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:** Independent Consumer Protection Office's Legal Issues Brief

INDEPENDENT CONSUMER PROTECTION OFFICE'S LEGAL ISSUES BRIEF

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Independent Consumer Protection Office of the Public Service Regulatory Board (hereinafter, "ICPO or OIPC", for its Spanish acronym), by and through the undersigned attorneys, and respectfully STATES and PRAYS as follows:

1. On June 30, 2023, the Puerto Rico Energy Bureau of the Puerto Rico Public Service Regulatory Board (hereinafter, "Energy Bureau or PREB") issued a *Resolution and Order* initiating the instant case under number NEPR-AP-2023-0003/*Puerto Rico Electric Power Authority Rate Review*, in accordance with the provisions of Act 57-2014, as amended, known as the "*Puerto Rico Energy Transformation and RELIEF Act*" (hereinafter, "Act 57-2014").[1]

2. On February 12, 2025, the Energy Bureau issued a *Resolution and Order* (hereinafter, "February 12 Order") establishing the filing requirements and procedures for the Rate Review of the Puerto Rico Electric Power Authority (hereinafter, "PREPA").[2]

3. Consistent with our ministerial duty and the authority granted by Act 57-2014, *supra*, on April 4, 2025, the OIPC filed a document titled "*Moción Notificando Intervención de la Oficina Independiente de Protección al Consumidor"*, notifying this Energy Bureau of our

[1] See, PREB's *Resolution and Order*, dated June 30, 2023.
[2] See, PREB's *Resolution and Order,* dated February 12, 2025.

intention to participate in the present proceeding in defense and representation of Puerto Rico's electric service consumers.

4. On July 3rd, 2025, LUMA filed a *Motion Submitting Rate Review Petition* (hereinafter, "*July 3rd Rate Review Petition"*) requesting, among other things, that the Energy Bureau approve a temporary or provisional rate increase pursuant to Section 6.25 (e) of Act 57-2014, to be collected in the interim period (commencing on September 1, 2025) while the PREB adjudicate the utility revenue requirement.[3]

5. On that same date, this Energy Bureau granted OIPC's intervention stating that "under the intervention criteria, the OIPC clearly satisfies all relevant factors: it has a legitimate interest that may be adversely affected by this tariff review, its statutory mandate to represent consumer interests cannot be adequately protected through other legal means, and its specialized expertise in consumer protection contributes valuable perspectives not otherwise available. This Bureau stated that "OIPC's intervention is not merely appropriate but legally mandated under the governing statute.".[4]

6. On July 7th, 2025, the PREB issued an *Order* setting deadlines relating to provisional rates granting intervenors until July 10th, 2025, to submit requests of information to LUMA relating to its request for provisional rates, and until July 11th, 2025, for objections to, statements of support for, or comments about LUMA's request for provisional rates.[5]

7. After several procedural developments, on July 14th, 2025, the PREB issued an *Order* granting intervenors until July 25th, 2025, to submit any final comments on the provisional rate. On said deadline, the OIPC submitted a document titled "*Independent Consumer Protection*

[3] See, LUMA's *Motion Submitting Rate Review Petition* dated July 3rd, 2025, at page 3.
[4] See, PREB's *Resolution* dated July 3, 2025, at page 3.
[5] See, PREB's *Order* dated July 7, 2025.

Office's Comments on LUMA and Genera's Request for Provisional Rate Adjustment (hereinafter, "OIPC's Comments on Provisional Rates").

8. On July 31st, 2025, this Energy Bureau issued a *Resolution and Order* establishing the Fiscal Year 2026 Provisional Rates and Fiscal Year 2026 Provisional Budget (hereinafter, "July 31st Order on Provisional Rates").[6]

9. On September 8, 2025, all intervenors in this proceeding, including the OIPC, filed their respective *Answering Testimony*, after which, on October 30, 2025, LUMA filed a motion entitled *Motion Submitting LUMA's Surrebuttal Testimonies*.

10. Thereafter, following multiple procedural orders issued by the Hearing Examiner and additional filings by the parties, the evidentiary hearings in this proceeding were conducted from November 12, 2025, through December 19, 2025.

11. On December 22, 2025, the Hearing Examiner issued an order entitled *Hearing Examiner's Order on Exhibits, Miscellaneous, Post-Hearing Matters, and Legal Issues*, which established, among other things, the post-hearing briefing schedule. As set forth in that Order, the deadline for Initial Briefs on Revenue Requirement was January 20, 2026, and Reply Briefs were due on February 2, 2026. The deadline for Initial Briefs on Rate Design was February 9, 2026, with Reply Briefs due on February 23, 2026. Initial Briefs on Legal and Policy Issues were scheduled to be filed on March 6, 2026, with corresponding Reply Briefs due later in March 2026.

12. On January 9, 2026, LUMA filed a Motion Submitting Revised Revenue Requirement (hereinafter, the "Revised Petition").

[6] See, PREB's *Resolution and Order*, dated July 31st, 2025.

13. After an extension of time was granted to file the Initial Brief on Revenue Requirement, the OIPC filed its Initial Legal Brief on Revenue Requirement on January 23, 2026, the extended deadline established by the Bureau.

14. Following the filing of the Initial Briefs on Revenue Requirement, on February 9, 2026, PREPA filed a Motion for Extension of Time to File Reply Brief on Revenue Requirement and Rate Design Briefs.

15. After several procedural incidents and related filings, including extension of time, on February 17, 2026, the OIPC filed its Initial Legal Brief on Rate Design.

16. As well as the briefs for revenue requirement and rate design, the OIPC hereby submits its Brief on Legal Issues for the consideration of the energy Bureau.

I. **INTRODUCTION:**

17. Act 57-2014, *supra*, delegated on the Energy Bureau the duty to modify the rates charged by PREPA. To that extent, Act. 57-2014, establishes:

> *Section 6.3. — Powers and Duties of the Energy Bureau.*
>
> *(...)*
>
> *(k) Review and approve and, if applicable, modify the rates or fees charged by electric power service companies in Puerto Rico in connection with any matter directly or indirectly related to the provision of electric power services.*

18. Regarding the process to be followed by the Energy Bureau, Act 57-2014, states the following:

> *Section 6.25. — Review of Electricity Rates.*
>
> *(a) In General. — The Energy Bureau shall be in charge of following the process established herein to review and approve the electric power service companies' proposed rate reviews. The 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. The regulations of the Energy Bureau for the rate review process shall comply with such principles.
(...)

