrastructure and facilities, debt and debt-service responsibilities, the utility's capacity to improve service and operations, conservation measures, and the impact of subsidies, statutory contributions, and other applicable funding sources on revenue needs.²⁷

This statutory formulation imposes a dual obligation. The Energy Bureau must protect customers from unjust or unreasonable charges, but it must simultaneously ensure that rates remain consistent with sound fiscal and operational practices and capable of sustaining reliable and adequate service. These are coequal statutory commands, not competing preferences that allow the Bureau to select one objective at the expense of the other.

At the revenue requirement stage, the “just and reasonable” standard directs the Bureau to determine the level of revenue required to provide service, based on the costs needed to operate and reliably maintain the system. The record in this proceeding underscores why that revenue-sufficiency principal matters: the legacy generation fleet must be maintained, operated, and decommissioned during a transition period, and costs associated with reliability, compliance, and operational readiness must be met. The Bureau's role at this stage is therefore constrained by the statutory requirement that rates be consistent with sound fiscal and operational practices that result in reliable and adequate service at the lowest reasonable cost without compromising reliability or fiscal integrity.

The structure of Section 6.25 confirms that the revenue requirement must be grounded in prudently incurred and necessary costs associated with providing service. Nothing in Act 57-2014 authorizes the Bureau to disregard or reduce recovery of prudent and necessary costs solely based on generalized affordability concerns.

That revenue sufficiency principle is reinforced by the broader statutory framework governing Puerto Rico's electric system. The *Puerto Rico Electric Power Authority Act*, Act 83-1941, as amended, expressly authorizes PREPA to propose and collect just and reasonable rates “that are sufficient to cover reasonable expenses incurred by [PREPA] in the development, improvement, extension, repair, conservation, and operation of its facilities and properties, for the payment of the principal of and interest on its bonds.”²⁸ This provision reflects a longstanding legislative premise that approved rates must be sufficient to sustain operations and financial commitments.

Likewise, the *Electric Power Authority Revitalization Act*, Act 4-2016, amended the *Puerto Rico Electric Power Authority Act* to establish, within the securitization framework, that any approved rate must be “sufficient” to guarantee payment of principal, interest, reserves, and other financial obligations, and to cover reasonable costs of providing service.²⁹ This statutory language

²⁷ *Id.*, § 6.25 (b), 22 L.P.R.A. § 1054x (b).

²⁸ § 5, 22 L.P.R.A. § 196(l).

²⁹ §6A, 22 L.P.R.A. § 196a.

confirms that revenue sufficiency and fiscal integrity are requirements embedded in Puerto Rico's electric utility statutory framework.

Act 120-2018 further reiterates that rates and charges under PREPA Transactions must remain “just and reasonable, and consistent with good fiscal and operating practices that provide for reliable services at the lowest cost possible”.³⁰ Act 120 thus confirms that, even in the context of system transformation and private operation, ratemaking remains anchored in fiscal soundness and reliability. It does not elevate affordability into an overriding criterion; rather, it reaffirms Act 57-2014's “just and reasonable” and fiscally sound standard.

However, Act 17-2019 expressly incorporates affordability into the Commonwealth's energy public policy. Section 1.5 directs that, when reviewing and approving rates and charges, the Energy Bureau *shall evaluate the efforts made to maintain charges* “as close as possible” to the \$0.20 per kilowatt-hour goal established in PREPA's Certified Fiscal Plan, while also reaffirming that the Bureau remains “ultimately responsible” for ensuring that charges collected are just and reasonable and consistent with sound fiscal and operational practices resulting in reliable and adequate service at the lowest reasonable cost.³¹

The directive to evaluate efforts to maintain charges near a policy target is framed as conditional and evaluative (“*shall evaluate the efforts made*”) and is expressly coupled with the Energy Bureau's continuing obligation to ensure fiscal soundness and reliable service. Act 17-2019 therefore situates affordability within the just and reasonable framework. Nothing in Act 17-2019 purports to amend or repeal the revenue sufficiency requirements embedded in Act 57-2014, Act 83-1941, Act 4-2016, or Act 120-2018. Affordability may inform policy context and implementation considerations, but the statutes do not authorize the Bureau to set a revenue requirement below the level necessary to maintain fiscal integrity and reliable service. Setting an artificially reduced revenue requirement in the name of affordability can have the perverse effect of increasing long-term customer harm—through service degradation, forced outages, delayed projects, or loss of access to external funding due to execution delays.

Once revenue requirements have been determined, the Energy Bureau has comparatively broader discretion in revenue allocation and rate design. Act 57-2014 authorizes PREB to structure rates and prevent undue discrimination. Section 1.5 of Act 17-2019 directs the Bureau to evaluate efforts to manage customer impacts and promote affordability within the public policy framework. After the revenue requirement has been determined, affordability considerations may appropriately influence the distribution of costs among classes (subsidies), the pacing of rate changes, and the structural design of charges, provided that the resulting rates collectively remain capable of producing the revenues required and remain consistent with sound fiscal and operational practices and reliable service as required by Act 57-2014.

³⁰ §9(f), 22 L.P.R.A. § 1118(f).

³¹ Art. 1.5 (a), 22 L.P.R.A. § 1141d (a).

This approach preserves the Legislature's dual mandate: protect customers against unjust and unreasonable charges while ensuring that the electric system has the resources necessary to operate reliably, comply with legal obligations, and implement Puerto Rico's energy policy in a practicable and fiscally sound manner.

ii. Distinction between Affordability and Practicability

Issue 3 further requires examination of what the governing statutes establish regarding the distinction between affordability and practicability, and the relationship between those concepts within the just and reasonable framework. Neither Act 57-2014 nor Act 17-2019 provides a formal definition of either term. But the structure of Puerto Rico's electric regulatory framework provides clear guidance as to how each concept must be understood, what role it may play in ratemaking, and the limits within which it operates.

Affordability is most directly reflected in the public policy language of Act 17-2019, which directs the Energy Bureau, when reviewing and approving rates and charges, to evaluate efforts to maintain charges as close as possible to the policy target established in the Certified Fiscal Plan, while simultaneously reaffirming that PREB remains ultimately responsible for ensuring that rates are just and reasonable and consistent with sound fiscal and operational practices resulting in reliable and adequate service at the lowest reasonable cost. Read in harmony with Act 57-2014 and the revenue sufficiency principles embedded in the broader statutory framework (including Act 83-1941, Act 4-2016, and Act 120-2018), Act 17-2019's formulation situates affordability within the broader just and reasonable standard established in Act 57-2014. It does not elevate affordability into an independent ratemaking ceiling or authorize rate levels that would compromise revenue sufficiency, fiscal integrity, or reliable service as required under Act 57-2014, reinforced by Act 83-1941, Act 4-2016, and Act 120-2018. The statutory structure does not authorize rate levels that compromise revenue sufficiency, fiscal integrity, or reliable service. Rather, affordability operates as an evaluative lens for the Bureau's review of whether cost control efforts, external funding strategies, and rate-design choices reasonably mitigate customer impacts while maintaining the resources necessary to provide service lawfully and reliably.

Practicability, although not expressly defined in the ratemaking provisions of Act 57-2014, relates to whether approved rates will function in practice to produce the revenues required by the approved rates. A rate that cannot be implemented administratively, that cannot be billed and collected with reasonable accuracy, or that predictably fails to produce realized revenue sufficient to fund approved costs would undermine those statutory objectives.

