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:** Bondholders' Reply Legal and Policy Brief

BONDHOLDERS' REPLY LEGAL AND POLICY BRIEF

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Bondholders[1] respectfully submit their *Reply Legal and Policy Brief*.

PRELIMINARY STATEMENT

The other parties' initial legal and policy briefs either agree with Bondholders' positions, or offer no legitimate basis for their disagreement.

First, all parties that address affordability and practicability agree these concepts cannot be used to reduce the revenue requirement and should be addressed, if at all, through rate design mechanisms like subsidies, discounted classes, and phased-in rates.

Second, no party has persuasively argued that the placeholder LDR, as proposed, is preempted by PROMESA. PREPA abandons its prior field-preemption argument and merely hypothesizes that some LDR, unlike the one proposed here, that counterfactually *did* address the amount, priority, and/or treatment of legacy debt, "*could* be" preempted. The UCC likewise focuses on nonexistent features of the LDR. The actual placeholder LDR proposed here is not preempted and would facilitate PREPA's emergence from bankruptcy—thus serving PROMESA's objectives—and advance PREB's duty to ensure PREPA meets its obligations to bondholders.

Third, PREPA and SREAEE continue to struggle with their inherently inconsistent arguments that PREB (i) should impose a charge now for legacy pension obligations subject to adjustment in Title III, but (ii) should *not* implement the placeholder LDR—which imposes no charge now—for legacy debt obligations subject to adjustment in Title III. Moreover, the proposed

[1] Terms not defined here are the same as in *Bondholders' Initial Post-Hearing Brief on the Revenue Requirement* (1/23/2026) ("BH Initial Rev.Br."), and *Bondholders' Initial Legal and Policy Brief* (3/6/2026) ("BH Initial L&P Br."). All cites to regulatory docket items are within this proceeding unless otherwise noted. All emphases are added unless otherwise noted. All parties' initial legal and policy briefs are cited as "[Party] Initial L&P Br."

pension costs are unsupported, PREPA has a history of diverting "pension" funds to other uses, and, as FOMB has admitted, PREPA's bond debt is senior to pensions regardless.

Fourth, the private operators cannot escape the plain language of Act 57-2014, which places the burden of proof on them and says nothing about a presumption of prudence. PREB must apply the legal standard established by the legislature and cannot experiment with an extra-textual presumption that has only ever been applied in inapposite contexts.

Finally, everyone except LUMA agrees that if duplicate funds are received for a project, ratepayers can and should be refunded what they unnecessarily paid. LUMA alone insists—without support—that not only does it have a right to keep and repurpose ratepayer funds, but PREB actually *cannot* refund customers, notwithstanding that PREB regularly does so.

ARGUMENT

I. Affordability and Practicability

Commonwealth law does not permit considerations of affordability or practicability to reduce the revenue requirement. BH Initial L&P Br. pp.4-7. Instead, rates must be sufficient to enable PREPA to cover all reasonable, prudent, and necessary costs, and to provide reliable and adequate service. *Id.* Under Section 1.4(vi) of Act 17-2019, affordability may be considered only in rate design. *Id.* p.5. All parties addressing this issue agree with these principles. *See* LUMA Initial L&P Br. pp.6-7; Genera Initial L&P Br. pp.13-14.

Genera also correctly observes that practicability was "not developed as a discrete evidentiary topic through dedicated testimony or qualified analysis of payment elasticity or behavioral thresholds at varying rate levels." *Id.* p.14; *see also* BH Initial L&P Br. pp.8-9. No party introduced evidence that would allow PREB to conclude customers would reduce energy consumption in response to higher rates, nor that higher rates would be uncollectible. BH Initial L&P Br. pp.8-9. Instead, it went unrebutted that demand for electricity is *inelastic*, particularly

over a three-year rate period. *Id.* p.8 (citing Dr. Tierney and Estrada). Although ICSE claimed in its revenue requirement reply that "regulatory prudence counsels in favor of measured and incremental approaches to revenue determinations" (ICSE Reply Rev.Br. p.7), ICSE did not introduce any evidence contradicting Dr. Tierney's and Estrada's testimony.

Nor does PREPA advance a contrary reading of the statutes. Instead, PREPA argues that PROMESA preempts PREB's "consideration of affordability as it pertains to PREPA's legacy debt obligations," and that PREB "implicitly recognized" in a prehearing order that it should not address such considerations. PREPA Initial L&P Br. pp.2-3 (citing *Resolution and Order re: PREPA's Debt Preclusion Motion* (11/13/2025) ("November 13 Order")). PREPA is wrong. ***First***, PROMESA does not preempt PREB's power to set rates or its statutory obligation to guarantee that PREPA meets its obligations to bondholders. BH Initial L&P Br. pp.9-15.

Second, contrary to PREPA's characterization, the November 13 Order correctly denied PREPA's requested relief—preclusion of PREB's consideration of legacy debt—and recognized there is no basis to address affordability or practicability *only regarding legacy debt*. As the Hearing Examiner explained (and PREB affirmed), there is "no principle by which practicability is affected by legacy debt any more than any of the hundreds of other contributors to a $5 billion cost of service." November 13 Order p.1 (quoting *Hearing Examiner's Order Following Prehearing Conference*, p.2 (11/10/2025)). What might "make[] electricity unaffordable for some of our fellow citizens is not any one cost but rather the sum of all the costs." *Id.*[2]

[2] The November 13 Order's decision not to permit testimony concerning the amount of legacy debt is consistent with the fact that the amount of PREPA's legacy bond debt is fixed and not susceptible to evidentiary proof, as its amount has been specified by the First Circuit Court of Appeals (*In re Fin. Oversight & Mgmt. Bd. for P.R.*, 121 F.4th 280, 310 (1st Cir. 2024)), and PREB cannot adjust PREPA's debts.

II. Legacy Debt and Unsecured Debt

A. *PROMESA Does Not Preempt the LDR.*

PROMESA does not preempt PREB from implementing a placeholder LDR, because it neither encroaches on the Title III court's exclusive authority to adjust PREPA's debt nor conflicts with PROMESA, the automatic stay, or PREPA's fiscal plan. BH Initial L&P Br. pp.9-18.

PREPA argues that a placeholder LDR "***could be*** preempted" if PREB were to hypothetically take "actions that pertain to the allowance, amount, extent, priority, or treatment of PREPA's legacy debts that are inconsistent with (1) PREPA's certified fiscal plan under Title II of PROMESA or (2) any determinations of the Title III court." PREPA Initial L&P Br. p.4.[3] No one is proposing that. The LDR does not require PREPA to repay any specific amount of debt at this time—it is simply a placeholder that will not be populated until after the Title III case. Accordingly, implementation of a placeholder LDR does not implicate the allowance, amount, extent, priority, or treatment of legacy debt. For the same reason, there is no conflict with the 2025 PREPA fiscal plan nor any future determinations by the Title III court.