(c) Rate Modification. — Every rate modification request previously approved by the Energy Bureau shall be filed with the Energy Bureau. The request shall state the grounds for the modification, the effect of such modification on the revenues and expenditures of the requestor, and any other information requested by the Energy Bureau through regulations or resolution. The Energy Bureau may initiate, motu proprio, or at the request of the Independent Consumer Protection Office or any other interested party, the rate review process when it is in the best interest of customers. Any modification to a rate proposed, whether to increase or decrease the same, shall undergo a discovery and a public hearing process to be held by the Energy Bureau to determine whether the proposed change is just and reasonable and consistent with sound fiscal and operational practices that provide for a reliable and adequate service, at the lowest reasonable cost. The Energy Bureau shall provide an opportunity to allow the participation of ICPO, the Energy Public Policy Program, the citizens, and interested parties in the process. The review and the order issuance processes shall not exceed one hundred eighty (180) days from the Energy Bureau's determination by resolution that the rate review request is complete; provided, however, that the Energy Bureau may extend the review process for an additional term that shall not exceed sixty (60) days.

(d) Temporary Rate Adjustment. — At the request of an electric power company, the Bureau may authorize an electric power service rate adjustment due to emergency or temporary events. Such request must be accompanied by all the documentation and information available that, in the judgment of the electric power company requesting it, warrants the temporary rate adjustment. The Bureau's preliminary determination authorizing or rejecting the proposed temporary rate adjustment shall be duly grounded, and issued and published not later than ten (10) days after the adjustment has been requested. If a temporary rate adjustment is approved, the Energy Bureau shall direct the requesting electric power company to issue a public notice informing the change and explaining, in general terms, the reasons that led to such temporary rate adjustment. If it is determined that a temporary rate adjustment is warranted, the Bureau shall hold public hearings within a term that shall not exceed thirty (30) days from the effective date of the temporary rate adjustment, where the requesting company and the general public shall have the opportunity to present evidence or expert testimony and documentary evidence supporting their respective positions. The Bureau shall issue a final determination as to whether a temporary rate adjustment is warranted within a term not to exceed sixty (60) days after the hearing process ends. If it is determined that the temporary rate adjustment is warranted, the Bureau shall fix the

> *duration and amount thereof. If the temporary rate adjustment is rejected, the Bureau shall determine whether the rates shall be adjusted for consumers to offset any difference resulting from the period in which the preliminary temporary rate adjustment was in effect. Failure to hold the public hearings shall render the temporary rate adjustment void. The effective term of temporary rate adjustment shall not exceed one hundred eighty (180) days as of the authorization thereof by the Bureau. The temporary rate adjustment herein established herein shall not be considered as a temporary rate.*
>
> *(...)*
>
> *(f) Final Determination of the Bureau. — Upon concluding the public hearing process, the Energy Bureau shall issue its final determination with regards to the rate review request and establish the electricity rate it deems just and reasonable. Such a determination shall be duly grounded and comply with all the safeguards of the due process of law applicable to the final determinations of administrative agencies. The Bureau shall publish and notify its determination on its webpage, together with the authorized rate duly itemized pursuant to the transparent bill requirements. The newly approved rate shall take effect sixty (60) days after the effective date of the Bureau's order. The Energy Bureau may extend or reduce such term at the request of the rate change requestor, but it shall never be less than thirty (30) days after the effective date of the Bureau's order. Upon issuing a final order after the rate review process, the Energy Bureau shall direct the requesting company to adjust customers' bills so as to credit or charge any discrepancy between the temporary rate established by the Bureau and the permanent rate approved by the Energy Bureau.*

19. As previously noted, in its *February 12 Order*, the Energy Bureau established the scope and procedures governing this proceeding. In that *Order*, the Bureau determined that in this proceeding, they will set permanent rates for FY2026, and projected rates for FY2027 and FY2028. The rates are to reflect both known and projected costs, including the costs to carry out actions required by the existing Integrated Resource Plan and the Integrated Resource Plan for 2024-2025 that LUMA will file this year. The Energy Bureau will convert the projected rates for FY2027 and FY2028 into permanent rates through a procedure to be specified in the current proceeding's final Order.[7]

[7] *See* PREB's *Resolution and Order* dated February 12, 2025, at pages 2-3.

20. The PREB also established that "[t]his proceeding will function simultaneously as a budget proceeding and a rate proceeding. Doing so merges two processes that have become separated. The 2017 rate order envisioned the budget process and the rate case process as companions: annual reviews of budgets, and triennial reviews of rates. For eight years we have had reviews of budgets without reviews of rates. This combination of budget approval and rate approval is reflected in the Filing Requirements accompanying this Order. Schedules A-1 and A-2 will contain, respectively, an Optimal Budget and a Constrained Budget, each organized according to the outline in the Appendix. That an item is listed in that outline does not commit the Energy Bureau to approving any particular cost level. Schedules B through H will contain the information necessary to calculate new rates based on the new budget."[8]

21. In the Optimal Budget there are no tradeoffs among activities; every activity receives the necessary costs. That is why it is called the Optimal Budget. For the Constrained Budget, tradeoffs are unavoidable; the Energy Bureau will have to elevate some needs over others. But the revenue requirement still must give LUMA and Genera a reasonable opportunity to achieve the metrics that trigger for each operator its respective incentive fee.[9]

22. In addressing the revenue requirement for the Constrained Budget, therefore, the Energy Bureau will need to adjust the metrics, or the allocation of compensation, or both, to reflect the lower budget amount that some areas of the Constrained Budget will receive as compared to the Optimal Budget. The Energy Bureau has the authority to make these adjustments in this rate proceeding. Section 1.5 (3)(d) of Act 17-2019 states: "When deemed appropriate, during ratemaking processes, the Bureau shall establish performance-based incentives and penalty

[8] *Id* at page 3.
[9] *Id* at page 5.

mechanisms for electric power service companies as well as mechanisms that ensure strict compliance with the orders of the Bureau(...). Any adjustment shall consider the metrics approved by the Energy Bureau in the performance metric proceeding and shall be consistent with just-and-reasonable ratemaking.[10]

23. Throughout this process, the Energy Bureau has reiterated the governing legal standard, rates must be just and reasonable, supported by substantial evidence, reflective of actual cost of service. The burden of proof rests squarely on the proposing parties to demonstrate that each component of the revenue requirement is prudent.

