

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

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**IN RE:**

**PUERTO RICO ELECTRIC POWER  
AUTHORITY RATE REVIEW**

**CASE NO.: NEPR-AP-2023-0003**

**SUBJECT: LUMA's Legal Brief**

**LUMA'S BRIEF IN RESPONSE TO LEGAL QUESTIONS**

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**TO THE HONORABLE PUERTO RICO ENERGY BUREAU:**

**COME NOW** LUMA Energy, LLC (“ManagementCo”), and LUMA Energy ServCo, LLC (“ServCo”), (jointly “LUMA”), and respectfully state and request the following:

**I. Threshold statement.**

LUMA submits this brief as requested by the Hearing Examiner in the order dated December 22, 2025 (“December 22<sup>nd</sup> Order”). Several of the legal questions of the December 22<sup>nd</sup> Order go beyond the matters at issue in this proceeding (namely setting permanent rates for the Puerto Rico Electric Power Authority (“PREPA”)) and are not ripe for adjudication. This Puerto Rico Energy Bureau (“PREB”) should decline to issue rulings on the following topics of the legal questions: (i) imposition of fines (including sources of funds to pay fines) and an emergency rate to avoid future more costly costs, given that the proposed revenue requirement does not include costs to pay fines and this case does not involve an emergency rate petition; (ii) PREB’s authority to authorize rate-based recovery of costs to compensate victims in negligence claims, for which no costs were requested; and (iii) the suggestion that PREB could approve Non-Federally-Funded

Capital costs (“NFC”) within the revenue requirement, and also direct that refunds to customers will be issued if the Federal Emergency Management Agency (“FEMA”) or other government agencies, later reimburse those costs. Notwithstanding, LUMA responds to several of the legal questions, without waiving any rights to contest any PREB determination in the final rate order.

## **II. Responses to Questions.**

### **1. Fines**

Discussion regarding the treatment and payment of fines is premature. LUMA’s proposed revenue requirement does not include a line item to pay a fine imposed by PREB. Thus, any discussion concerning the classification, payment, or recovery of fines is speculative and without a concrete factual predicate.

PREB derives its authority to impose administrative fines from Act 57-2014. Section 6.3(oo) of Act 57-2014 empowers PREB to “adopt the rules, orders, and regulations needed to carry out its duties, issue orders, and impose fines to comply with the powers granted by law, as well as for the implementation of this Act.” PR Laws Ann. Tit. 22 § 1054b(oo)(2025). Additionally, Section 6.7(h) authorizes Commissioners to “impose administrative fines within the parameters established by th[e] Act.” PR Laws Ann. Tit. 22 § 1054f(h).

PREB’s penalty jurisdiction extends to violations of public energy policy. PR Laws Ann. Tit. 22 § 1054jj. As reflected in PREB’s Regulation No. 8543, PREB may issue any order or resolution it deems necessary to give effect to the purposes of Act 57-2014, to compel compliance with any law whose interpretation and implementation is subject to the jurisdiction of the PREB, and to enforce its rules, regulations, orders and decisions. Section 12.01, Regulation 8543. Moreover, Regulation 8543 states procedural requirements before fines are imposed. These include issuance of a Notice of Noncompliance if PREB learns that a person has incurred, is, or may be

incurring a violation of energy public policy, Act 57-2014, any PREB regulation, or any other law whose interpretation, implementation, or enforcement falls under PREB's jurisdiction. Section 14.01, Regulation 8543. The Notice shall state the alleged breach, the facts, and order the person to respond, provide defenses and its position. Section 14.02, Regulation 8543; Tr. 11/24 111:1-14.

If an operator refuses to pay a PREB fine, PREB has enforcement mechanisms. Section 6.3(nn) of Act 57-2014, provides that PREB may “sue and be sued in complaints or causes of action in its own name against any natural or juridical person that fails to meet or interferes with the requirements, purposes, and objectives of this Act before the Court of First Instance of . . . Puerto Rico.” PR Laws Ann. Tit. 22 § 1054b(nn). PREB also has “legal standing to bring the necessary action including, but not limited to, requesting a contempt order against any natural or juridical person that fails to comply with the mandates contained under the jurisdiction of the Energy Bureau.” *Id.* Additionally, Section 6.36(e) provides that PREB “may resort to the pertinent forums to seek any remedy, including account garnishment, to ensure enforcement of the penalties imposed or any other power thereof in accordance with this Act.” PR Laws Ann. Tit. 22 § 1054jj(e). Furthermore, Section 6.36(f) provides that upon imposing a sanction, PREB “may direct any agency, body, office, public corporation, program, or entity of the Government of Puerto Rico that owes a debt to the regulated operator to deposit the amount owed with the Energy Bureau, . . . to ensure that it is fully paid.” PR Laws Ann. Tit. 22 § 1054jj(f).