The UCC only partially joined PREPA's preemption arguments, refusing to say PREPA's 2025 fiscal plan preempts the LDR. UCC Initial L&P Br. p.1 n.5. Instead, the UCC argues the LDR would conflict with the Title III court's exclusive jurisdiction "to determine the amount, treatment, and priority of all Legacy Debt against PREPA" if the LDR "*only* provides for the recognition and payment of bond claims," because that "presumes that bond claims are entitled to some priority of payment over PREPA's other Legacy Debt claims." UCC Initial L&P Br. p.3.

[3] PREPA has seemingly abandoned its previous argument that PROMESA field-preempts the placeholder LDR. *See PREPA's Response Regarding Consideration of Legacy Obligations*, pp.4-8 (10/27/2025).

The LDR presumes no such thing. It is simply a placeholder rider with no preset amount, or priority, of payment.[4]

Moreover, unlike legacy bond debt, there is no expectation that unsecured claims will be repaid over time through rates. BH RD Reply pp.7-8. Under the UCC's proposed settlement with FOMB, unsecured claims would be discharged upon PREPA's emergence from bankruptcy in exchange for cash. The UCC also ignores that PREB does not owe any statutory duty to holders of unsecured debt—unlike bondholders. *See id.* In the unlikely event that unsecured debt is to be repaid from go-forward rates, the placeholder LDR could account for that once the value of those claims is established.

B. *PREPA's, the UCC's, and OIPC's Alternate Arguments Opposing the LDR Are Meritless.*

PREPA, the UCC, and OIPC argue PREB can avoid the preemption question altogether by refusing to implement the LDR because it is unnecessary. PREPA Initial L&P Br. p.4; UCC Initial L&P Br. p.2; OIPC Initial L&P Br. ¶¶56-62. But as the record shows, the LDR would advance PREB's statutory mandate to guarantee that PREPA meets its obligations to bondholders, create administrative efficiencies by establishing now the mechanism to raise funds for debt service once the amount of legacy debt to be repaid is determined, and signal to the capital markets that PREB is taking steps to ensure PREPA emerges from Title III as a creditworthy utility. *See* BH Initial RD Br. pp.3-7; BH RD Reply pp.2-4, 6-7. All stakeholders benefit from avoiding delay upon PREPA's emergence from bankruptcy.

PREPA also claims PREB should not implement the LDR because it "would invite unnecessary litigation" with FOMB, which supposedly views even a placeholder LDR as

[4] The Bankruptcy Code, however, gives secured claims—such as legacy bond debt—priority over unsecured claims. BH Initial L&P Br. p.24.

preempted. PREPA Initial L&P Br. p.5. FOMB's views, however, are neither binding on PREB nor entitled to any weight, given FOMB's decision not to participate in this proceeding. BH Initial Rev.Br. p.95 n.76; BH Initial L&P Br. pp.27-28. In any event, the threat of litigation is illusory, because neither PREPA nor FOMB has explained how a mere placeholder LDR conflicts with FOMB's debt sustainability analysis in the 2025 fiscal plan (which is preliminary, contested, subject to revision, and subject to the Title III court's approval). BH Initial L&P Br. pp.16-18.

Finally, OIPC argues PREB should refrain from creating an LDR because of the uncertainty surrounding the ultimate debt amount and manner of repayment. OIPC Initial L&P Br. ¶¶56-62. But OIPC cites no evidence that approving a placeholder LDR would discount or sideline other repayment mechanisms, and there is no such evidence in the record. Indeed, nothing in the LDR precludes PREPA, the Title III court, or any party from exploring other repayment mechanisms, nor does it commit PREB to including a specific amount in the LDR. If PREPA's legacy bond debt is resolved in full or in part through non-rate means, the LDR may simply be adjusted accordingly, remain on the tariff book unused, or eliminated in the next rate case.

C. *The Solar Groups' Net-Metering Arguments Are Premature and Meritless.*

SUN and SESA argue the placeholder LDR violates Section 4(c) of Act 114-2007 insofar as it imposes a non-bypassable charge, which would allegedly discriminate against net-metering customers and discourage net-metering. SUN-SESA Initial L&P Br. ¶¶10-12. Again, the proposed LDR is a placeholder that, at present, would not impose any charges on any customers, net-metering or otherwise. Thus, these concerns are premature.

The solar groups' concerns are also misplaced. To the extent the LDR is later populated with a fixed-charge component, that would not discriminate against net-metering customers, but rather would apply to net-metering *and* non-net-metering customers alike. Thus, the policy of

avoiding undue discrimination toward net-metering customers, as embodied in Act 114-2007, would not be violated.

SUN and SESA also fail to explain why net-metering customers—who benefit from the assets funded by PREPA's legacy debt like all other customers (and arguably more so, because they also earn the full-retail rate for feeding power back into the debt-funded grid)—should receive preferential treatment. In fact, the solar groups' attempt to *exempt* net-metering customers from a common charge borne by other customers is what would be unfairly discriminatory. Act 114-2007 is meant as a shield to protect net-metering customers from selective charges, not as a sword to attack non-net-metering customers, as the solar groups advocate here.

Moreover, SUN and SESA offer no support for their claim that a future "LDR charge" would discourage solar adoption (SUN-SESA Initial L&P Br. ¶12), nor could they. Any fixed-charge component of the LDR would apply to all non-exempt customers, so potential net-metering customers would be subject to that charge whether or not they enter net-metering agreements.

III. Pension Costs

PREPA asks PREB to impose an actual, present cost on ratepayers to cover legacy pensions, which are subject to adjustment under Title III (while simultaneously opposing a *placeholder* rider, with *no* present cost, for legacy debt). However, PREPA has admittedly misused revenues purportedly collected for pensions before, and it therefore cannot be trusted to continue collecting from ratepayers on this alleged basis—particularly when PREPA and SREAEE have failed to establish an evidentiary basis for the proposed pension costs. BH Initial Rev.Br. pp.93-95; BH Reply RR Br. pp.63-65. The president of PREPA's retiree association recently

admitted that PREPA applies only a portion of the proceeds of the existing pension rider to actual pension payments, and simply "keeps the rest."[5]

Moreover, LUMA recently argued that $211M should be included in the revenue requirement for pensions. *Motion Submitting Revised Revenue Requirement Schedules and Revised Portion of LUMA's Revenue Requirement Brief*, Ex.B, p.114 n.4 (3/17/2026). That is nearly ***$100M less*** than the $307M requested by PREPA. PREPA's original $307M request is therefore excessive, and ratepayers should not be burdened with "pension" costs that PREPA failed to justify.