24. These brief addresses the legal issues identified for resolution in this phase of the proceeding. It focuses on the legal framework governing several issues raised including the Bureau's statutory authority, the limits imposed by federal and Commonwealth law, the treatment of particular cost categories, and the procedural and evidentiary standards that must guide the Bureau's determinations.

25. Accordingly, OIPC respectfully submits this Legal Issues Brief to assist the Energy Bureau in evaluating the statutory and regulatory questions presented in this proceeding and in issuing determinations that are consistent with the governing legal framework and the Bureau's obligation to ensure that the resulting rates and regulatory mechanisms comply with applicable law.

II. OIPC'S LEGAL BRIEF:

A. Energy Bureau Fines.

26. One of the legal issues presented in this proceeding concerns the extent of the Puerto Rico Energy Bureau's authority to impose administrative fines or penalties on the system

[10] *Id.*

operators, including LUMA Energy and Genera PR, for violations of statutory obligations, regulatory requirements, or Bureau orders. The resolution of this issue requires examination of the Bureau's statutory powers, the scope of its jurisdiction over electric power service companies, and the procedural safeguards that must accompany the imposition of administrative sanctions.

27. The Energy Bureau's authority derives principally from Act 57-2014, known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended. Under Section 6.3 of Act 57-2014, the Bureau is vested with broad regulatory powers over electric power service companies operating in Puerto Rico. These powers include the authority to regulate operations, enforce compliance with applicable laws and regulations, oversee the provision of electric services, and ensure that utilities operate in accordance with sound fiscal and operational practices.

28. Within this statutory framework, the Bureau possesses the authority to impose administrative penalties for violations of statutes, regulations, tariff provisions, and orders issued by the Bureau. This authority extends to operators responsible for generation and transmission and distribution services, including LUMA and Genera, to the extent that their activities fall within the regulatory jurisdiction of the Bureau.

29. The Bureau's sanctioning authority applies to conduct that affects the provision of electric service, compliance with regulatory mandates, or adherence to Bureau directives.

30. Although the Bureau possesses broad enforcement authority, the exercise of this power must comply with fundamental principles of administrative due process. As an administrative agency, the Bureau must ensure that regulated entities receive adequate notice of the conduct that may trigger enforcement action, as well as clear information regarding the potential penalties associated with such violations

31. These notice requirements are essential to ensure that enforcement actions are predictable, transparent, and consistent with principles of fair administrative governance. They also serve to provide regulated entities with the opportunity to conform their conduct to regulatory expectations and to challenge alleged violations through appropriate procedural mechanisms.

32. In the event that the Bureau determines that a violation has occurred and imposes a fine or administrative penalty, the operator must be afforded the opportunity to contest the determination through the procedures established by law and regulation. However, once the Bureau issues a final order imposing a penalty, the operator is obligated to comply with that determination unless it is stayed, modified, or overturned through the appropriate judicial review process.

33. If an operator refuses to pay a fine imposed by the Bureau, the Bureau may take additional enforcement actions within its statutory authority. These actions may include initiating collection proceedings, seeking enforcement of its order through the appropriate judicial forum, or imposing additional regulatory consequences associated with non-compliance. The Bureau's enforcement powers are intended to ensure that its regulatory determinations are not merely advisory but are capable of effective implementation.

34. Ultimately, the Bureau's authority to impose fines is an essential component of its regulatory mandate. Without meaningful enforcement tools, the Bureau would lack the ability to ensure compliance with the statutes, regulations, and orders governing Puerto Rico's electric system. At the same time, the exercise of that authority must be guided by clear standards, transparent procedures, and the due process protections required in administrative proceedings.

35. A related question concerns the source from which an operator must pay an administrative penalty imposed by the Energy Bureau. Specifically, whether such penalties must

be paid by the operator's owners or whether the operator could attempt to recover those amounts through accounts funded by ratepayers, such as those associated with the Operations and Maintenance Agreement ("OMA").

36. As an initial matter, the statutory framework governing electric power service companies in Puerto Rico makes clear that administrative penalties imposed by the Bureau are directed at the regulated entity itself. Under Section 6.36 of Act 57-2014, the Bureau may impose administrative penalties on electric power service companies or operators that violate applicable statutes, regulations, orders, or conditions of approval. The obligation to satisfy such penalties therefore lies with the regulated operator.

37. Penalties are not legitimate costs of providing electric service. Fines are imposed precisely because the operator has failed to comply with statutory or regulatory obligations. Allowing such penalties to be recovered from ratepayers would undermine the deterrent purpose of administrative enforcement and improperly shift the consequences of regulatory violations to consumers.

38. For this reason, the Energy Bureau has authority, in the exercise of its ratemaking powers under Act 57-2014, to determine whether particular costs are recoverable through rates. In doing so, the Bureau may expressly prohibit the recovery of administrative penalties through ratepayer-funded accounts, tariff riders, or other cost-recovery mechanisms. If the Bureau determines that fines are not recoverable from customers the operator must satisfy those penalties from non-ratepayer sources, which may include shareholder funds or other corporate resources.

39. The possibility that an operator might attempt to characterize a penalty as a recoverable expense under the OMA does not alter this conclusion. The OMA governs contractual relationships related to system operations and compensation mechanisms between the operator and

other governmental entities. However, contractual provisions cannot override the Energy Bureau's statutory authority over ratemaking and cost recovery. The Bureau retains exclusive jurisdiction to determine which costs may be recovered from ratepayers through regulated tariffs.