Importantly, in this proceeding, practicability was not developed as a discrete evidentiary topic through dedicated testimony or quantified analysis of payment elasticity or behavioral thresholds at varying rate levels. By contrast, the record does contain substantial evidence regarding operational needs, projected costs, maintenance requirements, and reliability needs. Any treatment of practicability must therefore remain tied to the evidentiary record and to reasonable regulatory inferences drawn from the statutory mandate that rates remain just and reasonable and

consistent with sound fiscal and operational practices resulting in reliable and adequate service. Considerations relating to customer payment behavior may inform implementation and revenue realization analysis, but they do not displace the statutory obligation of revenue sufficiency, nor do they authorize findings requiring evidentiary development not undertaken in this proceeding.

B. Issue 7 – Negligence Liability

Issue 7 concerns the scope of the Energy Bureau’s legal obligation and discretion, under the just and reasonable standard and the applicable Operation and Maintenance Agreements (“OMAs”), to determine the revenue required to cover costs associated with negligence liability. These costs include, without limitation, compensation to alleged victims, claims processing and assessment expenses, litigation and defense costs, insurance, and other related expenditures.

i. The Puerto Rico Supreme Court’s Decision and the Allocation of Ratemaking Authority

On December 1, 2025, the Puerto Rico Supreme Court issued its decision in *Departamento de Asuntos del Consumidor v. LUMA Energy, LLC y otros*.³² As reflected in Genera’s Late-Filed Exhibit submitted in compliance with the Hearing Examiner’s December 10, 2025 Order, the Court addressed the validity of a contractual waiver of extracontractual liability for ordinary negligence contained in the Transmission and Distribution OMA and previously approved by the Energy Bureau.

The Supreme Court concluded that the Energy Bureau lacked statutory authority to grant immunity or limit civil liability for ordinary negligence and declared the relevant waiver provision unconstitutional and null *ab initio*. The Court emphasized that only the Legislative Assembly may define the circumstances under which immunity from civil liability may be conferred.

Significantly, however, the Court declined to adjudicate the ratemaking implications of its ruling. The Court stated that it is the Energy Bureau—by express statutory mandate—that is vested with authority to determine whether indemnification payments or damages constitute authorized operational costs for ratemaking purposes, and whether such costs should be approved or rejected in the context of a rate review.

ii. Distinction Between Genera and Other Operators

The Puerto Rico Supreme Court’s decision addressed the validity of a contractual liability waiver provision concerning extracontractual liability for ordinary negligence contained in the Transmission and Distribution OMA. That decision therefore arose in the specific context of the transmission and distribution operator’s contractual framework and the Energy Bureau’s prior regulatory approval of the challenged waiver. Genera operates under the LGA OMA, which does not include the same waiver provision at issue in the Supreme Court case. Accordingly, Genera’s

³² 216 DPR ___, 2025 TSPR 126.

potential negligence exposure must be evaluated under ordinary Puerto Rico tort principles and the allocation of responsibilities established in the LGA OMA, rather than through assumptions derived from the T&D OMA's invalidated waiver clause.

iii. Genera's Compliance with the December 10, 2025 Order

Following discussion of the Supreme Court's decision during the December 2, 2025 hearing, the Hearing Examiner issued an Order dated December 10, 2025 directing each utility, including Genera, to provide its best estimates of all anticipated new costs arising from the decision, including claims processing, insurance, litigation, compensation to complaining individuals, administrative costs, and related expenses. Genera timely complied through a formal Motion and Late-Filed Exhibit (Genera Ex. 1061).

In that submission, Genera explained that, given the recency of the Supreme Court's decision and the limited information available concerning the nature and number of potential claims, Genera was unable at that time to quantify additional costs with reasonable certainty. This continues to be the case at present, and Genera will timely inform the Energy Bureau if and when additional information becomes available.

C. Issue 8 – “Burden of Proof”

Issue 8 concerns the practical and legal meaning of the statutory “burden of proof” imposed on a requesting electric power service company in a rate review proceeding under Act 57-2014. It requires clarification of that burden in the administrative context, the Energy Bureau's independent duty to set just and reasonable rates even where an applicant allegedly fails to meet its burden, the treatment of nonfederal capital (“NFC”) costs in the absence of asserted proof of federal funding, and the role, if any, of a rebuttable presumption of prudence within Puerto Rico utility regulation.

i. Meaning of “Burden of Proof” in Rate Review Proceedings

Section 6.25(b) of Act 57-2014 provides that “[d]uring any rate review process, the burden of proof shall lie on the requesting electric power service company to show that the proposed rate is just and reasonable, consistent with sound fiscal and operational practices that provide for a safe and adequate service at the lowest reasonable cost.”³³ In the administrative context, this burden requires the applicant to present competent, substantial, and reliable evidence sufficient to permit the Energy Bureau to determine whether the statutory standard has been satisfied. It is not equivalent to the burden of proof in a judicial proceeding. Ratemaking is inherently predictive and prospective. It requires the Bureau to make forward-looking judgments about a three-year period using available operational data, engineering assessments, reliability risks, compliance requirements, and financial forecasts. It necessarily involves managerial judgment about how to sequence work, how to allocate contingency in the face of uncertainty, how to weigh the risk of underspending on reliability-critical needs, and how to account for the timing and eligibility

³³ § 6.25 (b); 22 L.P.R.A. § 1054x (b).

constraints of external funding sources. In that setting, “burden of proof” cannot mean “no uncertainty.” Rather, it means that the requesting utility must provide evidence that is sufficiently probable and grounded to support a reasoned determination that the proposed costs and resulting rates satisfy the statutory criteria.³⁴ A different burden of proof, i.e., one that would require more certainty, could actually harm the system as reasonably likely but uncertain events might not be budgeted and contracted for until too late, resulting in lack of preparedness, slow response times and higher costs.

Bondholders argue that the utilities must be “strictly held” to their statutory burden and that there is “no presumption of reasonableness” for proposed costs.³⁵ They further argue that intervenors need not affirmatively disprove proposed costs and contend that the operators have failed to meet their burden.³⁶ Genera does not dispute that the statute places the burden on the applicant. However, that burden is satisfied where the utility produces sufficient evidence addressing the statutory elements identified in Section 6.25(b). Genera executives testified under oath to explain the reasonableness of budget categories and the operational basis for forecasted costs. That testimony spanned finance and cost tracking, engineering and maintenance planning, operations and asset management, fuels, IT/OT systems and cybersecurity, environmental and regulatory compliance, human resources and labor budgets, legal and insurance budgets, corporate and governmental affairs, and federal funds coordination. In addition, Genera’s officers responded to Requests for Information (“ROIs”), filed late-filed exhibits, and provided supplemental testimony as directed by the Energy Bureau, the Hearing Examiner, and other parties. The evidence addressed specific cost drivers and operational requirements—including the distinction between planned, asset-specific maintenance work and reliability-driven emergent needs; the rationale for reserve mechanisms and contractual compliance; the limitations and timing constraints of federal funding; and the operational dependencies associated with interconnection studies and evolving technical requirements.