A. *PREPA's Preemption Arguments Are Inconsistent.*

There is also no principled basis to exclude a placeholder LDR while including pensions in the revenue requirement. PREPA and SREAEE claim that, under Section 6.25(b) of Act 57-2014, PREB must include pension costs in the rate. PREPA Initial L&P Br. p.8; SREAEE Initial L&P Br. p.4. However, Section 6.25(b) also requires PREB to establish rates sufficient to cover "financing costs," which includes debt service on the bonds. Additionally, Act 57-2014 requires PREB to "guarantee that the Authority meets its obligations to bondholders." Act 57-2014 §6.3(p). Thus, the same Commonwealth law PREPA claims does not "grant [PREB] discretion" to exclude pension costs (PREPA Initial L&P Br. p.8), requires PREB to establish rates sufficient to cover debt service.

Moreover, PREPA's argument that the "allowance, amount, extent, priority, [and] treatment of" the debt claims will be addressed in PREPA's Title III case (PREPA Initial L&P Br.

[5] *PREPA Should Use All of Pension Fee to Augment System Reserves, Retirees' Leader Says*, San Juan Daily Star, https://www.sanjuandailystar.com/post/prepa-should-use-all-of-pension-fee-to-augment-system-reserves-retirees-leader-says.

pp.3-4, 7, 10[6]), applies equally to pensions, which are also prepetition claims subject to adjustment in the Title III case. BH Initial L&P Br. pp.21-23. PREPA acknowledges that the pensions' priority is "directly before the Title III court [] and should only be addressed in that proceeding." PREPA RR Reply ¶1.73 (emphasis original). If PREPA is correct that PREB cannot include even a placeholder LDR (it is not), then including dollars for pensions in the rate would be even more inappropriate. BH Initial L&P Br. p.30.

PREPA attempts to sidestep this inconsistency by arguing that "pension expense is a cost legally imposed on PREPA," because the 2025 fiscal plan provides for PayGo pension funding. PREPA Initial L&P Br. pp.8-10; *see also id.* p.11 (because these costs are in PREPA's fiscal plan, "PROMESA requires their inclusion"). But the fiscal plan cannot effectuate a restructuring or reorder the priorities of claims without Title III court approval. BH Initial L&P Br. pp.26-27. Indeed, Congress explicitly stated that although PROMESA Title II provides that a fiscal plan should establish an adequate level of pension funding, that obligation should not permit pensions to "be unduly favored over other indebtedness in a restructuring," nor should it "be interpreted to reprioritize pension liabilities ahead of lawful priorities or liens of bondholders." H.R. Rep. No. 114-602, p.45 (2016). Any contrary view would mean FOMB's fiscal plan is both unconstitutional and preempted by PROMESA Section 303. BH Initial L&P Br. p.29.[7]

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[6] *See also* UCC Initial L&P Br. pp.2-3. The UCC did not join PREPA's meritless arguments that the 2025 fiscal plan can compromise claims without Title III court approval. *See id.* p.1 n.5. If it were otherwise, then FOMB would not have needed to file the Title III petition at all.

[7] PREPA relies on inapposite cases interpreting PROMESA Section 204, but that section applies only to the Governor and Legislature, not PREB. Moreover, these cases addressed reprogramming—*i.e.*, the practice of carrying a "prior year authorization for spending" forward into a subsequent fiscal year. *See Nevares v. Fin. Oversight & Mgmt. Bd.*, 330 F. Supp. 3d 685, 704 (D.P.R. 2018); *Vázquez-Garced v. Fin. Oversight & Mgmt. Bd. for P.R.*, 945 F.3d 3, 5 (1st Cir. 2019). The other cases addressed PROMESA Section 204(a), which governs the adoption of new

PREPA also tries to justify its inconsistent positions by arguing that PROMESA "favors" pensions. *See* PREPA Initial L&P Br. p.11 n.29; PREPA Pension Brief ¶¶22-26. But, as SREAEE recognized, that "is inaccurate." SREAEE's Rebuttal p.3. PROMESA does not give priority to pension claims, and contrary to PREPA's arguments, the acceptance of voluntary payments would violate the automatic stay. BH Initial L&P Br. pp.23-26.[8]

B. ***SREAEE's Priority Arguments Are Improper and Meritless.***

SREAEE repeats its prior argument that pensions are "placed on the same footing as other core operating costs," are not affected by the Title III case, and therefore must be included in the rate. SREAEE Initial L&P Br. pp.5-6. But the characterization and payment priority of pension claims are disputed issues currently pending before the Title III court, and notably, both FOMB and Bondholders dispute SREAEE's claims to priority. BH Pension Response pp.6-8, 20-21. In any case, even if PREB decided to address these issues—it should not—SREAEE's arguments are meritless.

The priority issues hinge on SREAEE's claim that pensions are "Current Expenses" under the bond Trust Agreement. *See* SREAEE Initial L&P Br. pp.5-6, 13. But SREAEE is not a party to the Trust Agreement and therefore lacks standing to enforce it. BH Initial L&P Br. pp.30-31. Even if it had standing, SREAEE is wrong to argue that all pension obligations are Current Expenses entitled to priority treatment. SREAEE Initial L&P Br. p.13. Section 505 of the Trust Agreement permits PREPA to pay only *some* Current Expenses from its General Fund. BH Initial

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laws. *See In re Fin. Oversight & Mgmt. Bd. for P.R.*, 650 B.R. 334, 355-56 (D.P.R. 2023). That is far afield from regulatory ratemaking proceedings under Act 57-2014.

[8] PREPA's arguments regarding the stay ignore that *creditors* may not accept voluntary payments from debtors by virtue of the stay (unless their claim, like Bondholders', is payable from pledged special revenues). As such, PREPA's reliance on PROMESA Section 305 is misplaced. *See id.* p.26.

L&P Br. pp.31-32. These include items that are (i) reasonable and necessary to maintain the system in an efficient and economical manner, and (ii) included in the Annual Budget (as defined in the Trust Agreement). *Id.*

The alleged pension costs do not meet these criteria. *Id.* pp.31-35. Even FOMB has conceded this point. *See* Case 19-AP-405-LTS, ECF No. 53, pp.10-11 (Bankr. D.P.R. 2020) ("'[P]ast due' amounts allegedly due to SREAEE … do not meet the definition of Current Expenses as used in section 505 of the Trust Agreement.") Moreover, FOMB admitted that PREPA's union "already litigated" the priority issues "and lost"—a Commonwealth court already denied the union's "claim to priority under the Trust Agreement as a Current Expense." Adv. Proc. No. 23-094-LTS, ECF No. 15 at pp.2-3 n.3 (Bankr. D.P.R. 2024); BH Initial L&P Br. p.31. Finally, even though PREPA previously requested that PREB include pensions in the revenue requirement, PREPA used the "the [pension-related] rate revenue to meet other needs." SREAEE Pension Br. p.5. Notwithstanding this failure to fund pensions, PREPA continued to operate, demonstrating that payments on account of *former* employees, who no longer work on the system, are not necessary to operate PREPA in an "efficient and economical manner." BH Initial L&P Br. p.33. Finally, SREAEE cannot demonstrate any of these alleged costs were included in the Annual Budget.