40. Accordingly, even if the Puerto Rico Public-Private Partnerships Authority ("P3A") were to interpret the OMA in a manner suggesting that certain costs constitute "pass-through" expenses, such a contractual interpretation would not bind the Energy Bureau in its ratemaking determinations. The Bureau's statutory duty under Act 57-2014 is to ensure that rates charged to customers are just and reasonable. That duty necessarily includes the authority to exclude from rates costs that arise from operator misconduct, non-compliance, or regulatory violations.

41. This approach preserves the deterrent function of regulatory enforcement, prevents the socialization of regulatory violations across the customer base, and ensures that the statutory mandate of the Energy Bureau—to establish just and reasonable rates—is fully respected.

B. Annual Updates of Billing Determinants and the Energy Bureau's Statutory Authority

42. Another legal question raised in this proceeding concerns whether the Energy Bureau may approve a revenue requirement and rate design methodology while deferring the calculation of specific tariff rates to later annual updates based on revised billing determinants. Under the proposal discussed in the record, once the revenue requirement and rate structure are approved, the operator would submit updated forecasts of billing determinants—such as projected energy sales, customer counts, and demand levels—each year. The operator would then apply those updated determinants to the previously approved revenue requirement in order to calculate updated rates.

43. The statutory framework established by the Puerto Rico Energy Transformation and RELIEF Act is structured to provide stability, predictability, and transparency in electricity rates. In particular, the statute contemplates that the permanent rates established by the Puerto Rico Energy Bureau will remain in effect for a defined period, generally three years, unless modified through one of the procedures expressly authorized by law. This structure serves an important policy purpose, it provides consumers with a reasonable degree of certainty regarding the cost of electric service and protects them from continuous or unpredictable rate fluctuations.

44. Allowing permanent tariff rates to be recalculated annually based on updated billing determinants would be inconsistent with this statutory design. The purpose of establishing permanent rates for a multi-year period is precisely to ensure that consumers are not subject to recurring rate adjustments that introduce uncertainty into household and business energy costs. A regulatory framework in which the operator recalculates rates each year based on revised forecasts would undermine this statutory objective and erode the stability that the Legislature sought to provide.

45. Act 57-2014 is explicit regarding the circumstances under which permanent rates may be modified. Section 6.25 establishes specific procedures for rate reviews, modifications, and temporary adjustments, each with its own procedural safeguards. These include requirements for filings, evidentiary review, participation by intervenors, and determinations by the Energy Bureau based on the evidentiary record. The existence of these mechanisms confirms that any modification to approved rates must occur through defined regulatory processes that ensure transparency, participation, and oversight.

46. Allowing annual adjustments to permanent rates through revised billing determinants would effectively bypass these statutory procedures. In practical terms, such

adjustments would constitute rate modifications, because they would change the tariff rates charged to customers after the initial rate order. Under the statutory framework, however, a modification of approved rates must occur through the procedures established in Section 6.25, which include notice, opportunity for participation by interested parties, and review by the Energy Bureau based on a developed administrative record.

47. This requirement is particularly important because the reasonableness of tariff rates cannot be evaluated in isolation from the broader ratemaking record. Determining whether rates remain just and reasonable requires examination of multiple factors, including updated cost assumptions, system conditions, load forecasts, cost allocations, and rate impacts across customer classes. Such analysis cannot be meaningfully conducted through a purely mechanical recalculation based solely on updated billing determinants.

48. For these reasons, the proposal to allow annual recalculation of tariff rates based on updated billing determinants raises serious statutory concerns. While the Energy Bureau may approve methodologies for forecasting or monitoring billing determinants, any adjustment that results in a change to the tariff rates charged to customers must comply with the procedures for rate review or modification established in Section 6.25 of Act 57-2014.

49. Accordingly, the statutory framework does not support a system in which permanent rates are effectively recalculated each year outside the procedures expressly established. Any modification to the rates approved in this proceeding must occur through the processes defined in the statute, which are designed to ensure transparency, regulatory oversight, and protection of consumer interests.

50. Another**Legacy Debt, Unsecured Debt, and the Effect of PROMESA on Rate Design**

56. Another legal issue presented in this proceeding concerns whether the Energy Bureau may lawfully establish a placeholder rider with a zero amount to address the future recovery of legacy debt associated with the Puerto Rico Electric Power Authority ("PREPA"), and whether the answer differs depending on whether the debt at issue consists of bondholder obligations or other unsecured debt.

57. Regardless of whether the Puerto Rico Oversight, Management, and Economic Stability Act, "PROMESA" might or might not allow the establishment of a zero-amount placeholder rider, the Energy Bureau should exercise restraint and refrain from taking regulatory action at this stage with respect to any mechanism associated with the recovery of PREPA's legacy debt. As of today, it is uncertain, not only the total amount of legacy obligations that may ultimately be subject to repayment, but also regarding the manner in which such obligations will be resolved through the ongoing restructuring process.

58. Establishing a rider, even one with a zero balance, implicitly assumes that repayment will ultimately occur through charges collected in customers' electricity bills. Such an assumption risks prematurely narrowing the range of potential repayment alternatives that may emerge through the restructuring process.

59. In particular, the creation of a placeholder rider tied to electric tariffs could be interpreted as presupposing that the recovery of legacy debt will occur through electricity rates, thereby discounting or sidelining other potential repayment mechanisms. These alternatives may include, among others, the identification of funds by the Government, contributions from other public funding sources, negotiated settlements with creditors, or other financing structures that do not rely directly on customer electricity bills.

60. Because the ultimate structure of any legacy debt resolution remains uncertain, regulatory action establishing even a placeholder recovery mechanism could create unintended expectations regarding the eventual source of repayment. Such expectations may influence stakeholder negotiations or public perception regarding the restructuring process, even if the rider itself imposes no immediate financial obligation on ratepayers.

61. For these reasons, prudence counsels that the Energy Bureau refrain from adopting any tariff mechanism related to the recovery of legacy debt until the restructuring process clarifies both the amount of the obligations and the legally authorized structure for repayment. Acting prematurely in this area risks creating regulatory assumptions that may not align with the final outcome of the restructuring proceedings.