Disagreement about forecasting assumptions, engineering prioritization, cost sequencing, or federal funding timing elicited by intervenor counsel does not equate to a failure of proof. Those disagreements go to weight and policy judgment, not to the absence of sufficient evidence to comply with the operator’s burden of proof. Indeed, the record reflects that the Bureau itself

³⁴ See *Oficina de Ética Gubernamental v. Martínez Giraud*, 210 D.P.R. 79 (2022) (holding that the burden of proof in an administrative adjudicative proceeding rests on the party seeking relief or sanctions, and that agency determinations must be supported by legally sufficient evidence in the record and not by speculation or conjecture); *Capó Cruz v. Junta de Planificación*, 204 D.P.R. 581 (2020) (defining substantial evidence as relevant evidence that a reasonable mind might accept as adequate to support a conclusion); *Graciani Rodríguez v. Garage Isla Verde*, 202 D.P.R. 117 (2019) (explaining that administrative determinations must be grounded in the record as a whole and evaluated under a standard of reasonableness); *González Segarra v. CFSE*, 188 D.P.R. 252 (2013) (recognizing the presumption of regularity afforded to agency determinations supported by substantial evidence); see also 3 L.P.R.A. § 9675 (providing that agency factual determinations are sustained if supported by substantial evidence in the administrative record).

³⁵ *Bondholders’ Initial Post-Hearing Brief on the Revenue Requirement*, pp. 4–5.

³⁶ *Id.*, pp.1–3, 5.

recognized that ratemaking must manage competing risks—overspending on what is not executable versus underspending on what is executable—and that such determinations necessarily involve judgment rather than mechanical certainty.

The statutory burden of proof requires sufficient evidence tailored to administrative ratemaking. It requires the applicant to present enough reliable, competent evidence to permit the Bureau to make reasonable findings under the just and reasonable standard. It does not require the applicant to eliminate uncertainty, to guarantee federal obligation outcomes, to prove the future with precision, or to rebut every alternative hypothesis raised in briefing or by intervenor counsel. When the record contains sworn testimony and supporting discovery responses addressing the cost basis, operational need, and prudence of the requested revenue requirement, by experienced and knowledgeable executives—as it does here—the statutory “burden of proof” is satisfied, and the remaining task is for the Bureau to weigh the evidence and apply its statutory judgment within the boundaries of Act 57-2014.

ii. Effect of the Utility’s Burden and the Energy Bureau’s Duty to Set Just and Reasonable Rates

Section 6.25(a) of Act 57-2014 imposes an independent obligation on the Energy Bureau to ensure that the rates it approves are just and reasonable and consistent with sound fiscal and operational practices that provide reliable and adequate service at the lowest reasonable cost.³⁷ Section 6.25(b) allocates to the applicant the burden of demonstrating that its proposed rate satisfies that standard.³⁸ These provisions operate together. If PREB determines that certain components require modification, adjustment, or disallowance, it has authority to make those changes to ensure that the final revenue requirement and rates are workable, lawful, and sufficient to sustain reliable service. This dynamic was recognized during the hearing, including the need to manage competing risks of approving too much that cannot be executed versus approving too little of what must be executed to protect reliability.

This principle is important for costs that include inherent uncertainty. The record reflects that federal funding is neither automatic nor unlimited, that eligibility varies by cost category, and that the operative trigger for removing certain costs from rate treatment is obligation rather than a high-likelihood prediction. Likewise, the record reflects that some costs are subject to evolving technical requirements (e.g., MTRs affecting integration planning), and that some costs—including legal contingencies—relate to ramp-up in projects and compliance obligations that cannot be predicted with precision. In these settings, the Bureau’s task is to decide what is reasonable and prudent based on sufficient evidence and reasonable regulatory judgment, not to demand absolute certainty as a condition of cost recovery. When the Bureau adjusts a cost component—by disallowing, deferring, requiring a rider, or conditioning recovery on future

³⁷ 22 L.P.R.A. § 1054x (a).

³⁸ 22 L.P.R.A. § 1054x (b).

obligation—it must still ensure that the resulting rates remain consistent with sound fiscal and operational practices and capable of sustaining reliable and adequate service.

iii. Assignment of Nonfederal Capital Costs Values in the Absence of Proof of Federal Funding

Section 6.25 of Act 57-2014 requires the Energy Bureau to approve rates that allow recovery of operating and maintenance costs, prudent capital investments, financing costs, statutory costs, and other lawfully incurred expenses necessary to provide reliable and adequate service consistent with sound fiscal and operational practices.³⁹ The statute does not condition recovery of necessary capital investments on a definitive showing that all potential external funding sources have been conclusively exhausted. To the contrary, the statutory structure presumes that rates must be set prospectively to ensure the system has the resources needed to operate reliably and lawfully during the rate period, even as the utility pursues offsets and grants where available.

Bondholders contend that certain capital expenditures should be reduced or denied because the utilities have not proven the unavailability of federal funding and characterize aspects of the capital program as speculative or “hopeful.”⁴⁰ The practical implication of that position is that, absent definitive proof that federal funds are unavailable, the Energy Bureau should treat such projects as fully externally funded for ratemaking purposes, effectively assigning a nonfederal capital (“NFC”) value of zero, even where the project has been identified as necessary for reliability and compliance.

That approach is nowhere to be found in applicable legislation and is inconsistent with Act 57-2014’s revenue sufficiency mandate. Further, it requires proving a negative, an extremely burdensome and arguably impossible task as potential funding sources and allocations change over time.

The potential availability of federal funding is not a substitute for ratemaking, and operators have no obligation to “prove” that federal funds are not available before seeking ratepayer funding. The record reflects that federal funds are “not unlimited,” and that not all work categories are eligible even when a related project might qualify. The record also reflects that the operative trigger for removing costs from the revenue requirement is obligation, not merely a “high likelihood” designation: the record includes testimony clarifying that, if a project is not obligated by the relevant deadline, it will not be removed, because “a high likelihood is not obligated.” More fundamentally, the record reflects the reliability rationale for maintaining funding where federal funding is uncertain: the witnesses testified that projects are “needed for the system,” that Genera does not “have the federal funding” today and “cannot be 100% sure what’s going to happen,” and

³⁹ 22 L.P.R.A. § 1054x (a)–(b).

⁴⁰ *Bondholders’ Initial Post-Hearing Brief on the Revenue Requirement*, pp. 100–109; *Bondholders’ Reply Post-Hearing Brief on the Revenue Requirement*, pp. 34–36; 69–71.

that if funding is not approved, the projects “cannot be performed,” which would “be damage to the ratepayer” because it concerns “critical service.” These record realities defeat the premise that the potential availability of federal funds can be treated as certainty in lieu of ratemaking.

Federal funding programs are also subject to liquidity and sequencing requirements that complicate the simplistic “zero NFC” theory. The record reflects that federal-funded execution can require local cost-share and proof-of-payment before reimbursements or subsequent phases proceed, creating a recurring liquidity gap and a material financing challenge. In those circumstances, assigning an NFC value of zero does not simply “assume” federal funding will arrive; it assumes away the practical cash flow constraints that determine whether a project can be executed without interruption. A ratemaking outcome that under collects revenues needed to bridge these timing gaps risks either delaying reliability critical work or forfeiting access to federal funds due to inability to meet program requirements. That result would be inconsistent with the Bureau’s duty under Section 6.25(a) to ensure rates are consistent with sound fiscal and operational practices resulting in reliable and adequate service.