IV. Burden of Proof

Act 57-2014 places the evidentiary burden on the rate applicant to demonstrate that proposed rates satisfy the just-and-reasonable standard. *See* Act 57-2014 §6.25(b), 22 L.P.R.A. §1054x(b); *see also* BH Initial L&P Br. pp.18-19, 36-37, 41-42. Yet LUMA and Genera seek to dilute that statutory obligation in ways that countermand the law's unambiguous text, structure, and purpose.

A. *LUMA Misstates the Statutory Burden.*

LUMA acknowledges that rate applicants bear the burden of proof under Act 57-2014, but then backtracks to argue the burden is effectively meaningless unless intervenors or PREB first present affirmative evidence *dis*proving particular costs. LUMA Initial L&P Br. pp.11-13. In LUMA's view, utility expenditures are presumed prudent unless proven otherwise. *Id*; *see also infra* Part IV.E.1.

The statute contains no such presumption. BH Initial L&P Br. pp.36-37. To the contrary, Section 6.25(b) provides that the burden of proof "shall lie on the requesting electric power service company" to show its proposal satisfies the statutory standard. 22 L.P.R.A. §1054x(b). The statute also requires applicants to submit all information requested by PREB, including evidence supporting proposed costs and underlying assumptions. *Id.* These provisions impose an affirmative evidentiary obligation on rate *applicants*; they do not condition that obligation on a prior evidentiary challenge or affirmative showing by intervenors or PREB.

PREB's procedural rules reflect this deliberate allocation, requiring rate applicants to submit with their pre-filed testimony the analyses and factual support necessary for a comprehensive evidentiary review. *See* Reg. 8720 §2.17(e). PREB's prior orders recognize as much, too. BH Initial L&P Br. pp.28, 39; *see also, e.g.*, 2017 Rate Order p.79 (refusing to increase PREPA's budget for AOGP because PREPA's request was "unaccompanied by supporting evidence"); *id.* p.177 (similar for forecasting models).

The broader rate-review framework also confirms this burden allocation. Section 6.25 authorizes PREB to review proposed rate revisions, conduct discovery and hearings, and issue a grounded final determination establishing a just and reasonable rate. 22 L.P.R.A. §1054x(a), (c), (f). This structure contemplates an independent assessment of the application's evidentiary sufficiency—not a threshold inquiry into whether opposing parties have *dis*proven the proposal.

LUMA's approach would convert the statutory burden into a conditional obligation triggered only when an intervenor or PREB mounted a successful challenge—which is not what the statute says.[9]

Not only is a presumption of prudence inconsistent with the statute, but inventing one here would be bad policy. BH Initial L&P Br. pp.49-50. *None* of the elements that favor using a presumption of prudence is present here;[10] to the contrary, using a presumption of prudence here would encourage waste, incentivize a lack of transparency in rate applications, and ultimately harm ratepayers and other stakeholders. *Id.* pp.44-47.

B. *Genera Misinterprets Act 57-2014.*

Genera likewise misinterprets Act 57-2014, arguing that a rate applicant satisfies its burden where the evidence permits a "reasoned determination" that proposed costs are justified, even if costs remain uncertain or are disputed by intervenors. Genera Initial L&P Br. pp.17-18. But Section 6.25(b) does not permit the applicant to satisfy its burden based primarily on managerial judgments when the underlying assumptions remain uncertain and/or contested. Rather, the applicant must submit the "evidence and documents" that purportedly prove the proposed costs, and PREB's ultimate rate determination must be "duly grounded" in the evidence. Act 57-2014 §6.25(b), (f). The law does not say anything about allowing costs that are uncertain and/or undermined by countervailing evidence—which comports with its purpose of allowing only prudent, justified costs. *See supra* n.9. This also comports with standard ratemaking practice in

[9] The overriding purpose of Act 57-2014 is to ensure that imprudent costs are not charged to ratepayers, which also counsels against a presumption of prudence. BH Initial L&P Br. pp.38-40; *see also* Act 57-2014, Statement of Motives (law seeks to prevent PREPA from acting as a "monopoly that regulates itself" and that forces ratepayers to pay for "operational, managerial, and administrative deficiencies").

[10] The presumption of prudence applies only to IOUs, which (unlike PREPA) have a source other than ratepayers for funds, and which can have imprudent costs disallowed after the fact. *Id.* p.44.

the public-utility context. The Hearing Examiner testified in another rate proceeding that regulators "should require real evidence of prudent performance—objective facts showing that the [utility's] costs are the lowest feasible costs—rather than [relying on] the one-sided subjectivity in the [utility's] pre-filed testimony." Hempling Testimony, pp.21-22.

Genera's framing of the applicant's burden is therefore too permissive. Genera relies on general administrative law precedent (*see* Genera Initial L&P Br. p.17), but even under those principles, agency determinations must be grounded in legally sufficient record evidence and may not rest on conjecture. *See, e.g.*, *Oficina de Ética Gubernamental v. Martinez Giraud*, 210 D.P.R. 79, 115 (2022); *Gonzalez Segarra v. CFSE*, 188 D.P.R. 252, 276-77 (2013). Genera's cases do not alter the statutory burden imposed by Act 57-2014, nor do they establish that uncertain or refuted evidence satisfies the burden.

C. *OIPC Is Mistaken That PREB May Independently Establish Rates.*

OIPC correctly reads Act 57-2014 as placing the burden of proof on the rate applicant, and OIPC correctly observes that PREB's determination must be grounded in the evidentiary record. OIPC Initial L&P Br. pp.24-26. OIPC is mistaken, however, to suggest that PREB may *sua sponte* establish rates where the applicant has failed to carry its burden. *Id.* pp.25-26. While PREB may deny specific expenses or approve other amounts proposed by non-applicant parties and supported by the record, PREB does not possess unfettered discretion to formulate its own rates in a vacuum, after the close of evidence. BH Initial L&P Br. p.40.

While PREB may evaluate competing proposals and disallow unsupported costs, the statute requires that lawful rates be derived from the rate petition or some other justified proposal in the record, not from a rate proposal effectively developed post hoc by the regulator itself. *See* Act 57-2014 §6.25(b), (f). If PREB were to develop and accept its own rate proposal in this manner, it would threaten the "safeguards of the due process of law applicable to the final determinations of

administrative agencies." *Id.* §6.25(f), 22 L.P.R.A. §1054x. In administrative proceedings, due process requires that parties have a "meaningful opportunity to challenge the agency's decision," *Amoco Production Co. v. Fry*, 118 F.3d 812, 819 (D.C.C. 1997), and "fundamental fairness[] requires notice clearly informing a party of the proposed action and the basis for that action," such that parties can respond to the proposed action. *Chicago, Milwaukee, St. Paul & Pacific R. Co. v. United States*, 585 F.2d 254, 260 (7th Cir. 1978). The legislature and PREB established procedures for ratemaking, and "it is not up to [PREB] whether or not to acknowledge the[] rights" granted to the interested parties. *García Troncoso v. Right to Employment Admin.*, 8 P.R. Offic. Trans. 54, 56 (D.P.R. 1978).