62. Once the restructuring process determines the amount of legacy obligations and establishes the legally authorized repayment structure, the Energy Bureau will then be in a position to evaluate whether recovery through electric rates is appropriate and, if so, to determine the proper ratemaking mechanism. At that time, the Bureau may consider whether a rider, base-rate recovery, or another tariff structure represents the most appropriate and equitable method of implementing any authorized recovery.

E. Pension Costs, the Just-and-Reasonable Standard, and the Effect of PROMESA

63. Another legal issue presented in this proceeding concerns whether the Energy Bureau may include pension costs in electric rates and whether the federal statutory framework established under the Puerto Rico Oversight, Management, and Economic Stability Act preempts the Bureau from doing so.

i. Pension Costs and the Just-and-Reasonable Standard

64. Under Section 6.25 of Act 57-2014, the Energy Bureau must ensure that electric rates are just and reasonable and consistent with sound fiscal and operational practices that provide reliable service at the lowest reasonable cost. This statutory standard grants the Bureau authority to determine which categories of costs may be recovered through rates and which should be excluded.

65. The just-and-reasonable standard does not automatically require the inclusion of pension costs in rates. Rather, it authorizes the Bureau to evaluate whether such costs are prudently incurred, reasonably related to the provision of electric service, and appropriate to allocate to ratepayers. Pension obligations historically associated with utility operations may in some circumstances be considered part of the legitimate cost of providing service.

66. At the same time, the Bureau retains broad regulatory discretion to determine whether the structure, magnitude, and funding mechanism of pension obligations make them appropriate for recovery from ratepayers. Pension liabilities can arise from historical employment decisions, investment performance, funding policies, or governmental actions that may not necessarily reflect the current cost of providing service.

67. Accordingly, the just-and-reasonable standard authorizes, but does not require, the inclusion of pension costs in rates. The Bureau may allow recovery where the costs are demonstrated to be reasonable and service-related, but it may also limit or deny recovery where those costs do not meet the prudence and cost-causation principles that govern ratemaking.

ii. PROMESA and Potential Federal Preemption

68. The second question concerns whether PROMESA preempts the Energy Bureau from including pension costs in electric rates.

69. The record reflects that the Energy Bureau has already exercised its ratemaking authority with respect to pension-related costs without triggering any conflict with the federal restructuring proceedings under PROMESA. In its *Resolution and Order* dated July 31, 2025, establishing the provisional rate, the Bureau authorized a pension rider mechanism designed to address the recovery of pension-related obligations associated with the Puerto Rico Electric Power Authority ("PREPA").

70. The establishment of that rider constituted an exercise of the Bureau's ratemaking jurisdiction under Act 57-2014. Notably, the implementation of that mechanism did not prompt any determination in the Title III proceedings that the Bureau's action was preempted by PROMESA, nor did the federal court overseeing the restructuring process issue any order preventing or limiting the collection of pension-related charges through electric rates.

71. If the ratemaking treatment of pension obligations had conflicted with the restructuring authority of the Financial Oversight and Management Board for Puerto Rico or with the jurisdiction of the Title III court, such conflict would likely have been raised within the restructuring proceedings themselves. No such determination has been issued.

72. The absence of any judicial or oversight-board challenge to the Bureau's prior pension rider order demonstrates that the consideration of pension-related costs within the ratemaking process does not, in itself, interfere with PROMESA's restructuring framework. Rather, it confirms that the Energy Bureau retains authority to address operational costs associated with the electric system, including pension-related obligations, provided that its actions remain consistent with the broader fiscal and restructuring framework.

73. Accordingly, the Bureau's prior exercise of jurisdiction through the July 31, 2025 *Resolution and Order* supports the conclusion that PROMESA does not categorically preempt the

consideration of pension costs in ratemaking. Instead, the Bureau may continue to evaluate such costs under the just-and-reasonable standard, while ensuring that any ratemaking treatment remains consistent with the fiscal plan and with the ongoing restructuring process under Title III.

F. Pension Rider Rate Design and the Effect of Section 4 of Act 114-2007

74. Another legal issue raised in this proceeding concerns whether the pension rider established in the provisional-rate order may lawfully be structured as a fixed per-customer charge, and whether such a structure is consistent with Section 4 of the Puerto Rico Net Metering Act, Act 114-2007.

75. As an initial matter, neither Act 114-2007 nor Act 57-2014 establishes an explicit statutory prohibition against recovering costs through fixed charges. Act 57-2014 defines an electricity rate broadly. Section 1.3(ss) provides that an "Electricity Rate" includes "any payment, charge, duty, fee, usage charge, rent, or schedule collected by any electric power company for any service or product offered to the public." This definition confirms that the Energy Bureau possesses broad authority to design tariff structures that may include different types of charges, including fixed charges, usage charges, or other rate mechanisms.

76. Nothing in either statute expressly limits the Bureau's authority to structure particular categories of cost recovery, such as pension obligations, through fixed charges within the base tariff. Likewise, the net-metering framework established under Act 114-2007 does not categorically prohibit fixed customer charges. That statute primarily governs the method by which customers participating in net energy metering receive credit for electricity exported to the grid and ensures that exported energy offsets applicable volumetric charges. It does not establish a statutory rule that all system costs must be recovered through volumetric energy charges.

77. Accordingly, from a strictly legal standpoint, there appears to be no statutory impediment that would prevent the Energy Bureau from authorizing the recovery of pension obligations through a fixed per-customer charge within the tariff structure. The statutory framework grants the Bureau broad discretion to determine the appropriate rate design mechanisms necessary to ensure that rates remain just and reasonable.

78. Nevertheless, the absence of a statutory prohibition does not resolve the broader regulatory considerations associated with increasing fixed charges. As discussed in the OIPC's Initial Brief on Rate Design, the manner in which costs are recovered through the tariff structure has significant implications for cost causation, consumer equity, and the ability of customers to manage their electricity bills.