Section 6.36(c) of Act 57-2014 was amended by Act 2-2025, to provide that “fines imposed by the Energy Bureau on a private operator shall be paid by the Operator out of its own funds and be considered disallowed costs for the purposes of the contractual relationship with the State . . . .” PR Laws Ann. Tit. 22 § 1054jj(c). That amendment to Act 57-2014 was promulgated on March 19, 2025, and applies prospectively.

The Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (“OMA”), executed on June 22, 2020, prior to the passing of Section 6.36(c) of Act 57-2014, contains provisions governing Disallowed Costs<sup>1</sup>, which are costs that shall not be treated as T&D Pass-Through Expenditures and shall be the sole responsibility of LUMA. OMA, Section 7.6(a). Section 7.6 specifies that Disallowed Costs include: “(ii) any and all fines, penalties or other similar payments or charges imposed by PREB on Operator, except to the extent Operator is performing its obligations under this Agreement in accordance with this Agreement.” OMA, Section 7.6(a)(ii). This language creates a critical *caveat*: fines imposed by PREB are treated as Disallowed Costs only to the extent the operator failed to perform its obligations under the OMA in accordance with the agreement. As LUMA’s witness, Mr. Alejandro Figueroa (“Mr. Figueroa”) explained, the OMA treats PREB penalties as disallowed costs, provided they are resulting from actions that are inconsistent with the OMA. Tr. 11/24, 182:4-8.

Classifying any fine as a Disallowed Cost without complying with OMA Section 7.6(a) and prohibiting LUMA from disputing said expense, would impair LUMA’s contractual rights and expectations in violation of Section 7 of Article I of the Constitution of the Commonwealth of Puerto Rico and Section 10 of Article I of the Constitution of the United States. *See Trinidad Hernández v. ELA*, 188 DPR 828, 834-35 (2013) (*stating* the constitutional prohibition on impairment of contractual rights and applicable standard of unjustified substantial or severe impairment); *Domínguez Castro v. E.L.A.*, 178 DPR 1, 80 (2010) (“[the] protection against impairment of contractual obligations limits the power of the government to interfere with contractual obligations between private parties, as well as contractual obligations contracted by the State.”) (translation provided).

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<sup>1</sup> Capitalized terms when referencing the OMA have the meaning set forth therewith.

The OMA establishes a separate process for resolving disputes about whether a particular cost constitutes a Disallowed Cost. Section 7.6(b) of the OMA provides: “The Parties hereby agree that, in the event that a dispute arises in connection with Disallowed Costs, the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (Dispute Resolution).” OMA, Section 7.6(b). Consequently, as Mr. Figueroa testified, the fact that PREB imposes a penalty does not automatically make it a disallowed cost under the OMA. Tr. 11/24 188:12-21. Rather, the OMA provides a process by which the Public-Private Partnerships Authority (“P3A”) would make a determination as to whether it is a disallowed cost as defined in the OMA. *Id.*, 189:8-12. As counsel for LUMA clarified during the evidentiary hearing: “if the Energy Bureau determines that the cost is imprudent, it could trigger the process under the OMA for a determination [on] disallowed cost[s]. And under the OMA, that would be determined between the parties. So, it could be the consequence of a determination by ... [PREB] that that would be a disallowed cost. But it’s not that the ... [PREB] has authority ... to rule directly whether a cost is a disallowed cost or not.” Tr. 11/24 32:4-15.

“[I]f the Energy Bureau’s reasoning for imposing a penalty is, at the end of the day, a noncompliance with an obligation that LUMA has under the contract, then there would be no basis for [LUMA] to be able to go to P3A and then say, ‘overrule the PREB’s determination.’” *Id.*, 194:13-19. “Penalties can become disallowed costs, which LUMA as a private company would have to bear, and those costs would not go to rate[payers].” *Id.*, 194:21-25, 195:1.