Treating uncertain federal funding as certain revenue risks structural under recovery that is incompatible with the just and reasonable framework and would jeopardize the operator’s ability to perform under contract standards. Federal funding “possibility” does not eliminate the operational necessity of a project, nor does it guarantee funding in the relevant amount or within the three-year rate period. Ratemaking must therefore distinguish between (i) projects for which funding is actually obligated and administratively executable within the period, and (ii) projects that may be eligible but remain uncertain in timing, scope, and obligation status. Collapsing those categories by assigning NFC values of zero whenever federal funding is “possible” converts uncertainty into certainty by fiat and shifts the risk of funding delay or denial onto system reliability—precisely the outcome Act 57-2014 is designed to prevent.

The appropriate regulatory response to funding uncertainty is structured oversight, not categorical denial. PREB has multiple lawful tools to protect ratepayers without undermining reliability: it may require reporting and verification of funding status; impose conditions tied to obligation milestones; adopt reconciliation mechanisms to ensure that later reimbursements are credited appropriately; and structure riders to address cost-share and timing realities in a transparent manner. Revenue sufficiency under Act 57-2014 requires that the revenue requirement be grounded in demonstrated system needs and prudent planning. Where federal funding is not obligated, and where eligibility and timing remain contingent, PREB should not assign an NFC value of zero as a matter of burden of proof rhetoric. Instead, it should set prospective rates sufficient to execute necessary projects and maintain reliable service, while using administrable, evidence-based mechanisms to account for federal funding when and if it materializes.

iv. Presumption of Prudence and its Effects on the Utility’s Evidentiary Burden

Section 6.25(b) of Act 57-2014 places on the utility the burden of proving that its proposed rate is just and reasonable,⁴¹ consistent with sound fiscal and operational practices that provide for a safe and adequate service at the lowest reasonable cost. The statute does not expressly codify a rebuttable presumption of prudence. The absence of an explicit presumption, however, does not answer the distinct evidentiary question presented by the Hearing Examiner: whether managerial decisions must be treated as prudent unless affirmatively proven otherwise, or whether prudence is evaluated within the broader just and reasonable inquiry grounded in substantial evidence and reasonable regulatory judgment.

As a matter of basic administrative and ratemaking logic, a presumption of prudence would be consistent with the prospective and predictive nature of ratemaking. Rate cases routinely require the Bureau to evaluate future costs and plans—particularly in a three-year rate period—based on available information, operational experience, engineering assessments, and forecasts. Courts and regulatory commissions have long recognized that managerial decisions must be evaluated based on the information reasonably available at the time they were made, not with the benefit of hindsight. This principle is embedded in the prudence doctrine. Even where a statute does not expressly use the phrase “presumption of prudence,” the analytical structure is the same: a utility must present competent evidence explaining why its expenditures, plans, and operational judgments are reasonable; disallowance is appropriate only where the record demonstrates that the decision was unreasonable or imprudent when made. This approach preserves the statutory balance: it protects ratepayers from paying for avoidable, wasteful, or imprudent costs while ensuring that utilities (or system operators acting under government-authorized agreements) are not penalized for making reasonable decisions in an uncertain environment. Accordingly, utility expenditures are generally presumed to reflect the exercise of prudent and reasonable managerial judgement, and disallowance is appropriate only where the record demonstrates that the decision was unreasonable or imprudent when made.⁴²

Bondholders argue that there is “no presumption of reasonableness” and that the utilities must be strictly held to their burden.⁴³ Genera does not dispute the statutory allocation of burden of proof to the requesting utility under Section 6.25(b). The key legal question, however, is whether that burden requires the utility to affirmatively disprove every conceivable allegation of imprudence, absent record evidence raising material concern.

There is a meaningful distinction between (i) the statutory burden to prove that a proposed rate is just and reasonable under Section 6.25(b), and (ii) a separate and more onerous burden to

⁴¹ 22 L.P.R.A. § 1054x (b).

⁴² See, e.g., *Nat'l Fuel Gas Distrib. Corp. v. Pub. Serv. Comm'n of N.Y.*, 16 N.Y.3d 360, 947 N.E.2d 115 (2011) (prudence is evaluated based on the information reasonably available at the time decisions were made, not with the benefit of hindsight); *West Ohio Gas Co. v. Pub. Utils. Comm'n of Ohio*, 294 U.S. 63 (1935) (regulatory determinations must be grounded in record evidence and may not rest on arbitrary disallowance); *Missouri ex rel. Southwestern Bell Tel. Co. v. Pub. Serv. Comm'n*, 262 U.S. 276 (1923) (regulator may not substitute its judgment for that of management absent demonstrated abuse of discretion).

⁴³ *Bondholders' Initial Post-Hearing Brief on the Revenue Requirement*, pp. 4–5.

affirmatively establish that there was no imprudence in each managerial decision. The former is mandated by Act 57-2014. There is no statutory basis for the latter. Section 6.25(b) sets the evidentiary standard for the rate proposal. It requires the applicant to present sufficient evidence for the cost basis, operational needs, and prudence of its proposed revenue requirement. Once that showing is made, intervenors may challenge the evidence through cross-examination and material evidence to the contrary. PREB must then weigh the evidence and make findings. But “burden of proof” does not mean that a utility must rebut every hypothetical alternative raised in post-hearing briefing. Nor does it mean that cross-examination on a subset of details negates the entire evidentiary foundation when the record contains sworn testimony from experienced executives and material supporting discovery responses explaining cost drivers and operational needs.

Even in jurisdictions that recognize a rebuttable presumption of prudence, that presumption does not eliminate the utility’s burden of proof. It does not “lighten” the burden in the sense of excusing the utility from presenting substantial evidence. Rather, it clarifies that once the utility has introduced competent evidence supporting its expenditures and planning judgments, disallowance should be supported by record evidence demonstrating inefficiency, improvidence, or inconsistency with sound fiscal and operational practices.⁴⁴

D. Issue 10 – Emergency Rate

Issue 10 concerns the scope of the Energy Bureau’s authority under Section 6.25(d) of Act 57-2014 to authorize rate adjustments “due to emergency or temporary events.” It requires interpretation of that statutory phrase and determination of whether it extends beyond reliability or liquidity emergencies to encompass circumstances involving prospective cost escalation if expenditures are deferred.

i. Meaning of Emergency or Temporary Events

Section 6.25(d) of Act 57-2014 provides that “[a]t the request of an electric power company, the Bureau may authorize an electric power service rate adjustment due to emergency or temporary events.”⁴⁵ The subsection then establishes a specific expedited procedure: a preliminary determination within 10 days, public notice if approved, public hearings within 30 days of the adjustment’s effective date, and a final determination within 60 days after the hearing process concludes. The effective term of any such temporary rate adjustment may not exceed 180

⁴⁴ See, e.g., *Public Serv. Comm’n of N.Y. v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980) (burden allocation in rate proceedings does not relieve the utility of demonstrating that proposed rates are just and reasonable, nor permit agency action without reasoned explanation grounded in the record); *Arizona Pub. Serv. Co. v. United States*, 742 F.2d 644 (D.C. Cir. 1984) (allocation of burden of proof does not excuse agency from engaging in reasoned decision-making supported by record evidence; conjecture is insufficient); *Kansas Gas & Elec. Co. v. FERC*, 758 F.2d 713 (D.C. Cir. 1985) (upholding burden allocation while emphasizing requirement of rational, record-based findings); *Missouri ex rel. Sw. Bell Tel. Co. v. Pub. Serv. Comm’n*, 262 U.S. 276 (1923) (regulatory authority does not extend to substituting regulatory judgment for that of management absent demonstrated unreasonableness).