79. In that brief, OIPC explained that the central concern with LUMA's proposed rate design is not merely the level of the resulting rates but the structure through which revenues are recovered. Increasing reliance on fixed or unavoidable charges weakens the traditional relationship between electricity consumption and cost responsibility and diminishes customers' ability to reduce their bills through conservation, energy efficiency, or demand management.

80. OIPC recognizes that increasing fixed charges may enhance revenue stability because such charges apply broadly across the customer base, including customers whose volumetric consumption may be low or reduced for various reasons. These may include subsidized customers, participants in net-metering programs, or customers whose recorded consumption does not fully reflect actual usage due to meter tampering or other forms of energy theft. From a revenue-collection perspective, fixed charges therefore ensure that all customers contribute to the funding of the electric system.

81. At the same time, however, these characteristics represent the principal regulatory drawback of excessive reliance on fixed charges. Increasing unavoidable charges dilutes the connection between consumption and cost responsibility, places disproportionate burdens on low-usage customers, and reduces the effectiveness of conservation and energy-efficiency incentives.

82. For these reasons, while the statutory framework does not prohibit the recovery of pension obligations through a fixed charge, the Energy Bureau must carefully evaluate whether such a structure is consistent with the broader ratemaking principles of fairness, cost causation, and consumer protection. The Bureau must also consider whether increasing fixed charges in this context would exacerbate the structural concerns identified in the rate design portion of this proceeding.

83. Ultimately, the legal question is not whether a fixed pension charge is permissible under the statutes, but whether adopting such a structure represents the most appropriate exercise of the Energy Bureau's ratemaking discretion in light of the evidentiary record and the Bureau's statutory obligation to ensure that rates remain just and reasonable.

G. <u>Negligence Liability and the Treatment of Related Costs in the Revenue Requirement</u>

84. Another legal issue presented in this proceeding concerns how the Energy Bureau should treat costs associated with negligence liability when determining the revenue requirement. These costs may include: (i) actual or potential compensation owed to victims of utility negligence, whether arising from ordinary negligence or gross negligence; (ii) costs incurred to investigate, process, or defend against claims brought by alleged victims; (iii) insurance costs associated with negligence liability; and (iv) other related expenses.

85. The starting point for this analysis is the statutory mandate contained in Puerto Rico Energy Transformation and RELIEF Act, which requires that all rates approved by the Energy

Bureau be just and reasonable and supported by sound regulatory principles. Under this standard, the Bureau must determine whether each category of costs included in the revenue requirement is prudently incurred, necessary for the provision of electric service, and appropriately allocable to ratepayers. Costs that do not satisfy these criteria cannot automatically be recovered from customers.

86. The Energy Bureau must also consider the contractual framework governing the operation of the transmission and distribution system and generation assets, particularly the Operations and Maintenance Agreements ("OMAs") entered into with LUMA and Genera. Those agreements establish operational responsibilities and performance obligations for the operators, while also addressing how certain categories of costs may be treated for ratemaking purposes. However, the OMAs do not displace the Energy Bureau's statutory authority to determine whether particular costs should be recovered from ratepayers. Contractual provisions cannot override the Bureau's independent duty to ensure that rates remain just and reasonable.

87. Within this legal framework, the Bureau has ample discretion in evaluating negligence-related costs.

88. First, with respect to compensation owed to victims of utility negligence, the Bureau must evaluate whether the underlying liability arises from conduct that should reasonably be borne by the utility or operator rather than by customers. The Bureau has the task to distinguish between ordinary operational risks, which may in some circumstances be recoverable in rates, and costs resulting from imprudent or negligent conduct, which should be disallowed to ensure that utilities retain proper incentives for safe and responsible system operation. In particular, costs resulting from gross negligence or willful misconduct should be excluded from rate recovery

because shifting such costs to consumers would undermine accountability and conflict with the just-and-reasonable standard.

89. Second, the Bureau must evaluate legal and administrative costs associated with processing or defending claims. Certain expenses related to claims management, legal defense, or investigation may be part of the ordinary cost of operating a utility system. However, the Bureau retains discretion to determine whether these costs were prudently incurred and reasonably necessary. Where litigation costs arise directly from alleged negligence or operational failures, the Bureau may determine that those costs should be borne by the operator or its owners rather than recovered from customers.

90. Third, the Bureau must consider the treatment of insurance costs associated with negligence liability. Insurance coverage for operational risks is a common and prudent practice for utilities and system operators. Reasonable insurance premiums designed to protect against unforeseen liability may therefore be recoverable in rates, provided that the coverage is appropriate and the cost is reasonable. Nevertheless, the Bureau must still examine whether the level of coverage, premium structure, and allocation of insurance costs are consistent with prudent utility management and whether the operator has taken reasonable steps to mitigate risk.

91. Finally, with respect to other negligence-related costs, the Bureau retains broad discretion under the just-and-reasonable standard to determine whether such costs should be included in the revenue requirement. The guiding principle must remain cost causation and regulatory fairness. Costs that arise from normal system operation and prudent management may in some circumstances be recoverable, while costs arising from imprudent conduct, operational failures, or breaches of contractual obligations may properly be excluded from recovery.

92. In exercising this discretion, the Energy Bureau must balance two regulatory objectives. On the one hand, the Bureau must ensure that utilities have a reasonable opportunity to recover the costs of providing electric service. On the other hand, the Bureau must ensure that ratepayers are not forced to bear the financial consequences of negligence or operational misconduct that should properly be borne by the operator or its owners.

93. Accordingly, the Bureau's legal obligation is not to automatically include or exclude negligence-related costs in the revenue requirement, but rather to evaluate those costs through the lens of prudence, cost causation, and consumer protection. Where the record demonstrates that costs arise from prudent operations or necessary risk management, the Bureau may permit recovery. Conversely, where costs arise from negligent conduct or operational failures, the Bureau has both the authority and the responsibility to disallow those costs to protect consumers and preserve proper operational incentives.

H. Burden of Proof in Rate Review Proceedings

94. Section 6.25(b) of the Puerto Rico Energy Transformation and RELIEF Act provides that: "During 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."