Moreover, PREB’s regulatory jurisdiction extends to electric power service companies and persons whose actions affect the provision of electric power services. PR Laws Ann. Tit. 22 § 1054c(b). Act 57-2014, however, does not confer regulatory jurisdiction over shareholders or other

owners of an operator such as LUMA. PREB’s jurisdiction over LUMA only extends to the services it provides under the contractual provisions of the OMA as the operator of the grid.

## **2. Annual Updates of Billing Determinants.**

Absent a PREB-initiated extraordinary rate review process, updating billing determinants annually is contrary to Act 57-2014. Act 57-2014 contemplates that approved rates, including the billing determinants used to calculate them, remain in effect for at least three-year cycles, and therefore does not authorize an annual resetting of rate values through annual billing-determinant updates as the default ratemaking approach. The statute provides that “[t]he Bureau shall approve a rate that ... remains in effect for, at least, three (3)-year cycles, unless the Energy Bureau *motu proprio* decides to conduct a rate review”. Act 57-2014, § 6.25(b)(9)), PR Laws Ann. Tit. 22 § 1054x. Act 83 of May 12, 1941 (“Act 83”), mirrors Act 57-2014, adding that periodic adjustments through riders are permissible. Act 83, Section 6A, 22 LPRC § 196(a) (2025).

This is aligned with PREB’s authority to “[f]ormulate and implement strategies to achieve the objectives of this Act including, ... attaining the goal of reducing and stabilizing energy costs permanently, controlling volatility in the price of electricity in Puerto Rico.” Act 57-2014, § 6.3(f), PR Laws Ann. Tit. 22 § 1054b. This stability purpose is reflected in the record: Commissioner Torres-Miranda stated that the purpose of the current “rate procedure was to establish rates for three years because the people of Puerto Rico, they need stability” and PREB “can’t be changing the [billing] determinants every year.” Tr. 12/16, 45:2–11. *See also* LUMA’s Rate Design Brief, 9-11.

## **3. Practicability.**

On the question whether Act 57-2014 and Act 17-2019 require or grant PREB discretion to use affordability as a criterion, it is LUMA’s position that those statutes do not allow PREB to

consider affordability in setting the approved revenue requirement to establish just and reasonable rates. However, as discussed below, PREB can consider affordability in rate design and cost allocation as a consideration of public policy. Public policy adopted in Act 17-2019, considers practicability as a guiding principle in rate structure design, *see* Section 1.4 (vi); and the principles of universal access to electric power and efficiencies in generation, transmission, and distribution of electric power found in Section 1.5. PR Laws Annot Tit. 22 §§ 1141c, 1141d (2025).

Although affordability and practicability are factors that PREB may consider in cost allocation and rate designs, rates must raise sufficient revenues to provide reliable service and maintain and invest in the electric system (“System”). That is the principal task of ratemaking. Section 6.25 of Act 57-2014 sets a statutory duty to ensure revenue sufficiency to fund just and reasonable operational and maintenance costs, capital costs, financing costs and costs imposed by statute. PR Laws Ann. Tit. 22 § 1054x(a).

The terms “affordability” and “practicability,” are not defined in the statutes, and thus, the statutory text does not provide principled guidance or intelligible criteria for PREB to consider affordability and practicability as standalone requirements. Moreover, these statutes do not distinguish between the two concepts and do not mandate that PREB employ them in setting the approved revenue requirement. Indeed, it is arguable that using these criteria in setting the revenue requirement would not be consistent with public policy because it could result in depriving the utility of the funds it needs to provide adequate electric service. REB’s determination should focus on LUMA’s careful and documented prioritization of proposed investments.

As LUMA established in its Revenue Requirement Brief (“RRBrief”), 128-129, rate design and revenue allocation are the proper avenues to address concerns about affordability, not by giving a “haircut” to the revenue requirement and undermining adequate service. PREB has discretion to

consider affordability and related policy goals when distributing the approved revenue requirement among customer classes, and through proposals such as the ones set forth by LUMA.

#### **4. Negligence Liability Costs.**

During the evidentiary hearing, a discussion arose as to who bears the costs of negligence and whether such costs should be passed through to ratepayers. The Hearing Examiner made a distinction between ordinary operating costs (such as insurance and claims processing) and actual damage payments. Tr. 12/2, 32:18-21. He stated that, if LUMA is found to be negligent, the question remains whether the cost of satisfying the liability is recoverable through the pass-through process or whether it is a corporate liability that LUMA must pay from its own funds. *Id.*, 32:1-7. That determination demands consideration of facts regarding the alleged negligent action, and thus, it is improper for PREB to answer the question in this rate case, absent a live and real controversy that could trigger discussions on Disallowed Costs under the OMA.