⁴⁵ 22 L.P.R.A. § 1054x (d).

days.⁴⁶ These procedural features are not incidental—they are the Legislature’s clearest signal as to what “emergency or temporary events” must mean in context.

The statutory text of subsection (d) does not define the phrase “emergency or temporary events.” Nor does it expand the term beyond its ordinary meaning. The structure of Section 6.25 is therefore instructive.

First, subsection (d) is embedded within the broader rate review statute, where subsection (a) imposes PREB’s independent duty to ensure rates are just and reasonable and consistent with sound fiscal and operational practices resulting in reliable and adequate service, and subsection (b) places the burden on the applicant to demonstrate that its proposed rates satisfy that standard.⁴⁷ Subsection (d) does not alter the substantive just-and-reasonable framework or the Bureau’s independent review obligations. Rather, it establishes a narrowly tailored procedural mechanism—an extraordinary, provisional process designed to address urgent or temporary events without waiting for the completion of a full evidentiary rate case.

Second, the procedural design confirms that subsection (d) is temporary and *exceptional* in character. A 10-day preliminary determination, a mandatory hearing process within 30 days, and a 180-day maximum duration would be irrational if the Legislature intended subsection (d) to serve as a substitute pathway for ordinary rate changes, long-term cost recovery, or multi-year capital planning. Likewise, the requirement for a final determination following public hearings confirms that emergency adjustments are not intended to bypass due process, but rather to provide short-term relief while a fuller record is developed and tested.

Taken together, the specific structure of the sections compels a narrow construction: “emergency or temporary events” must be construed to refer to circumstances that are both (i) atypical relative to normal system planning and (ii) sufficiently urgent to justify provisional rate relief before completion of a full evidentiary process. The mechanism is tailored to discrete, time-sensitive events—not routine operational forecasting, not predictable cost increases, and not long-term capital planning considerations that should be addressed through a standard revenue-requirement proceeding. In other words, subsection (d) is designed for an unexpected shock to the system—an event that demands prompt action to preserve the continuity of safe and adequate service and to protect fiscal stability during a short, defined window.

The distinction between emergency/temporary conditions and ordinary planning is not merely theoretical. The record reflects multiple categories of risk that can arise suddenly and materially—forced outages, force majeure-type disruptions, cascading failures, and sudden liquidity constraints tied to time-sensitive funding requirements. These are the kinds of circumstances that, depending on their magnitude, may qualify as “emergency or temporary events” because they are not simply a matter of forecasted needs over a three-year rate period; they

⁴⁶ *Id.*

⁴⁷ 22 L.P.R.A. § 1054x.

are unplanned, urgent events that can compromise reliability or fiscal integrity if not addressed promptly.

Construing “emergency or temporary events” narrowly is consistent with the statutory intent of Act 57-2014, which requires the Bureau to ensure rates are just and reasonable and provide reliable service at the lowest reasonable cost while protecting customers from unnecessary or premature rate increases. A broad interpretation of subsection (d) would erode the discipline of ordinary ratemaking by allowing multi-year or structural cost issues to be shoehorned into an emergency mechanism, despite the Legislature’s express decision to cap such adjustments at 180 days and to require expedited hearings and a final decision. The better reading is the one dictated by the structure: subsection (d) exists to address a temporary crisis—an urgent and atypical event—while preserving the integrity of the full rate-review process as the primary mechanism for determining revenue requirements and long-term rate design.

ii. Application to Reliability and Liquidity Emergencies

Reliability emergencies fall comfortably within the ordinary meaning of Section 6.25(d). If an unforeseen event creates a credible and imminent risk of system outage, forced derating of essential units, fuel interruption, or regulatory shutdown, the resulting condition may constitute an “emergency” within the meaning of the statute. In that setting, a true reliability emergency—one that threatens immediate service continuity—fits squarely within the logic of an expedited, temporary rate adjustment. In such cases, temporary relief may be necessary to preserve safe and adequate service, which remains the core statutory objective of Act 57-2014’s ratemaking framework.⁴⁸

A liquidity shortfall, standing alone, does not constitute an emergency. However, where a demonstrated and imminent cash-flow constraint materially impairs the operator’s ability to satisfy essential, time-sensitive operational obligations—such as payroll for critical operational personnel, fuel procurement necessary to sustain generation, or compliance expenditures required to maintain lawful operation—and where delay would pose a concrete threat to continuity of service, the resulting risk to system reliability may bring the matter within Section 6.25(d). The record reflects that cash-flow constraints may arise even where an approved budget exists; the practical ability to meet immediate obligations can diverge from projected allocations. In such circumstances, it is not the financial imbalance itself, but the substantiated and imminent threat to continued electric service, that may justify provisional relief under the statute. The requirement that the Bureau issue a preliminary determination within ten (10) days reinforces that Section 6.25(d) is designed to address destabilizing conditions that cannot await completion of a full rate proceeding, while preserving the Bureau’s authority to make a final prudence determination.

This reading is consistent with the contractual and governance framework reflected in the LGA OMA, which presumes operational and financial viability necessary to perform O&M

⁴⁸ 22 L.P.R.A. § 1054x.

services in compliance with applicable law. Were extraordinary events to threaten system viability in the short term—whether through a reliability crisis or a liquidity shock—Section 6.25(d) functions as a limited stabilizing tool that allows temporary relief while preserving the integrity of the ordinary ratemaking process.

iii. Application to Prospective Cost Escalation and Deferred Expenditures

A materially different situation arises where the asserted basis for temporary rate adjustment is that a project may cost more in the future if expenditures are deferred, but no imminent reliability risk or liquidity impairment exists. The statutory text of subsection (d) does not refer to projected future cost increases, inflationary pressures, or general capital sequencing concerns. Nor does it displace the evidentiary burden imposed by subsection (b). The temporary adjustment mechanism is time-limited (maximum 180 days), requires subsequent public hearings, and culminates in a final determination. These features indicate that subsection (d) is designed to address exigent circumstances requiring immediate provisional relief, not ordinary forward-looking planning judgments.

Prospective cost escalation is a common feature of infrastructure management. Inflation, contractor pricing variability, and supply-chain conditions are inherent risks in capital budgeting. The record in this case reflects that technical requirements can evolve over time and that increased requirements can increase costs and commercial terms. But those realities—standing alone—are not the type of “emergency” the Legislature contemplated. They are the kinds of considerations ordinarily evaluated through integrated planning, budgeting, and comprehensive rate proceedings, where the Bureau can assess prudence, timing, tradeoffs between optimal and constrained scenarios, and the extent to which deferral is justified by executability, funding constraints, or reliability priorities. Indeed, the hearing record reflects that the Bureau must balance competing risks—overspending on what is not executable versus underspending on what is executable—and that such balancing is part of ordinary ratemaking and project oversight, not an emergency substitute.⁴⁹

If the mere possibility that a project may become more expensive in the future were sufficient to constitute an “emergency,” the limiting language of subsection (d) – and its carefully constructed procedural safeguards – would be rendered largely superfluous. Routine project sequencing disputes could be reframed as emergency matters simply by alleging that later execution could cost more. That would undermine the statutory design by allowing parties to bypass the comprehensive review contemplated by subsection (b)—including full evidentiary development—through repeated use of a short-term emergency mechanism. It would also create perverse incentives: operators could seek emergency adjustments whenever they project escalation, while intervenors would be forced to litigate long-term planning questions on an expedited timeline that the statute reserves for true emergencies.