D. *LUMA and Genera Wrongly Ask PREB to Disregard Available Federal Funds, to Ratepayers' Detriment.*

LUMA and Genera argue PREB should disregard the availability of federal funds, claiming it is "not a part of the statutory standard." LUMA Initial L&P Br. p.13; Genera Initial L&P Br. p.19 (same). But to charge ratepayers for a proposed cost, the statute explicitly requires that the utility prove the cost "is just and reasonable [and] provide[s] for a safe and adequate service at the *lowest possible cost.*" 22 L.P.R.A. §1054x(b); *see also* BH Initial L&P Br. pp.41-43. Similarly, other parts of Act 57-2014 explicitly consider the reasonableness of the proposed costs. *See, e.g.*, Act 57-2014 §1.2 (creating PREB "to ensure that energy costs are just and reasonable," by "thoroughly scrutiniz[ing] the power grid's maintenance"), §6.21 ("every rate or charge required or collected for any service … shall be just, reasonable, and nondiscriminatory"), §6.25(b)(9)(i) (similar). LUMA and Genera cannot show a cost is "reasonable" and the "lowest possible cost" to ratepayers when it can be paid with outside, non-ratepayer funds. BH Initial L&P Br. p.41.

Genera insists it would have to "prov[e] a negative" if PREB were to consider the availability of outside funds. Genera Initial L&P Br. p.19. Not so. Genera must simply show by

a preponderance of the evidence that it *needs* to charge ratepayers for a cost, as it has proposed to do, based on an inability to secure outside funding. It is only natural to expect the applicants to resort to available outside funds. As PREB has long made clear, ratepayers cannot be the funding source of first resort. PRO p.32.; *see also id.* pp.29-30 (refusing to let utility charge ratepayers for federal cost-share when "outside funding paths exist" or "external funds remain reasonably attainable"). Yet, Genera and LUMA often ignored that guidance and resorted to ratepayers *before* outside funding, only admitting under questioning by PREB and intervenors that outside funding was actually or potentially available to cover such costs.

LUMA similarly argues it is "unreasonable for PREB to deny NFC costs in this proceeding based on an expectation of federal funding." LUMA Initial L&P Br. p.13. Like Genera, LUMA asks PREB to disregard LUMA's statutory obligation to propose the "lowest possible cost." LUMA also argues that federal funding cannot be considered because it is "uncertain and dependent on the action[] of third parties, and thus[] outside of LUMA's control." *Id.* That argument does not speak to the statutory standard and, at any rate, is irrelevant. A prudent and reasonable operator should be able to minimize uncertainty in obtaining federal funding, and LUMA touted its ability to do just that when seeking award of its OMA.

E. *LUMA and Genera's Arguments Demonstrate Why the Presumption of Prudence Is Inapplicable.*

i. *LUMA misunderstands the presumption of prudence.*

LUMA has repeatedly acknowledged it "bears the burden to show its proposed rates are just and reasonable," and that PREB cannot assume a decision by the utility's executive team is "by default[] a prudent decision." *Request for Leave to Exceed Page Limitation*, p.2 (1/23/2026); 11/24 Tr. 91:10-93:2. But now, faced with its failure to carry its statutory burden, LUMA argues for the first time that even if it *has not* carried its burden, PREB "cannot substitute the utility's

management views." LUMA Initial L&P Br. p.13. In effect, LUMA would eliminate its burden and have PREB operate as a mere rubber-stamp. This request is especially problematic because PREB may not be able to hold LUMA responsible after setting rates, as PREB does not have "the authority to make LUMA use its own funds" and cannot disallow LUMA's imprudently incurred expenses unless they are the result of negligence or willful misconduct. PRO p.27.

LUMA claims the presumption of prudence stems from regulators "not [being] clothed with the general power of management incident to ownership." LUMA Initial L&P Br. p.12 (quoting *State of Missouri ex rel. Sw. Bell Tel. Co. v. Public Serv. Comm'n of Mo.*, 262 U.S. 276, 289 (1923)). But LUMA's quote from *Southwestern Bell* does not derive from Justice Brandeis's concurrence, which is the presumption's origin. *See* Hempling Testimony, pp.18-19. Instead, LUMA misleadingly cites to the explanation in Justice McReynolds's majority opinion for why the Court should not disallow an "ordinary charge paid voluntarily by local companies of the general system." 262 U.S. at 288-89. This approach "differ[ed] fundamentally" from the presumption of prudence laid out in Justice Brandeis's concurrence. *Id.* at 289-90 (Brandeis, J., concurring). As the Hearing Examiner previously explained, in *Southwestern Bell*, there was "no rationale—statutory, constitutional or policy—for 'assum[ing]' that a monopoly always incurs its costs 'in the exercise of reasonable judgment.'" Hempling Testimony, pp.18-19.

LUMA also misconstrues how the presumption of prudence works. LUMA claims intervenors or PREB must demonstrate its expenses 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." *Compare* LUMA Initial L&P Br. pp.12-13 (quoting *North Carolina ex rel. Utils. Comm'n v. Intervenor Residents of Bent*

Creek, 286 S.E.2d 770, 779 (N.C. 1982) ("*Bent Creek*")), *with Bent Creek*, 286 S.E.2d at 779 (holding that the language LUMA cites applies only when a party challenges a utility's "transactions tak[ing] place between affiliated companies"). Thus, *Bent Creek* does *not* address the presumption of prudence and is instead explicitly limited to the issue of a utility recovering payments made to an affiliate—not ordinary ratemaking. And even in that inapposite context, the court recognized that the regulator "has the right to test the reasonableness" of expenses, to "require [that] the utility[] prove the[] propriety and reasonableness [of its expenses] by affirmative evidence," and that the regulator "must always determine that expenses paid to affiliated companies are reasonable[,] and the burden of persuasion on that issue lies with the company." *Id.* at 778.

LUMA's reliance on the South Carolina Supreme Court's *Hamm* decision is also unavailing. There, the court made clear the "ultimate burden of showing every reasonable effort to minimize [] costs *remains on the utility*." *Hamm v. S.C. Pub. Serv. Comm'n*, 309 S.C. 282, 286-87 (1992). Thus, far from supporting LUMA's argument that PREB should rubber-stamp its requests, *Hamm* confirms utilities bear the burden. In fact, before describing the presumption of prudence, the court in *Hamm* observed that the regulator "made specific factual findings" and "found no evidence of operational imprudence." *Id.* at 286.

In effect, LUMA urges PREB to adopt an approach "deferential to the utility, costly to the customers," which would "allow[] LUMA to impose on ratepayers its full costs, without [PREB] having seen any evidence of the prudence of those costs." Hempling Testimony, p.19; *see also* BH Initial L&P Br. pp.46-47.