95. The statutory language is clear and unambiguous. The electric power company, or its operator, requesting a rate change bears the burden of demonstrating that the proposed rate satisfies the legal standard of being just and reasonable. This burden requires the applicant to present sufficient evidence supporting the revenue requirement, the cost assumptions, and the resulting rate design.

96. This statutory requirement must also be read in conjunction with the provisions of the Puerto Rico Uniform Administrative Procedure Act, Act 38-2017, which governs formal adjudicatory proceedings before administrative agencies. Under that statute, every formal adjudicatory proceeding must safeguard certain fundamental procedural rights, including a. The right to timely notice of the claims or allegations against a party; b. The right to present evidence; c. The right to an impartial adjudication; and d. The right to a decision based on the administrative record.

97. These procedural guarantees reinforce the statutory allocation of the burden of proof. Because the decision of the Energy Bureau must be based on the evidence contained in the record, it is the responsibility of the proposing utility to provide the evidentiary basis demonstrating that its requested rates comply with the just-and-reasonable standard established in Act 57-2014.

98. In light of the clarity of the statutory framework, there is no need to resort to doctrinal concepts such as a rebuttable presumption of prudence. The governing statute already establishes the applicable rule, the proponent of a rate change carries the burden of demonstrating that the proposed rates are just and reasonable.

99. Accordingly, the absence of proof of imprudence by intervenors does not relieve the utility of its statutory obligation. The burden remains on the applicant to affirmatively demonstrate, through substantial evidence, that the proposed revenue requirement and resulting rates satisfy the statutory standard.

100. At the same time, the Energy Bureau retains broad regulatory authority to determine the rates that ultimately govern electric service in Puerto Rico. Even if the applicant fails to fully

justify certain elements of its proposal, the Bureau must still exercise its ratemaking authority to establish rates that are just and reasonable.

101. This authority includes the ability to disallow unsupported costs, modify assumptions, adopt alternative methodologies supported by the record, or otherwise adjust the revenue requirement and rate structure. The Bureau may therefore approve rates that differ from those proposed by the utility, provided that its determination is supported by the evidentiary record.

102. In sum, the statutory framework establishes two complementary principles. First, the applicant bears the burden of proving that the proposed rates are just and reasonable. Second, the Energy Bureau retains the authority, and the responsibility, to establish lawful rates based on the evidentiary record, even if doing so requires modifying or rejecting elements of the applicant's proposal.

I. Decoupling Adjustments and Annual Rate Reconciliation

103. Another legal question concerns whether the governing statutes permit the Energy Bureau to authorize decoupling-related adjustments, in the form of surcharges or surcredits, when actual revenues differ from the authorized revenue requirement. Specifically, the issue is whether such adjustments may be implemented outside of a rider and outside of a new rate case, through an adjustment to the existing per-kWh rate, provided that the mechanism is clearly described in the order establishing the decoupling program.

104. For purposes of this legal issue, OIPC incorporates by reference the arguments presented in Part B *Annual Updates of Billing Determinants and the Energy Bureau's Statutory Authority* of this brief concerning the statutory limitations on annual updates to billing determinants and the modification of approved rates.

105. As explained above, the statutory framework established by Puerto Rico Energy Transformation and RELIEF Act is designed to provide stability, predictability, and transparency in electricity rates. Under that framework, the permanent rates established by the Puerto Rico Energy Bureau are intended to remain in effect for a defined period, generally three years, unless modified through one of the procedures expressly authorized by law.

106. The statute identifies the specific mechanisms through which approved rates may be modified, including formal rate review proceedings, rate modifications, and temporary adjustments under Section 6.25. Each of these mechanisms contains procedural safeguards, including filings, evidentiary review, participation by intervenors, and determinations by the Bureau based on the administrative record.

107. Allowing decoupling-related adjustments to modify existing tariff rates outside of those procedures would raise the same statutory concerns identified in Part B. In practical terms, an annual reconciliation that results in a change to the per-kWh tariff rate constitutes a modification of the approved rate. Under the statutory framework, such modifications must occur through the procedures established in Section 6.25 of Act 57-2014.

108. The determination of whether a rate adjustment is just and reasonable cannot be reduced to a purely mechanical reconciliation between actual and authorized revenues. Ratemaking requires consideration of multiple factors, including system conditions, cost assumptions, load forecasts, cost allocation among customer classes, and the resulting impacts on consumers. These determinations require an evidentiary process grounded in the administrative record.

109. Accordingly, although decoupling mechanisms are used in some jurisdictions, their implementation must remain consistent with the statutory framework governing ratemaking in

Puerto Rico. Under Act 57-2014, any adjustment that modifies the tariff rates charged to customers must comply with the procedures established for rate review or modification.

J. Scope of "Emergency or Temporary Events" Under Section 6.25(d)

110. Section 6.25(d) of the Puerto Rico Energy Transformation and RELIEF Act authorizes the Puerto Rico Energy Bureau to approve a temporary rate adjustment "due to emergency or temporary events." The statute establishes an expedited procedure through which the Bureau may authorize such adjustments when circumstances require immediate regulatory action.

111. The statutory language raises the question whether the phrase "emergency or temporary events**"** encompasses situations that do not involve an immediate reliability threat or a liquidity crisis, but rather circumstances where delaying expenditures could increase future costs.

112. The phrase "emergency or temporary events" must be interpreted in light of the overall statutory purpose of Act 57-2014 and the procedural structure established in Section 6.25(d). That provision creates an accelerated process allowing the Bureau to issue a preliminary determination within ten days and to conduct hearings within a limited timeframe. Such procedural abbreviation indicates that the mechanism was intended to address situations requiring prompt regulatory response.

113. Emergency rate mechanisms in utility regulation are associated with circumstances such as, imminent threats to system reliability or safety, unforeseen financial conditions affecting the utility's ability to maintain operations or extraordinary events outside the normal course of operations.

114. A scenario in which a utility argues that expenditures must occur immediately because delaying them could make the project more expensive in the future is conceptually different from the types of circumstances traditionally associated with emergency ratemaking.