⁴⁹ 22 L.P.R.A. § 1054x (b).

Accordingly, while anticipated cost escalation may be relevant to a prudence determination in a general rate case, it does not, standing alone, constitute an “emergency or temporary event” within the meaning of Section 6.25(d). Only where deferral would create an imminent and material threat to system reliability, legal compliance, or the ability to provide safe and adequate service—and where the risk cannot reasonably await resolution through the ordinary rate process—would the statutory threshold for temporary rate adjustment be implicated. This interpretation preserves the statutory distinction between (i) extraordinary, time-sensitive events warranting provisional relief and (ii) ordinary planning considerations properly addressed through the comprehensive rate-review framework established by Act 57-2014.

E. Issue 11 – Refund of Ratepayer Payments for Nonfederal Capital Expenditures

Issue 11 concerns the treatment of NFC costs included in an authorized revenue requirement when those costs are subsequently defrayed by federal or Commonwealth funds. It requires examination of whether reimbursement of ratepayers under such circumstances implicates the prohibition against retroactive ratemaking, and whether the timing and structure of the reimbursement affect that analysis.

i. Reimbursement During the Provisional Rate Period and Retroactivity Considerations

If reimbursement occurs during the provisional-rate period—before permanent rates take effect—the prohibition against retroactive ratemaking is not implicated in the same manner as it would be for a closed rate period. Provisional rates are interim by design and are subject to reconciliation against the permanent revenue requirement ultimately determined under Section 6.25 of Act 57-2014.⁵⁰

Where an NFC cost included in provisional rates is subsequently defrayed by federal or Commonwealth funds before permanent rates are established, the Energy Bureau may reflect that development in the permanent revenue requirement and reconcile provisional collections against the final determination. Any resulting over-collection may be credited or refunded as part of that reconciliation. In such circumstances, the Bureau would not be altering the final rate for a closed period; rather, it would be completing the ratemaking process that was expressly provisional from the outset.

In fact, the Resolution and Order⁵¹ establishing provisional rates stated that “[w]hen the Energy Bureau completes that adjudicative procedure and adopts permanent rates that satisfy the statutory just and reasonable standard, the total dollars collected from each customer class provisionally will be reconciled, by credit or surcharge, retroactively to July 1, 2025, so that each customer class pays the amounts that the Energy Bureau has established as the appropriate amounts

⁵⁰ 22 L.P.R.A. § 1054x.

⁵¹ Resolution and Order, Case No. NEPR-AP-2023-0003, *Establishment of Fiscal Year 2026 Provisional Rates and Fiscal Year 2026 Provisional Budget*, July 31, 2025.

for FY2026”.⁵² Accordingly, ratepayers were adequately put on notice that the provisional rate was conditional and subject to upward or downward reconciliation as part of the permanent rate setting process.⁵³

Accordingly, reimbursement during the provisional rate period does not present a retroactivity problem, as there is no final permanent rate in place.

ii. Reimbursement After the Provisional Rate Period and Retroactive Ratemaking

Where reimbursement occurs after the provisional-rate period—after permanent rates take effect—the prohibition against retroactive ratemaking can be implicated.

Where an NFC cost was incorporated into provisional rates and was subsequently defrayed by federal or Commonwealth funds after permanent rates were established, the Energy Bureau may reflect that change in the permanent revenue requirement and reconcile provisional collections if the regulator previously made adequate reservations in its final rate order related to the conditional recovery of NFC. For an adequate defense against a retroactivity claim, the Energy Bureau should clearly state in its final rate order that the NFC cost is conditional, that if external funds are received the utility will credit customers, and notify them that it would reduce future revenue requirements or refund amounts through a defined mechanism. Any resulting over-collection may be credited or refunded as part of that reconciliation, using administrable tools—credits, offsets, or riders—that preserve transparency and avoid double recovery. In these circumstances, the Bureau is not retroactively changing a final rate for a closed period; rather, it is finalizing the permanent rate based on updated factual circumstances and reconciling interim collections to align with the final revenue requirement.⁵⁴

This approach respects the prospective nature of ratemaking while preventing windfalls to any party. It preserves PREB’s duty under Act 57-2014 to ensure rates are just and reasonable and consistent with sound fiscal and operational practices, while also ensuring that ratepayers are not left bearing costs that are later defrayed during the same provisional stage of the ratemaking process.

⁵² *Id.*, p. 5.

⁵³ See, e.g., *FPC v. Tennessee Gas Transmission Co.*, 371 U.S. 145 (1962) (refunds permissible where rates were collected subject to refund); *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066 (D.C. Cir. 1992) (no retroactivity violation where parties had notice that rates were provisional and subject to later reconciliation); *Exxon Co., U.S.A. v. FERC*, 182 F.3d 30 (D.C. Cir. 1999) (retroactive implementation appropriate absent reasonable detrimental reliance where methodology was contested and subject to correction).

⁵⁴ See, e.g., *FPC v. Tennessee Gas Transmission Co.*, 371 U.S. 145 (1962) (refunds and interim reductions permissible where increased rates were collected subject to refund pending final determination); *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066 (D.C. Cir. 1992) (no retroactivity violation where parties had notice that rates were provisional and subject to later reconciliation); *Exxon Co., U.S.A. v. FERC*, 182 F.3d 30 (D.C. Cir. 1999) (retroactive corrective implementation permissible where parties were on notice that the methodology was contested and subject to revision and no reasonable detrimental reliance was shown); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (rate order lawful if its overall effect is just and reasonable, regardless of the particular methodology employed).

iii. Effect of Advance Notice in the Original Revenue Requirement Order

The retroactivity analysis is materially affected when PREB, in the order approving the revenue requirement, expressly conditions approval of a specific NFC cost on the absence of federal or Commonwealth funding and provides that, should such funds later become available to defray that cost, reimbursement or credit to customers will be required. In that circumstance, the Bureau is not revisiting a fully fixed rate for a closed period; it is implementing a condition that was part of the original approval and therefore part of the rate design itself.

This distinction flows from basic principles of prospective ratemaking and administrative adjudication. When approval of a cost component is expressly contingent on a defined future event, such as the later obligation or receipt of external funds for a project, then the approved amount is not fixed in unconditional terms. The contingency operates as a built-in adjustment mechanism. Both the utility and ratepayers are on notice from the moment of approval that the amount is conditional in a specific, defined way: the utility may recover the cost through rates unless and until the specified external funding event occurs, and if it occurs, the order requires a defined corrective action (credit, offset, or reconciliation). Because the contingency is embedded in the order itself, later implementation of the contingency does not “reopen” the order; it effectuates it. A conditional approval framework reduces those disputes by clarifying beforehand how the Bureau will treat later funding events, and by aligning expectations before any revenues are collected.