PREB should consider that it has an obligation to ensure that legitimate operational costs necessary to maintain reliable service are recoverable. PR Laws Ann. Tit. 22 § 1054x(b)(9). Further, PREB should consider the timing and evidentiary requirements for addressing costs of negligence liability. Tr. 12/2, 22:12-19. As LUMA has noted, quantifying certain costs—particularly damages—may not be feasible within the current rate period. *Id.*, 22:1-19. PREB may consider mechanisms such as reserves or adjustment clauses to address cost categories that cannot be precisely quantified at this time. Finally, PREB should distinguish between different types of negligence and liability costs. Insurance costs and claims-processing costs are ongoing operating expenses that can be projected and included in the revenue requirement. *Id.*, 21:5-21. Actual damages awards, by contrast, are contingent on litigation outcomes and may require different treatment. *Id.*, 13:19-23.

*i. Compensation Owed to Victims of Utility Negligence.*

This discussion is premature. To date, compensation liability payable in the rate period has not been imposed on LUMA by any court, regulatory body, or other adjudicative authority. Thus, discussion regarding potential compensation obligations remains speculative and without a proper factual or legal foundation. This matter should be deferred until such time as there is an actual basis for its consideration. *See also* Exhibit 1062.

It is important to note that the OMA provides separate liability caps for losses attributable to negligence, gross negligence, or willful misconduct, indicating that the parties contemplated different treatment for such conduct. OMA, Section 18.3(a)-(b)(i).<sup>2</sup>

In the past, PREB approved large settlement amounts in cases involving PREPA’s alleged negligence with payment from PREPA’s HoldCo Non-Labor Budget, stating that it was in PREPA’s and ratepayers’ best interests. PREB acknowledged that the intent of PREPA’s request was appropriate and that settlements benefiting ratepayers should generally be favored. *See* Resolutions and Orders dated August 15, 2024, March 20, 2025, and March 28, 2025, Case No. NEPR-MI-2021-0004.

*ii. Costs to Assess and Process, or Defend Against, Alleged Victims’ Claims*

The OMA establishes a comprehensive framework governing the treatment of costs incurred by LUMA in operating the transmission and distribution system (“T&D System”). OMA, Section 7.2(a). Under the OMA, costs incurred by LUMA in performing O&M Services are

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<sup>2</sup> The OMA establishes limitations on LUMA’s liability, including annual and aggregate caps. OMA, Section 18.3(a)(i). LUMA’s negligence liability to PREPA and the P3A, including Disallowed Costs, under Section 18.1 is limited to \$35,000,000 in the aggregate for losses occurring in any Contract Year and \$105,000,000 in the aggregate for all losses during the Term. *Id.* For losses attributable to gross negligence or willful misconduct, separate caps apply: \$35,000,000 for all losses occurring in each Contract Year for each of the first five Contract Years; \$52,500,000 for all losses occurring in each Contract Year for each subsequent Contract Year; and a total maximum of \$105,000,000 in aggregate for all losses during the Term. OMA, Section 18.3(b)(i).

generally treated as “T&D Pass-Through Expenditures,” which are paid by PREPA and ultimately recovered through rates. T&D Pass-Through Expenditures include a comprehensive range of costs incurred in providing O&M Services, including but not limited to: claims, lawsuits, litigations, losses, fines, penalties, costs and expenses, judgments, liens, settlements, appeals, disbursements, and similar expenses incurred in connection with the performance of O&M Services. OMA, Annex XI(6). The OMA expressly contemplates that legal costs, including reasonable and documented fees of external counsel, constitute permissible T&D Pass-Through Expenditures. *Id.* The OMA also includes “wages, salaries, bonuses, employer contributions to pension and employee medical plans...incurred by ServCo in performing the O&M Services.” OMA, Annex XI(1).

LUMA identified the incremental headcount and costs needed to manage the type of claims that could arise due to the nullification of the liability waiver. Those costs are \$1,159,475.00. Exhibit 1062. PREB has discretion to determine whether such costs are just and reasonable for recovery. PR Laws Ann. Tit. 22 § 1054x(b)(9). However, PREB must consider that operational costs for claims processing represent legitimate business expenses necessary for the utility to comply with its legal obligations. Tr. 12/2, 50:6-12. As Commissioner Torres noted in the evidentiary hearing, even setting aside the question of who pays for damages, “there is an operational part of that process. You either have a division or more employees to address the complaints, and that is an operational cost.” *Id.*, 50:3-12. If that operational cost is not accounted for in the rate-setting process, the utility cannot perform its duties effectively.

