GOVERNMENT OF PUERTO RICO
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: LUMA's Legal Reply Brief

LUMA'S REPLY BRIEF ON LEGAL QUESTIONS

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TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

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

I. Introduction.

The law requires that rates be set to meet the needs of the system. Ample record evidence supports those needs. LUMA's burden is thus amply met.

The evidence, spanning sixteen opening pre-filed testimonies, rebuttal testimonies, hundreds of LUMA's responses to discovery requests that were marked as evidence by the parties, as well as hundreds of pages of witness testimony before this Puerto Rico Energy Bureau ("PREB"), is more than substantial to establish that proposed costs are reasonable costs to operate, reconstruct and remediate Puerto Rico's Transmission and Distribution System ("T&D System"). LUMA submitted workpapers with costs breakdowns for capital investments at the portfolio and program levels, and operations and maintenance costs, subdivided by costs categories (salaries, wages and benefits; communications; information and technology; materials and supplies;

transportation, per diem, and mileage; utilities and rents; professional, technical and outsourced services; and miscellaneous costs that include expenses such as cellular allowances, automotive licenses, and other costs of operations).[1] Those costs breakdowns are supported by sworn testimonies by leaders and subject-matter experts for each of LUMA's Departments, who also identified that several of the costs are avoidable or have been incurred.

As discussed in LUMA's Revenue Requirement Brief ("LUMA's RRBrief")[2], the record shows a detailed analysis of T&D System needs, virtually uncontested estimates of costs based on T&D System needs, and an accompanying fulsome budgeting process.

The record is unyieldingly clear regarding need: "[t]he [T&D] [S]ystem . . . is literally falling apart around us on a daily basis." Transcript 11/17, p. 96, ll. 4-6; p. 97, ll. 4-19. *See also* LUMA's RRBrief, Section II(A)(1); p. 39. Crucially, **intervenors and PREB consultants did not file a single piece of evidence to challenge those costs or the need to fund critical investments to remediate and rebuild the T&D System**. The only semblance of opposition to proposed costs came in the form of proposals on financing costs through federal funding. PREPA's Bondholders ("Bondholders") try to suggest that LUMA did not meet the statutory burden of proof. They are wrong on the law, and are using the argument as smokescreen to distract from the fact that LUMA's costs proposals are not only supported by substantial evidence, but also uncontested.

The presumption of prudence is well-founded and appropriate post-hoc and forward-looking. And it makes sense that the presumption applies forward, as well as behind, because ratemaking is an inherently forward-looking exercise. But Bondholders just ignore the settled authority applying the presumption to future ratemaking. The presumption attaches *after* the

[1] *See e.g.,* Exhibits 1, 2, 2.03, 2.04, 2.05, through 18, and 399.

[2] LUMA's RRBrief is dated January 26, 2026.

applicant meets its burden of submitting evidence to support that costs are just and reasonable. It is thus entirely consistent with Act 57's[3] statutory burden.

Below, LUMA also addresses suggestions by the Independent Consumer Protection Office ("ICPO"), Bondholders, and Genera, that refunds to customers after permanent rates are implemented are legal. Finally, LUMA refutes claims by ICPO on PREB's authority to impose fines and regarding negligence liability costs that invite PREB to override the four corners of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("OMA").

II. Discussion

A. Burden of Proof

Bondholders assert that the allocation of the burden of proof is a procedural rule that determines which party has the burden to come forward with evidence of facts. Bondholders' Initial Legal and Policy Brief, ("BHs Legal Brief"), 35. They argue there are different levels of burden (e.g., preponderance of the evidence, beyond a reasonable doubt in criminal cases) and that the burden of proof can shift to another party after the initial party has first met its burden. *Id.,* 36. They also assert that under Act 57-2014, during any rate review process the burden of proof to show the rate is just and reasonable, consistent with sound fiscal and operational practices that provide for a safe and adequate service at the lowest reasonable costs is on the applicant and that the applicant must submit all the information requested by PREB. *Id.,* 36, 39-40. Bondholders also cite to requirements that all applicants submit pre-filed testimony with all facts and calculations needed to support a comprehensive analysis. *Id.,* 39.