Advance notice also strengthens legal defensibility because it reduces the risk that later adjustments will be characterized as retroactive ratemaking. The classic retroactivity concern arises when a regulator changes the legal consequences of a completed period by revising rates after the fact. But when the original order expressly reserves a defined condition and prescribes the adjustment mechanism in advance, the later credit is not a “change” in the rate; it is the operation of the approved rate design under conditions that were disclosed and established at the outset. Ratepayers cannot claim surprise because they were notified that a credit would be required if external funds later defray the same cost. Likewise, the utility cannot claim deprivation of reliance interests because it recovered the cost subject to an express, pre-defined obligation to credit customers if the condition occurs.

This kind of conditional administrative approval is also consistent with PREB’s continuing duty under Act 57-2014 to ensure that rates remain just and reasonable and consistent with sound fiscal and operational practices. It promotes transparency and prevents double recovery without requiring the Bureau to make speculative assumptions about federal funding outcomes at the time of initial approval. It also provides an administrable approach to the timing problem: rather than forcing the Bureau to deny recovery unless external funds are definitively ruled out (which the record suggests may be impracticable given eligibility and obligation timing), the Bureau can approve recovery now and require automatic adjustment later if external funding materializes.

Prospectively, PREB should consider incorporating structured conditional language or defined NFC reconciliation mechanisms into revenue requirement orders where external funding

uncertainty is foreseeable. Such mechanisms can include: (i) clear definitions of the triggering event (e.g., obligation, receipt, or reimbursement); (ii) accounting and documentation requirements to verify the funding event; (iii) specified timelines for credits or offsets; and (iv) coordination with riders or reconciliation tools that preserve the prospective nature of ratemaking. These provisions would reduce the likelihood of future litigation over refunds by making clear, in advance, how the Bureau will treat reimbursements that occur during the rate period.

Accordingly, advance notice in the approving order significantly mitigates retroactivity concerns and strengthens the legal defensibility of subsequent reimbursement, offsets, or credits where external funding becomes available. It preserves the integrity of prospective ratemaking by treating reimbursements as the implementation of a pre-defined condition—not as a reopening of a closed rate—and it promotes regulatory clarity and fairness to both ratepayers and the utility in a funding environment defined by uncertainty and timing constraints.

IV. CONCLUSION

For the FY2026–FY2028 Rate Period, the Energy Bureau’s rulings on the legal and policy issues addressed in this Initial Brief should clarify the statutory boundaries of PREB’s authority, preserve the integrity of prospective ratemaking, and provide an administrable framework that supports reliable and adequate electric service consistent with sound fiscal and operational practices. To that end, Genera respectfully requests that the Bureau resolve the issues presented as follows:

Issue 1 (Energy Bureau fines applied to Genera). PREB should confirm that its administrative penalty authority is statutory in nature and must be exercised consistent with applicable notice and hearing safeguards, and that enforcement jurisdiction for such fines runs to the regulated operator, subject to contractual liability limitations, indemnities, PREPA’s obligations and other terms of the LGA OMA, not to non-party owners, parent entities, affiliates, or sponsors. PREB should further clarify that regulatory fines and contractual performance remedies occupy distinct spheres: the Energy Bureau may sanction regulatory noncompliance, while contractual oversight, remedies, and performance governance under the LGA OMA remain administered through the Agreement’s structures and the designated Administrator. The Energy Bureau should acknowledge the importance of fully honoring and adequately funding the contractual rights and obligations entered into by governmental entities of Puerto Rico, consistent with the Commonwealth’s public policy. Such recognition promotes legal certainty, investor confidence, and the continued financing and development of future projects on the Island.

Issue 3 (Affordability and practicability). Affordability is a significant public-policy objective that informs implementation, allocation, and rate design, but does not authorize a revenue requirement set below the level necessary to recover prudently incurred and necessary costs to provide reliable and adequate service. Practicability is properly understood as revenue realization and fiscal functionality (i.e., whether rates will work in practice to produce the revenues needed for lawful service), and that any practicability considerations must remain tied to the evidentiary

record rather than unsupported assumptions about customer payment behavior. Within that structure, PREB should determine a lawful revenue requirement first, and then apply affordability considerations through allocation and rate-design tools that manage customer impacts without compromising revenue sufficiency.

Issue 7 (Negligence liability). Through the Supreme Court’s determination, PREB cannot create civil law immunity through contract approval but retains ratemaking jurisdiction to determine the appropriate treatment of negligence related costs under the just and reasonable standard. Consistent with the procedural posture reflected in the record, at this time Genera does not have sufficient information on the effects the Supreme Court determination will have on potential claims or liability from this determination.

Issue 8 (Burden of proof). The statutory burden on the requesting utility requires competent, substantial evidence sufficient to support reasoned findings under the just and reasonable standard—but does not require certainty, or elimination of all disagreement inherent to prospective ratemaking. PREB should confirm that the burden allocation does not relieve PREB of its independent duty to set just and reasonable rates. In addition, PREB should reject any framework that assigns nonfederal capital costs a value of “zero” merely because federal funding is *possible* but not obligated; instead, PREB should require obligation based treatment, structured oversight, and administrable reconciliation mechanisms that prevent double recovery while preserving the ability to execute reliability critical projects when external funds are uncertain or delayed. Finally, PREB should clarify that the absence of an express statutory “presumption of prudence” does not create a presumption of imprudence; prudence is evaluated on the information reasonably available at the time and disallowance requires a supported evidentiary showing of unreasonableness when the decision was made.

Issue 10 (Emergency rate). Section 6.25(d) of Act 57-2014 should be interpreted narrowly, consistent with its expedited procedure and 180-day maximum duration, and should clarify that “emergency or temporary events” encompass discrete, urgent, atypical reliability crises (e.g., credible imminent risks to continued service from outages, derates, fuel interruptions, or compliance-driven shutdown risks) and material liquidity emergencies that threaten service continuity and cannot reasonably await completion of a full rate case. Conversely, PREB should clarify that prospective cost escalation, inflationary pressures, or generalized sequencing concerns—without an imminent reliability or liquidity threat—do not, standing alone, qualify as “emergency or temporary events” and should be addressed through ordinary rate proceedings.

Issue 11 (Refund/credit of ratepayer payments for NFC costs later defrayed by external funding). Where reimbursement occurs during a provisional rate period, reconciliation against the permanent revenue requirement can be implemented without the same retroactivity concerns that apply to closed rate periods, because provisional rates are interim by design and ratepayers were adequately put on notice, by the Bureau, that the provisional rate was conditional and subject to upward or downward reconciliation as part of the permanent rate setting process.

For the permanent rate order, the retroactivity risk is substantially mitigated where the approving order provides *advance notice and expressly conditions recovery* of specified NFC costs on the absence of external funding—requiring a defined credit or reimbursement mechanism if federal or Commonwealth funds later defray the same cost. For future administrability and to reduce litigation risk, PREB should incorporate structured conditional language and defined reconciliation.

Lastly, in its ratemaking endeavor, the Energy Bureau should acknowledge the importance of fully honoring and adequately funding the contractual rights and obligations entered by governmental entities of Puerto Rico, consistent with the Commonwealth’s public policy. Such recognition promotes legal certainty, investor confidence, and the continued financing and development of future projects on the Island. The Energy Bureau should also incorporate structured conditional mechanisms into revenue requirement orders where external funding uncertainty is foreseeable, including clear triggering events (e.g., obligation/receipt), documentation requirements, and timelines for credits or offsets.