The operational costs associated with claims processing represent a necessary component of utility operations, particularly in light of the Puerto Rico Supreme Court’s decision on the liability waiver. Tr. 12/2, 50:6-25, 51:1-5.

**iii. Insurance**

The OMA requires that the Operator maintain Required Insurance as specified in Annex XII. OMA, Section 10.1. The OMA also recognizes as T&D Pass-Through Expenditures the costs of obtaining and maintaining Required Insurance, including premiums, claims, and deductible payments. OMA, Annex XI(13). Thus, insurance costs associated with utility operations are recoverable pass-through expenditures under the OMA. All premiums, deductibles, and other fees, costs, and expenses shall be T&D Pass-Through Expenditures. OMA, Annex XI(13).

The statutory and contractual framework contemplates that insurance costs are generally recoverable as legitimate utility expenses. *Id.* PREB has discretion to examine insurance costs and determine whether they are prudent and reasonable. PR Laws Ann. Tit. 22 § 1054x(b)(9). LUMA presented in this proceeding the LUMA-PREPA Comprehensive Insurance Program for 2024-2026, which describes each insurance type, its costs, and discloses that all included insurance policies are required under the OMA. Exhibit 801. All those costs are required and necessary for LUMA and PREPA to operate the System.

However, LUMA does not expect any insurers to be willing to assume the risk of covering the actual \$2M Self-insurance Retention in its liability insurance umbrella. Exhibit 1062. It remains uncertain whether such insurance options would be available for this purpose. *Id.*

**5. Burden of proof.**

Under Section 6.25(b) of Act 57-2014, an electric power company requesting to recover its costs has the burden of proof “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.” PR Laws Annot. §1054(x). Section 13.03 (E) of PREB Regulation 8543, mirrors that standard.

In *West Ohio Gas Co. v. Public Utilities Commission*, 294 U.S. 63, 72 (1935), the U.S. Supreme Court declared that “[g]ood faith is to be presumed on the part of the managers of a business.” “Although the burden of proof of the reasonableness of all costs incurred which enter into a rate increase request rests with the utility, the utility’s expenses are presumed to be reasonable and incurred in good faith.” *Hamm v. S.C. Pub. Serv. Comin’n*, 422 S.E.2d 110, 112 (S.C. 1992). This presumed prudence stems from the principle that while regulators “may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies and is not clothed with the general power of management incident to ownership.” *Missouri ex rel. Southwestern Bell Tel. Co. v. Public Service Com.*, 262 U.S. 276, 289 (1923).

Prudence has been defined as “[c]arefulness, precaution, attentiveness, and good judgment, as applied to action or conduct . . . .” *WPSC v. Public Serv. Comm’n*, 457 N.W.2d 502, 504 (Wis. Ct. App. 1990) (citation omitted). It is “an essential constituent of utility regulation, [and] is determined by judging whether the utility acted reasonably, under the circumstances at the time, considering that the company had to solve its problems prospectively rather than in reliance on hindsight.” *Long Island Lighting Co. v. Pub. Serv. Comm’n*, 134 A.D.2d 135, 143-144 (App. Div. 3rd Dept. 1987) (citation omitted).

The presumption “does not shift the burden of persuasion but shifts the burden of production on to the Commission or other contesting party to demonstrate a tenable basis for raising the specter of imprudence.” *Hamm*, 422 S.E.2d at 112. Only when a “showing of inefficiency or improvidence” is made will a presumption of prudence not survive. *Id.* “The burden of going forward with evidence of reasonableness and justness arises only when the Commission requires it or affirmative evidence is offered by a party to the proceeding that challenges the reasonableness of expenses . . . the basis that they are exorbitant, unnecessary, wasteful,

extravagant, or incurred in abuse of discretion or in bad faith or that such expenses exceed either the cost of the same or similar goods or services on the open market or the cost similar utilities pay to their affiliated companies for the same or similar goods or services.” *State ex rel. Utils. Com. v. Intervenor Residents of Bent Creek/Mt. Carmel Subdivisions*, 286 S.E.2d 770, 779 (N.C. 1982) (*citation omitted*).