[3] Reference to Act 57 in this brief is to the Puerto Rico Energy Transformation and RELIEF Act, Act 57-2014, 22 LPRA §§ 1051-1056 (2025) ("Act 57" and/or "Act 57-2014").

Why they spend so much time on this is puzzling. LUMA agrees that the applicant bearS the burden to present evidence to support its rate application. LUMA filed substantial evidence in support of its case, meeting all of the filing requirements set forth by PREB in its February 12, 2025 Filing Requirements Order, including all of the rate schedules and witness testimonies supporting the costs of every Department. The testimonies are supported with extensive documentation of the costs that were developed by the utility in the bottom-up process and extensive workpapers with all the costs and calculations necessary to analyze its proposal and that was required to support the rate filing as just and reasonable and to meet the statutory burden. PREB determined that the filing was complete and ordered a hearing to allow the intervenors an opportunity to contest the filing. *See* Resolution and Order of August 19, 2025. Leading up to the hearing, LUMA also answered *thousands* of requests for information concerning its costs and participated in technical conferences with PREB consultants and intervenors. Bondholders do not point to any evidence to support their claim that the utility failed to meet its burden to present an affirmative case in support of the rate application.

Rather, Bondholders contest application of the presumption of prudence and take issue with a standard that would shift the burden to intervenors or require them, in their words, to "disprove" amounts requested by rate applicants. BHs Legal Brief, 36, 43-50. The presumption of prudence that the Hearing Examiner raised in the December 22nd Order is consistent with Act 57's provisions that the utility bears the burden of proof to show that its cost are just and reasonable. It properly affords deference to the utility's substantiated judgment. The law is well settled that costs incurred by utility management are presumed prudent and made in the exercise of reasonable management judgement in the absence of any evidence raising a serious concern about the costs. *See National Fuel Gas Distrib. Corp. v. Public Serv. Commn. of the State of N.Y.,* 947 N.E.2d 115, 120-121 (N.Y.

2011) ("A utility company seeking a rate change has the burden of proving that the requested regulatory action is 'just and reasonable.' However, a utility's decision to expend monetary resources is presumed to have been made in the exercise of reasonable managerial judgment. [The Department of Public Service**, an intervenor**] carries the initial burden of providing a rational basis to infer that the utility may have acted imprudently before the burden shifts to the utility to demonstrate that its decision was prudent when made."); Scott H. Hempling*, Regulating Public Utility Performance,* 286-87 (2nd ed. 2021) ("When a utility seeks a rate increase it bears a statutory burden of proof on whether the increased rate is just and reasonable. […] Also known as the "risk of non-persuasion", the utility's burden of proof is usually lightened by a rebuttable presumption of prudence. This presumption puts the burden on the intervenor, or the regulator, to produce enough evidence of imprudence to create "serious doubt" about the utility's prudence. On the other hand, if the intervenor produces no evidence of imprudence, thus creating no "serious doubt," then the presumption of prudence remains unrebutted, allowing the utility to meet its burden of proof.").

The presumption is widely applied in other jurisdictions that have similar just and reasonable statutory requirements and in rate review settings:

> The prudence standard is traditionally used to address the proper valuation of utility investment in rate base. Any investment found to be unreasonable is deemed imprudent and subject to partial or full disallowance. An example of a modern articulation of the prudence standard is as follows: A prudence review must determine whether the company's actions, based on all that it knew or should have known at the time, were reasonable and prudent in light of the circumstances which then existed. It is clear that such a determination may not properly be made on the basis of hindsight judgments, nor is it appropriate for the [commission] to merely substitute its best judgment for the judgments made by the company's managers. The company's conduct should be judged by asking whether the conduct was reasonable at the time, under all circumstances, considering that the company had to solve its problems prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the task that confronted the company.