115. Cost escalation risk, standing alone, does not necessarily constitute an "emergency" within the meaning of the statute. Infrastructure projects and operational programs often involve timing considerations that affect cost. If every situation in which earlier spending might reduce future costs were treated as an emergency, the expedited procedure in Section 6.25(d) could become a substitute for the ordinary rate review process.

116. The statutory framework suggests that routine investment planning and cost optimization decisions are more appropriately evaluated within the standard ratemaking process, where the Bureau has the opportunity to review evidence through discovery, testimony, and evidentiary hearings.

117. Interpreting Section 6.25(d) narrowly is consistent with the structure of the broader ratemaking provisions of Puerto Rico Energy Transformation and RELIEF Act. The statute establishes detailed procedures for comprehensive rate review, including discovery and public hearings, precisely to ensure that rate changes are supported by substantial evidence and subject to meaningful scrutiny.

118. Allowing ordinary cost-management decisions to qualify as emergencies could circumvent those procedures and potentially undermine the statutory safeguards designed to protect ratepayers.

119. Accordingly, while the Energy Bureau retains discretion to determine whether particular circumstances constitute an "emergency or temporary event," the statutory language and structure suggest that Section 6.25(d) is intended to address extraordinary situations requiring

immediate regulatory intervention, rather than routine project planning considerations. A situation in which earlier spending might reduce future costs, without more, would ordinarily be more appropriately addressed within the normal ratemaking process rather than through the emergency rate mechanism.

K. Refunds of Ratepayer Payments for Non-Federal Capital Expenditures

i. During the Provisional-Rate Period

120. A related legal issue concerns the treatment of situations in which the authorized revenue requirement includes recovery of Non-Federal Capital ("NFC") expenditures, but those expenditures later receive federal or Commonwealth funding. In such circumstances, the question arises whether the Puerto Rico Energy Bureau may reimburse ratepayers for the associated costs without violating the prohibition against retroactive ratemaking.

121. Specifically, the issue presented is whether reimbursement during the provisional rate period would be legally permissible if the Bureau reflects the adjustment in the permanent revenue requirement and then reconciles the permanent revenue requirement against the provisional rates previously collected.

122. Section 6.25 of the Puerto Rico Energy Transformation and RELIEF Act establishes a ratemaking framework in which provisional rates may be authorized while the Energy Bureau conducts the full rate review proceeding. These provisional rates are explicitly temporary and subject to later reconciliation once the Bureau determines the permanent revenue requirement. The statute expressly contemplates that differences between the provisional and permanent rates may later be reconciled through adjustments to customer bills.

123. Because provisional rates are inherently subject to later adjustment, collections during the provisional period are not necessarily final.

124. Adjustments made during the provisional rate period pursuant to a reconciliation mechanism established by statute differ materially from retroactive ratemaking. Where the statute expressly provides that provisional rates are subject to reconciliation with the permanent revenue requirement, the later adjustment is not a retroactive modification of a final rate. Rather, it represents the completion of the ratemaking process.

125. Accordingly, if the Energy Bureau determines that certain costs initially treated as non-federal capital expenditures were subsequently funded through federal or Commonwealth sources, the Bureau may adjust the permanent revenue requirement to reflect those developments. Any difference between the provisional collections and the permanent revenue requirement may then be reconciled through refunds or credits to customers.

126. Because such reconciliation is contemplated by the statutory framework governing provisional rates, it does not constitute retroactive ratemaking.

ii. After the Provisional Rate Period

127. Providing for conditional recovery and future reconciliation is consistent with the statutory requirement under Puerto Rico Energy Transformation and RELIEF Act that rates remain just and reasonable. Allowing a utility to retain revenues collected for costs that are subsequently funded by federal or Commonwealth sources would create the risk of double recovery and could result in rates that exceed the level necessary to provide adequate service.

128. Rates are designed to allow the utility to recover prudently incurred costs necessary to provide electric service. When a cost initially assumed to be borne by ratepayers is later offset or reimbursed through external funding, the economic premise underlying the original rate calculation changes. In such circumstances, continuing to allow the utility to retain those funds would result in revenues exceeding the level necessary to provide service.

129. From this perspective, the relevant question is not whether the Bureau is revising a previously approved rate, but whether ratepayers should continue to bear costs that are no longer attributable to them. Once federal or Commonwealth funds become available to defray a cost previously recovered from customers, retaining those funds would allow the utility to collect revenues for costs it did not ultimately incur.

130. Ensuring that customers receive the benefit of such funding therefore serves to preserve the integrity of the cost-of-service framework and to prevent unjust enrichment. In effect, the credit simply aligns the utility's revenues with the actual costs that remain unreimbursed after external funding is applied.

131. Accordingly, refunding amounts to customers when external funds are later received should be understood primarily as a mechanism to prevent double recovery rather than as a retroactive adjustment of previously approved rates. Such a mechanism ensures that ratepayers ultimately pay only those costs that remain properly attributable to electric service.

III. CONCLUSION

132. In addressing the legal questions raised in this proceeding, including issues related to fines, decoupling, pension recovery, legacy debt, and the burden of proof, the Bureau must exercise its statutory authority in a manner that safeguards due process, respects the applicable federal and local legal frameworks, and ensures that any ratemaking determinations remain consistent with the requirement that electric rates in Puerto Rico be just, reasonable, and supported by the record.

133. For these reasons, OIPC respectfully submits this Legal Issues Brief to assist the Bureau in its evaluation of the matters before it and in the issuance of a determination consistent with the governing statutory framework.

WHEREFORE, the OIPC respectfully submits the instant Legal Issues Brief and requests that this Honorable Energy Bureau take notice of the arguments set forth herein, consider the legal analyses presented, and adopt the rationales and recommendations advanced by OIPC in resolving the legal issues before it in this proceeding.

RESPECTFULLY submitted today, March 6, 2026.

I HEREBY CERTIFY that on this date a copy of this motion has been electronically filed with the Clerk of the Puerto Rico Energy Bureau and that I have emailed a copy of this motion to the following email addresses: Scott Hempling, shempling@scotthemplinglaw.com; and to the attorneys of the parties of record: 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; katiuska.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;

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