As discussed in LUMA’s Revenue Requirement Reply Brief, (“RRReply”), 2-5, unavailability of federal funds is not a part of the statutory standard. PREB’s or intervenors’ expectation on availability of federal funds does not mean that proposed NFC costs are wasteful or imprudent. Moreover, it should be noted that PREPA is challenging in Case No. NEPR-MI-2021-0002, the prioritization of LUMA’s FEMA projects, which adds to the list of factors, that must be managed to commence and/or continue federally funded projects.<sup>3</sup> It is unreasonable for PREB to deny NFC costs in this proceeding based on an expectation of federal funding, given that the date and time when such funding may materialize is uncertain and dependent on the action or inaction of third parties and thus, to a large extent, outside of LUMA’s control. Meanwhile, investments are needed to address longstanding deficiencies or mitigate service interruptions. This does not mean that LUMA would not be able to recover those costs from federal sources through reimbursements.

Absent affirmative opposing evidence, PREB is bound to approve proposed costs which are supported by both substantial record evidence and the presumption of prudence. As discussed in LUMA’s RRBrief and RRReply, LUMA met its burden of proving that proposed costs are just and reasonable, consistent with sound fiscal and operational practices. Given the urgent needs of the T&D System and the uncertainties surrounding federal funds, using NFC funds to accelerate

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<sup>3</sup> See e.g., Exhibit 74, pp. 18-19, 22-23, 28-29, 32-33; Exhibit 79, pp. 23-27, 29-31, 35-38, 43-44.

projects is consistent with sound fiscal and operational practices, because it is prioritizing the execution of critical improvements while preserving the ability to obtain full reimbursement through federal programs.

PREB did not present evidence to challenge LUMA's costs or LUMA's request to fund NFC and allocation between NFC and federally funded costs. Bondholders likewise did not present affirmative evidence to challenge, much less raise serious doubts about the prudence of LUMA's proposed costs.

If PREB understands that the utility did not carry its burden of proving that particular costs or the proposed rates are just and reasonable, it cannot substitute the utility's management views with its own views to approve different costs or rates, particularly if PREB's views are not supported by affirmative and substantial evidence. Act 57-2014, Section 6.25 (g)(*stating* circumstances where PREB's inaction leads to automatic approval of a proposed rate and stating authority to *approve or reject* rates within certain timeframes); Act 83, Section 6A(g), 22 LPR § 196(a)g (2025) (same); Act 83, Section 6A(f) ("If the Commission determines that the proposed rate change is unjust or unreasonable, it shall issue a duly grounded order stating so. In such case, the rate modification object of the request shall not proceed and the rate whose modification was sought shall continue in effect."); *but see* Regulation 8543, Section 13.02(E)(*construing* that PREB may modify a proposed rate).

## **6. Decoupling**

Act 57-2014 does not allow PREB to approve annual adjustments to the per-kWh rate outside of a rate case. The proposed decoupling mechanism, however, would be implemented through a rider approved in the context of a rate case, in correct alignment with Act 57's mandates on available ratemaking processes. The prohibition against retroactive ratemaking would not bar

approval of the proposed decoupling rider because PREB would be approving a base rate and a decoupling rider at the same time and would not alter the rates retroactively. The decoupling mechanism is based on the approved revenue requirement as the target, and it adds a surcharge and/or a credit to the bill if sales are 3% higher or lower than the sales volumes used to set the approved rates in order to adjust the bills to achieve the approved revenue requirement. The decoupling rider would be an integral part of the approved rates, and both the final rate order and approved rider text would set forth the mechanisms to match revenues to the approved revenue requirement.

Treatment of a revenue decoupling mechanism as part of the established and approved rate, rather than as a retroactive change, is settled precedent in other jurisdictions. For example, the Illinois Appellate Court held that “[a]lthough revenue decoupling is a different rate design from traditional ratemaking, the legal principles remain the same, i.e., once the Commission approves a ratemaking plan, it cannot later modify that plan to correct an error.” *People ex rel. Madigan v. Illinois Com. Commn.*, 988 N.E.2d 146, 154 (Ill. App. Ct. 2d Dist. 2013), *aff’d and vacated in part*, 25 N.E.3d 587 (Ill. 2015) (*vacating* holding on retroactive ratemaking due to forfeiture of that argument on appeal). In that case, the Court went on to state that “the Commission approved a design, which involved fixed and reasonable amounts of revenues for the Utilities and which involved a later true-up calculation based on actual sales. This two-tiered design was approved only once by the Commission and was not later modified... This rate methodology was approved by the Commission and not added retroactively to cure a mistake. Accordingly, ... **the Commission’s acceptance and adoption of revenue decoupling does not constitute retroactive ratemaking.**” *Id.* at 154-155 (emphasis added) (citation omitted).