As Bondholders warned, the presumption of prudence could bind PREB to "rubber-stamping" the utilities' proposals—defanging the regulator's only tool to regulate this monopoly

over an essential resource. BH Initial L&P Br. pp.49-50. That warning has proven true—LUMA admits that is *exactly what it wants*. According to LUMA, if the presumption applies, "PREB *is bound to approve* [LUMA's] proposed costs which are supported by both substantial record evidence and the presumption of prudence." LUMA Initial L&P Br. p.13. Remarkably, LUMA never defines "substantial record evidence," and instead argues that *even if* PREB finds LUMA failed to carry its burden, PREB is *still* bound to rubber-stamp LUMA's proposed costs, because PREB "cannot substitute the utility's management views with its own." *Id*. p.14. PREB must reject LUMA's attempt to evade the independent regulation required by Act 57-2014.

ii. <u>*Genera tries to manufacture ambiguity and presents a false dichotomy.*</u>

Genera attempts to create ambiguity in the plain text of Act 57-2014, claiming the law "requires clarification of" the utilities' burden in the "administrative context," and that its "burden of proof" to "show that the proposed rate is just and reasonable" leaves an "evidentiary question." Genera Initial L&P Br. pp.16, 21. Neither contention holds water.

The burden of proof in Puerto Rico administrative proceedings is a preponderance of the evidence. *Oficina de Ética Gubernamental v. Martinez Giraud*, 210 D.P.R. 79, 93-94 (2022). The Puerto Rico Supreme Court has been clear on this point.

Nor is there an open "evidentiary question"—it is black-letter law that when a party bears the burden of proof, it bears the "duty to prove a disputed assertion" and "carries both the burden of persuasion and the burden of production." BLACK'S LAW DICTIONARY (12th ed. 2024); *see also* BH Initial L&P Br. pp.35-37. The evidentiary standard here is thus simple—the utility must prove by a preponderance of the evidence that its proposed costs are "reasonable and just," with sufficient evidence for PREB to evaluate the proposed costs.

Both Genera and LUMA emphasize the importance of regulators evaluating utilities' decisions "based on the information reasonably available [to the utility company] at the time that

they were made, not with the benefit of hindsight." Genera Initial L&P Br. p.21; *see also* LUMA Initial L&P Br. p.12 (same). Avoiding hindsight bias is indeed a justification for the presumption of prudence. BH Initial L&P Br. pp.45-46. But this is not an after-the-fact cost-allowance proceeding, it is a prospective ratemaking case. *Id.* PREB is not assessing the utilities' decisions with the benefit of hindsight, and thus this rationale does not apply. To the contrary, the "prospective and predictive nature of ratemaking" (Genera Initial L&P Br. p.21) supports a searching, evidence-based inquiry, wherein the regulator scrutinizes the applicant's evidence without deference.

Genera argues, without supporting citations, that Act 57-2014's "analytical structure is the same" as the presumption of prudence. Genera Initial L&P Br. p.21. That is false. The legislature could have, but did not, draft legislation with a presumption of prudence favoring the utility. The legislature's choice is presumed to be deliberate, and it must be respected by an administrative agency—it cannot be rewritten under the guise of "interpretation." BH Initial L&P Br. pp.36-38.

Genera also mischaracterizes PREB's choices here—it is not simply a question of either applying the presumption of prudence or requiring the utility to "affirmatively establish that there was no imprudence in each managerial decision." Genera Initial L&P Br. pp.21-22. As discussed, the utility must prove its request by a preponderance of the evidence, which neither gives the utilities an inappropriate, extra-textual presumption nor creates a requirement to "rebut every hypothetical." *Id.*

Genera argues the presumption of prudence is consistent with the "prospective and predictive nature of ratemaking." *Id.* p.21. But the forward-looking nature of ratemaking is exactly why a presumption of prudence is *not* appropriate—there is no hindsight concern, and there is no mechanism for cost-disallowance later. BH Initial L&P Br. pp.3, 44-46. Tellingly,

Genera does not cite a single case applying the presumption of prudence to prospective ratemaking.[11] The presumption of prudence applies to retrospective disallowance proceedings.

Genera argues a cost will be disallowed only if a party makes an affirmative showing of "inefficiency, improvidence, or inconsistency with sound fiscal and operational practices" (Genera Initial L&P Br. p.22), but the cited cases are inapposite. For instance, Genera ignores that in *Public Service Commission of New York v. FERC*, the statutory scheme placed "the burden of explaining the reasonableness" of the change in costs *on the regulator*—unlike Act 57-2014, which has no such requirement. 642 F.2d 1335, 1346, 1348 (D.C. Cir. 1980) (noting the regulator "erred in placing the burden of proof on the opponents of [the regulator's proposed rates] in cost allocation rather than upon itself"). And under the statutory scheme in *Arizona Public Service Company v. United States*, again unlike here, the regulator could "only investigate the reasonableness of a challenged rate if the railroads have market dominance over 'the transportation to which the rate applies,'" and this finding was a jurisdictional "prerequisite to [the regulator] exercising its power." 742 F.2d 644, 645, 647 (D.C. Cir. 1984). This has no bearing on Genera's obligation to prove its rates are just and reasonable under Act 57-2014. *Kansas Gas & Electric Company v. FERC* is also irrelevant—no party disputes that PREB's ultimate findings "must be supported by 'substantial evidence in the record.'" 758 F.2d 713, 721 (D.C. Cir. 1985). PREB's obligation to provide a reasoned decision grounded in the record does not lighten the utility's burden of proof;

[11] The few cases that have addressed the presumption of prudence in prospective ratemaking have done so only when evaluating *previously* incurred expenses—not the utility's forward-looking expectations. *See, e.g.*, *Spire Mo., Inc. v. Public Serv. Comm'n*, 618 S.W.3d 225, 232 (Mo. 2021) (en banc) (noting that the "presumption of prudence [ordinarily applies] in determining whether a utility reasonably *incurred* its expenses" when assessing whether the utility collected "past excess recovery"—a factor in determining a just and reasonable rate of return); *see also Mississippi ex rel. Pittman v. Miss. Public Serv. Comm'n*, 538 So.2d 387, 398 (Miss. 1989) (similar); 64 Am. Jur. Public Utilities §118 (2026) (noting a utility's good faith may be presumed in assessing *incurred expenses* in "proceedings to fix its rates").

it shows the importance of the utility *carrying* its burden. Lastly, Genera cites *Missouri Southwestern Bell*, but, as the Hearing Examiner has noted—and as Bondholders explained in their Initial L&P Brief—Justice Brandeis's concurrence, lacking any "rationale," relies on competitive market pressures, which are completely absent here, and Justice McReynolds's majority opinion says nothing about the presumption of prudence. 262 U.S. at 290-91; Hempling Testimony, pp.2, 19.