Taken together, these clarifications will ensure that PREB’s final orders in this proceeding are legally coherent, administrable, and aligned with Puerto Rico’s statutory framework—protecting ratepayers from improper cost recovery and double recovery, while ensuring revenue sufficiency is necessary for reliable and adequate service during the system’s transition and within the constraints reflected in the record.

Exhibit 2

***RESUMEN EN ESPAÑOL DEL ALEGATO INICIAL DE GENERA SOBRE ASUNTOS LEGALES Y
POLÍTICA PÚBLICA***

RESUMEN EN ESPAÑOL DEL ALEGATO INICIAL DE GENERA SOBRE ASUNTOS LEGALES Y POLÍTICA PÚBLICA

1. Genera presenta su Alegato Inicial para atender los asuntos legales y de política pública identificados por el Oficial Examinador en este procedimiento de revisión tarifaria, relacionados con la determinación del requerimiento de ingresos para los años fiscales 2026-2028 y con la interpretación del marco regulatorio aplicable al sistema eléctrico de Puerto Rico.
2. El Alegato se fundamenta en el marco estatutario vigente, incluyendo la Ley 57-2014 y legislación relacionada, que establece la responsabilidad del Negociado de Energía de asegurar que las tarifas sean justas y razonables y consistentes con prácticas fiscales y operacionales que permitan proveer un servicio eléctrico confiable y adecuado al menor costo razonable.
3. Asimismo, el escrito describe el contexto operacional y regulatorio actual del sistema eléctrico, caracterizado por procesos de transformación estructural, la participación de operadores bajo acuerdos aprobados por el Gobierno de Puerto Rico, incluyendo el LGA OMA celebrado entre PREPA, P3A y Genera, y la interacción entre mecanismos tarifarios y fuentes de financiamiento externo.
4. En ese contexto, Genera señala que el proceso tarifario requiere evaluar los costos necesarios para mantener la operación segura y confiable del sistema, así como considerar factores operacionales, regulatorios y financieros que inciden en la ejecución de proyectos y en la disponibilidad de recursos.
5. El Alegato también examina el papel que desempeñan los fondos federales en la recuperación y modernización del sistema eléctrico, señalando que dichos fondos pueden complementar la recuperación tarifaria, pero que su disponibilidad depende de procesos de elegibilidad, aprobación y obligación por parte de las agencias federales correspondientes que determinan cuándo los recursos pueden utilizarse efectivamente.
6. De igual forma, se explica que muchos programas federales requieren pareo de fondos y evidencia de desembolsos antes de procesar reembolsos, lo que puede generar desfases temporeros de liquidez que deben considerarse dentro del análisis tarifario.
7. En cuanto al Asunto 1, el Alegato analiza el alcance de la autoridad del Negociado para imponer multas administrativas bajo la ley aplicable, señalando que dicha autoridad es de naturaleza estatutaria y debe ejercerse conforme a los requisitos de debido proceso y dentro de los límites jurisdiccionales establecidos por ley.
8. Genera explica que las sanciones regulatorias por incumplimientos a órdenes o disposiciones regulatorias operan de forma independiente a los mecanismos contractuales que rigen el desempeño operacional y las relaciones contractuales entre las entidades participantes del sistema eléctrico bajo el acuerdo de operación y mantenimiento aplicable.
9. Asimismo, se señala que la legislación dispone que las multas administrativas deben ser pagadas con fondos propios de la entidad sancionada y no pueden recuperarse mediante cargos

a los clientes del sistema eléctrico.

10. También se plantea que la autoridad sancionadora del Negociado se ejerce sobre las entidades sujetas a su jurisdicción regulatoria y no se extiende automáticamente a entidades afiliadas, inversionistas u otros terceros que no sean parte del procedimiento.
11. En cuanto al Asunto 3, el Alegato examina el papel de la asequibilidad dentro del marco estatutario de tarifas justas y razonables, destacando que el Negociado tiene la responsabilidad dual de proteger a los consumidores de cargos injustos y, al mismo tiempo, asegurar que el sistema eléctrico cuente con los recursos necesarios para operar de manera confiable y adecuada.
12. Genera sostiene que las consideraciones de asequibilidad pueden informar el análisis de política pública y el diseño tarifario, pero no autorizan establecer tarifas por debajo del nivel necesario para cubrir costos prudentes y necesarios asociados a la operación del sistema eléctrico ni para comprometer la suficiencia de ingresos requerida por el marco estatutario aplicable.
13. El escrito también distingue entre los conceptos de asequibilidad y practicabilidad, señalando que la primera se relaciona con el impacto tarifario sobre los clientes mientras que la segunda se refiere a la viabilidad práctica de implementar tarifas que produzcan los ingresos necesarios para sostener la operación del sistema.
14. En relación con el Asunto 7, se examinan las implicaciones regulatorias de la decisión del Tribunal Supremo de Puerto Rico relacionada con disposiciones contractuales sobre responsabilidad por negligencia ordinaria en el contexto del sistema eléctrico.
15. Genera explica que dicha decisión no resolvió el tratamiento tarifario de los costos relacionados con reclamaciones por negligencia, por lo que corresponde al Negociado evaluar si tales costos pueden considerarse costos operacionales recuperables dentro del proceso tarifario.
16. En cuanto al Asunto 8, el Alegato analiza el significado del peso de la prueba en procesos de revisión tarifaria y explica que el solicitante debe presentar evidencia suficiente que permita al Negociado evaluar si las tarifas propuestas cumplen con el estándar legal aplicable.
17. También se señala que, dado el carácter prospectivo de los procesos tarifarios, el análisis regulatorio requiere considerar proyecciones razonables basadas en información disponible, experiencia operacional y evaluaciones técnicas, sin exigir certeza absoluta sobre eventos futuros.
18. En relación con el Asunto 10, el escrito examina la autoridad del Negociado para aprobar ajustes tarifarios temporeros en situaciones de emergencia, señalando que dicho mecanismo está diseñado para atender eventos extraordinarios y urgentes que puedan poner en riesgo la continuidad del servicio eléctrico.

19. Genera aclara que este mecanismo no está destinado a sustituir el proceso tarifario ordinario ni a atender consideraciones normales de planificación o aumentos de costos proyectados que no constituyan una emergencia real.
20. Respecto al Asunto 11, el Alegato analiza el tratamiento de costos que posteriormente puedan ser cubiertos por fondos federales o del Gobierno de Puerto Rico, señalando que el Negociado puede establecer mecanismos de reconciliación o créditos a los clientes cuando dichos fondos se reciben luego de que los costos hayan sido incluidos en tarifas provisionales o permanentes.
21. Genera explica que, cuando el Negociado condiciona la recuperación de ciertos costos a la ausencia de financiamiento externo, la implementación posterior de créditos o ajustes tarifarios no constituye ratificación retroactiva de tarifas, sino la aplicación de una condición previamente establecida en la orden tarifaria.
22. En conclusión, Genera solicita que el Negociado resuelva los asuntos legales y de política pública presentados de manera consistente con el marco estatutario aplicable y con los principios regulatorios que requieren establecer tarifas justas y razonables que permitan operar el sistema eléctrico de forma segura, adecuada y confiable.