## 7. Emergency Rate

Section 6.25(d) of Act 57-2014, authorizes PREB to approve a rate adjustment due to “emergency or temporary events.” PR Laws Ann. Tit. 22 § 1054x(d). The Hearing Examiner asks whether this encompasses a situation that is neither a reliability emergency nor a liquidity emergency, but a scenario in which failing to spend funds now will result in a particular project or activity costing more later.

This rate case does not involve an emergency rate petition. No party filed evidence to support an emergency rate, nor do the filing requirements establish that PREB will consider or issue a ruling regarding an emergency rate. Moreover, Puerto Rico Supreme Court (“PR S.Ct.”) precedent and a recent PREB ruling establish that an emergency or temporary event requires fact-based analyses guided by multi-pronged factors. The parties and PREB would need to consider specific facts on cost-avoidance scenarios, to engage in fruitful legal argumentation on whether those facts meet the emergency rate standard. Thus, LUMA requests that PREB decline to issue a ruling regarding an emergency rate.

Without waiving the aforementioned contentions, LUMA herein outlines applicable law.

In *Meléndez v. Valdejully*, 20 P.R. Offic. Trans. 1, 120 DPR 1 (1987), the PR S.Ct. held that an operational and financial crisis of a public corporation requiring immediate action constitutes an emergency under provisions governing temporary rate relief. *Id.*, at 22. The PR S.Ct. emphasized that the term “emergency” “comprises an event or a combination and accumulation of circumstances that require immediate action.” *Id.* “Emergency” is synonymous with “urgency”, “necessity”, and “hurry”/“haste”. *Id.*; see also *San Gerónimo Caribe v. A.R.Pe*, 174 DPR 640, 665 (2008).

The PR S.Ct. identified two particularly relevant criteria: (1) a present or clearly imminent threat that the utility will be unable to continue meeting its public service obligations; and (2) a present or clearly imminent threat that the utility will be unable to obtain the necessary funds to finance the construction of necessary new or replacement plants. *Meléndez*, 20 P.R. Offic. Trans., at 22.

Recently, in Case No. NEPR-AP-2025-0002, PREB interpreted that an event qualifies as “emergency” or “temporary” when it creates “an urgent threat of service degradation or financial collapse that cannot await resolution through the ordinary rate-case calendar.” Resolution and Order of May 29, 2025, 2. Qualifying events include external shocks like market events that create severe cost increases, particularly if they are “sudden and beyond the utility’s ability to mitigate through normal operational adjustments.” *Id.*, 2-3. The factual predicates of market shocks and their effects on the utility are required to determine if a future cost increase would meet PREB’s interpretation of events that justify an emergency rate.

## **8. Refunds to Customers and Retroactive Ratemaking**

The scenario whereby Act 57-2014 allows PREB to alter a provisionally approved rate retroactively, including through refunds, is Section 6.25(f), which governs the final reconciliation of provisional rates. In the absence of statutory authority, PREB cannot issue refunds to customers if reimbursements from FEMA or other sources are available to cover costs lawfully recovered through base rates. Once PREB approves the cost-of-service study, sets the authorized revenue requirement, and establishes rates, it cannot retroactively adjust the rates unless the rate is established as a rider with a reconciliation. This does not apply to base rates, which are set as a rate rather than a rider.

It is in the best interests of customers and the T&D System to invest FEMA funds in the System. At least once in 2024, PREB authorized PREPA to invest FEMA reimbursement funds to cover pension costs. *See* Resolution and Order of December 26, 2024, Case NEPR-MI-2021-0004<sup>4</sup>, at 2 and n. 7 (*explaining* that FEMA’s payment “reimburse[d] expenses incurred to provide emergency repair and restoration to electrical distribution and transmission lines through force account labor and equipment island wide due to Hurricane María.”). In a statement that seamlessly aligns with LUMA’s proposal in this rate case to, with PREB approval, invest FEMA reimbursements in capital projects, PREB stated that “FEMA reimbursement funds are best reserved for system repairs and improvements, and use of the FEMA Reimbursement account funds requires prior Energy Bureau approval.” *Id.*, 2. As established by admissible evidence throughout this proceeding, the System’s dire condition persists, and necessary repairs and improvements remain outstanding.