V. Refunds of Ratepayer Overpayments for NFC

Genera, OIPC, and Bondholders agree that customer refunds are legally required and practically sound when outside funding renders ratepayer collections unnecessary. LUMA is the only party opposing such refunds, and LUMA's unsupported position exposes a double-dip strategy to pad its liquidity at ratepayers' expense, which must be rejected.

A. *LUMA's Position Is Contrary to PREB's Policy and Fundamental Fairness.*

LUMA argues "PREB cannot retroactively adjust the rates" for base-rate NFC costs, and "it is in the best interests of customers and the T&D System" for LUMA to keep and reallocate double-collected funds rather than return them to customers. LUMA Initial L&P Br. pp.17-19. In other words, LUMA asks PREB to bless a scheme whereby LUMA collects money from ratepayers for a given project, receives federal or Commonwealth money for the very same project, and then keeps the ratepayers' money to use on *other* projects as LUMA chooses.

LUMA says returning funds to customers is "a financial luxury that the System's current liquidity position cannot support." *Id.* p.20. The question is not whether the System needs some level of investment—of course it does—but whether LUMA should be permitted to collect twice for the very same cost. PREB has stated that FEMA funds are "best reserved for system repairs

and improvements,"[12] but that does not mean ratepayer funds should be *retained and repurposed* after federal funds have covered an expenditure. LUMA's argument attempts to convert a truism (the grid needs investment) into a license for LUMA to double-collect. Refunding customers for money collected but no longer needed for a project is not a "luxury."

LUMA's position also flouts PREB's directive that it "will not treat electricity customers as the funding source of first resort." PRO p.32. Notwithstanding this directive, LUMA has repeatedly admitted that it opposes customer refunds, even when it double-collects. *See* BH Initial L&P Br. p.43. Permitting LUMA to double-collect would create precisely the perverse incentive PREB sought to avoid—utilities would be motivated to collect easier-to-use ratepayer funds rather than expend the effort to properly use federal funds.

LUMA wrongly contends PREB has blessed its proposed approach, citing an order from years ago in another, non-ratemaking proceeding, which authorized PREPA to use certain FEMA reimbursement funds on an emergency, one-time basis to cover pension payments. *See* LUMA Initial L&P Br. p.18 (citing *Resolution and Order re: Urgent Motion for Budget Revision to Partially Cover PREPA Employee Retirement System Funding for FY2025*, NEPR-MI-2021-0004 (12/26/2024)). This 2024 order from the budgets case lends no support to LUMA's proposal to retain double-collected funds. Among other things, the order did not: (i) address a scenario where ratepayers had already been charged for a capital project and then federal reimbursements were received for the same project; (ii) address the legitimacy of repurposing double-collected funds for other, non-approved projects (as opposed to using reimbursements for pensions "[a]s an emergency measure"); or (iii) consider the possibility of refunding excess ratepayer funds.

[12] *Resolution and Order re: Urgent Motion for Budget Revision to Partially Cover PREPA Employee Retirement System Funding for FY2025*, NEPR-MI-2021-0004, p.2 (12/26/2024).

B. *LUMA's Due Process and Retroactivity Arguments Fail.*

LUMA argues its double-collection policy is legally permissible because "[n]either PREB nor the intervenors put forth a proposal supported by pre-filed testimony to refund customers," and so a refund mechanism would "violate due process." LUMA Initial L&P Br. pp.17-18. This argument is meritless.

First, the refund issue was litigated and developed throughout the evidentiary hearing, such that the Hearing Examiner ultimately included it in his Issues List. Ricardo Pallens of Genera committed on the record to refunding customers if federal funds were ultimately received for ratepayer-funded projects, and the Hearing Examiner stated unequivocally, "that goes for LUMA as well, and PREPA and Genera." 11/20 Tr. 427:12-428:20. LUMA cannot claim surprise that refunds are at issue when the Hearing Examiner put LUMA on notice during the hearing and otherwise.

Second, PREB's legal authority to order refunds is well-established. Section 6.25(f) of Act 57-2014 expressly authorizes reconciliation of provisional rates, and nothing in that statute or any other law prohibits PREB from establishing a similar mechanism for permanent rates insofar as notice is given. BH Initial L&P Br. pp.51-52. PREB also routinely makes reconciliations in other proceedings, such as the quarterly reconciliation case. LUMA's argument that base rates cannot be reconciled ignores that PREB can, and should, provide advance notice of a reconciliation mechanism in its final order.

Finally, LUMA's invocation of the rule against retroactive ratemaking is inapposite. That rule is intended to protect customers' reliance interests by ensuring they know the rates to be charged and are not subject to surprise adjustments for past periods. BH Initial L&P Br. p.52. Where advance notice is provided that a cost is subject to potential refund upon receipt of outside funding, there can be no claim of unfair surprise. Indeed, customers could hardly complain about

receiving *refunds* of unnecessary collections, and LUMA has no legitimate reliance interest in keeping ratepayer funds rendered redundant by outside funding.

C. *PREB Should Establish a Clear Refund Mechanism in Its Final Order.*

For the foregoing reasons and to avoid retroactive-ratemaking issues, PREB should create an appropriate mechanism for refunds of double-collected ratepayer funds in its final order. It would be unjust to allow LUMA to retain customers' funds that have been rendered redundant by outside funding.

CONCLUSION

Bondholders respectfully request that PREB make the determinations regarding legal and policy issues reflected in this brief, their Initial Legal and Policy Brief, and in their prior post-hearing briefs.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief, exclusive of the portions exempted in the Hearing Examiner's 12/22/2025 Order (caption, table of contents, signature blocks, and service information) and the Spanish summary required by standing order, contains 7,600 words per the word-processing program's word count feature.