Neither PREB nor the intervenors put forth a proposal supported by pre-filed testimony to refund customers if rate-funded projects are later eligible for reimbursement from FEMA or other non-rate sources. PREB’s proposal to address concerns about the timing and availability of federal funding was the one filed by its consultant, Guímel Cortés, of a restricted federally funded account that would operate as a working capital facility. Exhibit 65.0. That proposal does not involve reimbursements to customers. Furthermore, PREB’s approval of a refund mechanism at this stage would violate due process and the requirement that any decision be based on substantial evidence in the administrative record. *See Mayagüez Sugar Co. v. Tribunal de Apelación de Contribuciones*, 60 DPR 753, 767 (1942) (“To permit findings of fact on controversial and disputed questions to

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<sup>4</sup> Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2024/12/20241226-MI20210004-Resolution-and-Order.pdf>

be based on documents or testimony of which the aggrieved party becomes aware for the first time in the decision of the fact-finding body would be to make a dead letter of due process”); *Magriz Rodríguez v. Empresas Nativas, Inc.*, 143 DPR 63, 71 (1997) (“Only when the administrative determination is based on the case record are the parties guaranteed the opportunity to challenge the accuracy of the agency’s opinion and subsequent judicial review.”) (translation provided); *see also* Sections 3.1, 3.18, and 4.5 of Act No. 38-2017, PR Laws Ann. Tit. 3 §§ 9641, 9658, 9675 (2025) (guaranteeing the right to a decision based on the record and limiting judicial review to substantial evidence on the administrative record).

Once the revenue requirement is approved, it becomes final and is not subject to subsequent revision or retroactive adjustments. The procedurally correct and legally sound course of action is for PREB to maintain the approved revenue requirement unaltered and to evaluate how the then-available budget may be prudently reallocated to other critical System needs within the existing revenue framework.

Maintaining the revenue requirement intact and reallocating NFC funds to other critical projects that are not federally-funded, maintains the balance of stable rates and advances the reconstruction of the T&D System. This approach is consistent with prior PREB determinations, including decisions allowing for the internal reallocation of approved revenues to address pressing obligations, such as pension-related costs, without reopening or retroactively modifying the approved revenue requirement.

Moreover, reimbursing customers with cash receipts that offset investments already made, ignores two fundamental realities. First, the System continues to require sustained and accelerated investment to mitigate risk, improve reliability, and avoid future service interruptions. Second, the utility must maintain sufficient cash balances and liquidity to execute the PREB-approved budget,

particularly given the unavoidable timing mismatch between revenue inflows and expenditure outflows. Under these circumstances, directing cash outflows as refunds constitutes a financial luxury that the System's current liquidity position cannot support without jeopardizing operational stability. Returning funds to customers would undermine the utility's ability to comply with the approved budget, weaken its working capital position, and exacerbate liquidity constraints, outcomes that are neither in the public interest nor consistent with sound regulatory ratemaking principles. Overlooking these circumstances would mean ignoring PREB's responsibility to ensure that determinations to revise rates include should be consistent with sound fiscal and operational practices that provide for reliable and adequate service, even if the consideration is a decrease. Act 57-2014, § 6.25(c), PR Laws Ann. Tit. 22 § 1054x.

As the regulator, PREB is uniquely positioned to ensure that reallocated funds are directed to projects that maximize value to the System, avoid duplication, and remain aligned with parallel investments being undertaken by other operators and stakeholders across the System.

**WHEREFORE**, LUMA respectfully requests that the PREB **take notice** of the arguments set forth in the foregoing brief; and **grant** the request for relief included in *LUMA's Revenue Requirement and Rate Design Briefs*.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 6<sup>th</sup> day of March, 2026.

**WE HEREBY CERTIFY** that this document was filed using the electronic filing system of this Energy Bureau and that electronic copies of this document will be served onto the following mailing list: mvalle@gmlex.net; alexis.rivera@prepa.pr.gov; jmartinez@gmlex.net; jgonzalez@gmlex.net; nzayas@gmlex.net; Gerard.Gil@ankura.com; Jorge.SanMiguel@ankura.com; Lucas.Porter@ankura.com; mdiconza@omm.com; golivera@omm.com; pfriedman@omm.com; msyassin@omm.com; 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;

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