/s/ *Corey K. Brady*
Corey K. Brady

Dated: March 20, 2026

RESPECTFULLY SUBMITTED,

THIS 20th DAY OF MARCH 2026

CERTIFICATE OF SERVICE: We hereby certify that the foregoing petition was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System, and courtesy copies were sent via electronic means to 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; jan.albinolopez@us.dlapiper.com; Rachel.Albanese@us.dlapiper.com; varoon.sachdev@whitecase.com; javrua@sesapr.org; Brett.ingerman@us.dlapiper.com; brett.solberg@us.dlapiper.com; agraitfe@agraitlawpr.com; jpouroman@outlook.com; epo@amgprlaw.com; loliver@amgprlaw.com; acasellas@amgprlaw.com; matt.barr@weil.com; Robert.berezin@weil.com; Gabriel.morgan@weil.com; corey.brady@weil.com; lindsay.greenbaum@analysisgroup.com; harrison.holtz@analysisgroup.com; charles.wu@analysisgroup.com; Brian.Gorin@analysisgroup.com; Bhumika.Sharma@analysisgroup.com; Rachel.Anderson@analysisgroup.com; lramos@ramoscruzlegal.com; tlauria@whitecase.com; gkurtz@whitecase.com; ccolumbres@whitecase.com; isaac.glassman@whitecase.com; tmacwright@whitecase.com; jcunningham@whitecase.com; mshepherd@whitecase.com; jgreen@whitecase.com; hburgos@cabprlaw.com; dperez@cabprlaw.com; howard.hawkins@cwt.com; mark.ellenberg@cwt.com; casey.servais@cwt.com; bill.natbony@cwt.com; zack.schrieber@cwt.com; thomas.curtin@cwt.com; escalera@reichardescalera.com; riverac@reichardescalera.com; susheelkirpalani@quinnemanuel.com; erickay@quinnemanuel.com; dmonserrate@msglawpr.com; fgierbolini@msglawpr.com; rschell@msglawpr.com; eric.brunstad@dechert.com; Stephen.zide@dechert.com; David.herman@dechert.com; Isaac.Stevens@dechert.com; James.Moser@dechert.com; michael.doluisio@dechert.com; Kayla.Yoon@dechert.com; mfb@tcm.law; lft@tcm.law; arosenberg@paulweiss.com; pbrachman@paulweiss.com; swintner@paulweiss.com; kzeituni@paulweiss.com; Julia@londoneconomics.com; Brian@londoneconomics.com; luke@londoneconomics.com; juan@londoneconomics.com; mmcgill@gibsondunn.com; LShelfer@gibsondunn.com; jcasillas@cstlawpr.com; jnieves@cstlawpr.com; pedrojimenez@paulhastings.com; ericstolze@paulhastings.com; arrivera@nuenergypr.com; apc@mcvpr.com; ramonluisnieves@rlnlegal.com; kbailey@acciongroup.com; shempling@scotthemplinglaw.com; rsmithla@aol.com; guy@maxetaenergy.com; jorge@maxetaenergy.com; rafael@maxetaenergy.com; dawn.bisdorf@gmail.com; msdady@gmail.com; mcranston29@gmail.com; ahopkins@synapse-energy.com; clane@synapse-energy.com;

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RESUMEN DE: BONDHOLDERS' REPLY LEGAL AND POLICY BRIEF
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Los escritos iniciales de las demás partes en lo legal y de política pública en su mayoría coinciden con las posturas de los Bonistas o no ofrecen base legítima para disentir: (i) la asequibilidad y la practicabilidad no pueden usarse para reducir el "revenue requirement" y, si acaso, se abordan en el diseño tarifario; (ii) ningún participante ha demostrado que el LDR provisional propuesto esté preemptado por PROMESA y, por el contrario, facilitaría la salida de la quiebra y el cumplimiento del deber del PREB hacia los bonistas; y (iii) PREPA y SREAEE sostienen argumentos inconsistentes al pedir cobrar ahora por pensiones sujetas a Título III mientras se oponen a un LDR sin cargo presente para deuda heredada, cuando además esos costos de pensión carecen de sustento, PREPA ha desviado fondos "de pensión" y la JSF ha admitido la prelación de la deuda de bonos. Asimismo, la Ley 57 2014 impone la carga probatoria a los operadores privados y no reconoce presunción de prudencia, y todos salvo LUMA concuerdan en que si llegan fondos duplicados por un proyecto deben reembolsarse a los abonados. LUMA, sin apoyo, insiste en que puede retener y reutilizar fondos de los clientes y que el PREB no puede reembolsar, pese a que el PREB lo hace de forma habitual.

Las nociones de "asequibilidad" y "practicabilidad" no pueden usarse para reducir el revenue requirement, solo inciden en el diseño tarifario, y no hubo evidencia de elasticidad de demanda o de incobrabilidad; además, PROMESA no desplaza la autoridad del PREB ni justifica aislar la deuda heredada, como confirmó la orden del 13 de noviembre. Un Legacy Debt Rider (LDR) provisional no está preemptado: es un mecanismo en blanco que no fija montos ni prioridades, no interfiere con el Título III ni con el plan fiscal, y adelanta el mandato del PREB al crear eficiencias y enviar una señal de crédito; las objeciones de PREPA, UCC y OIPC por supuesta litigiosidad o incertidumbre carecen de base porque el LDR es ajustable, puede quedar

sin uso o eliminarse. Los reparos de SUN y SESA son prematuros y, aun si en el futuro hubiera un cargo fijo no evadible, aplicaría por igual a clientes con y sin medición neta y no hay evidencia de que desincentive la adopción solar.

PREPA pretende cobrar hoy a los abonados pensiones heredadas aún sujetas a ajuste en Título III, pese a su historial de desviar ingresos del recargo de pensiones, a la falta de base probatoria de PREPA y SREAEE, y a que LUMA estima un requisito de $211M frente a los $307M solicitados. Su postura es incoherente. Si la Sec. 6.25(b) obliga a incluir pensiones, también exige cubrir costos de financiamiento y "garantizar" a los bonistas (§6.3(p)), y el plan fiscal no puede reordenar prioridades sin aprobación del Título III. PROMESA no da prioridad a pensiones y pagos voluntarios chocarían con la paralización automática. Además, SREAEE no tiene legitimación para exigir bajo el Trust Agreement y, aun de tenerla, las pensiones no califican como "Gastos Corrientes", no son necesarias para operar ni constan en el Presupuesto Anual, como reconoce la propia JSF, máxime cuando PREPA usó el recargo para otras necesidades y siguió operando.

Los escritos confirman que la Ley 57-2014 impone, sin presunción de prudencia, la carga al solicitante de probar con evidencia suficiente que sus costos son justos, razonables y al costo más bajo posible. LUMA y Genera intentan debilitar ese estándar, pidiendo deferencia gerencial o tolerando costos inciertos, mientras OIPC acierta sobre la carga pero erra al sugerir que el PREB pueda fijar tarifas motu proprio fuera del récord y del debido proceso. El PREB debe considerar la disponibilidad de fondos federales y exigir que los solicitantes demuestren la imposibilidad de financiamiento externo antes de recurrir a los abonados. En materia de NFC, Genera, OIPC y los Bonistas apoyan reembolsos cuando lleguen fondos externos. LUMA, única en contra, propone un "doble cobro" incompatible con la política del PREB de no usar a los clientes como fuente de

primera instancia y no sustentado por la orden presupuestaria de 2024. En suma, no procede la presunción de prudencia ni ignorar fondos externos, y el PREB debe rechazar el doble cobro y ordenar reembolsos cuando el financiamiento externo haga innecesarios los cargos.

El PREB debe establecer en su orden final un mecanismo claro para reembolsar cobros dobles porque el tema fue litigado y notificado, tiene autoridad para reconciliaciones bajo la Ley 57-2014 §6.25(f), la regla contra la retroactividad no aplica cuando hay aviso previo, y LUMA carece de un interés legítimo en retener fondos redundantes, tal como solicitan los Bonistas.