PacifiCorp, Request for a General Rate Revision, 2012 Ore. PUC LEXIS 474,*67-69 (Or. Pub. Utility Comm'n, December 20, 2012) (internal citations and quotation marks omitted) (decision rendered in the context of a general rate revision where the utility had the statutory burden of proof and the burden did not shift to any other party); *see also Entergy Gulf States, Inc. v. La. PSC*, 726 So. 2d 870, 873 (La. 1999) ("When the Commission reviews a utility's rates it is required to apply a 'prudence' standard. Under this so-called 'prudence review,' the Commission scrutinizes the utility's decision-making processes for reasonableness. This Court has established that in a prudence review of a utility company's rates, the burden of proof is on the utility, which must demonstrate that it went through a reasonable decision-making process to arrive at a course of action and, given the facts as they were or should have been known at the time, responded in a reasonable manner.") (citation omitted); *In re: Notice of Intent of Mississippi Power Co. for a Change in Rates*, 2015 Miss. PUC LEXIS 189, *48 (Miss. PSC 2015) (proceeding to set permanent rates) (*stating* that, in Mississippi, a "presumption of prudence" exists in favor of the utility and that the Commission had previously rejected "the notion that simply 'opening its books to inspection' or relying upon the wisdom of management would be sufficient for [a utility] to present a prima facie case, thereby shifting the burden of production."); *In re: Petition of Mississippi Power Co. for finding of prudence in connection with the Kemper County Integrated Gasification Combined Cycle Generating Facility*, 2013 Miss. PUC LEXIS 170, 2-6 (Miss. PSC, October 15, 2013) (*referencing* that in the proceeding, Commission staff and an intervenor cited "**overwhelming weight of authority** from other jurisdictions that apply the presumption, although **primarily in rate cases**," *discussing* the "generally accepted prudency standard," and *explaining* that it found "the rationale behind applying a presumption of prudency practical, necessary and compelling. . . . It is a tool to assist in conducting efficient hearings. It is

crafted to accommodate the voluminous, highly technical evidence required to establish the prudence of investment in electric power plants. The Commission's prima facie procedure allows the utility to establish the prudence by introducing evidence that is comprehensive, but short of proof of the prudence of every bolt, washer, pipe hanger, cable tray, I-beam, or concrete pour.") (emphasis in bold provided); *In re Citizens Communications Co.*, 2002 Vt. PUC Lexis 275, *2, *36, (Vt. Public Service Bd., July 15, 2002) (*stating* in a proceeding to increase retail rates and in the context of approving a "significant" rate increase, that "[a] regulated utility's rates contain thousands of cost items. It would be an overly burdensome task for litigants and the Board to be required to make an affirmative determination about every possible relevant variable which might have an impact upon the cost of service, particularly within the seven months prescribed by 30 V.S.A. §227(a).").

Contrary to what Bondholders suggest, there are decisions and precedents, including several of those cited above in this Brief, where public service commissions adopt and apply the presumption in proceedings like this one to approve rate-base costs and to review base rates, even where the applicable statute imposes the burden of proof on the utility and does not codify the presumption. Importantly, take the *West Ohio Gas Co. v. Pub. Util. Comm'n*, 294 U.S. 63, 72 (1935) case, in which the U.S. Supreme Court declared that "[g]ood faith is to be presumed on the part of the managers of a business," and that "in the absence of a showing of inefficiency or improvidence, a court will not substitute its judgment for theirs as to the measure of a prudent outlay." That was a rate case. Similarly, another rate case, *Anaheim, Riverside, Banning, Colton & Azusa v. Fed. Energy Regul. Com*., 669 F.2d 799, 809 (D.C. 1981), discussed the presumption applied to rate review processes stating that "utilities seeking a rate increase are not required to demonstrate in their cases-in-chief that all expenditures were prudent…. However, where some

other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the applicant has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent." *See also Gulf States Utils.* v. *La. Pub. Serv. Comm'n*, 578 So.2d 71, 84-85 (La. 1991) (*discussing* the prudent investment rule in relation to the authority of the La. Commission to determine costs to be included in base rates, and *holding* that prudence review "encompasses a public utility's continuation of an investment as well as its decision to enter into that investment, and that a "utility's investments are presumed to be prudent and allowable. When, however, the Commission raises serious doubt about the prudence of a particular investment, a searching inquiry becomes necessary, and at that point, the burden shifts to the utility to prove that the expenditure was in fact necessary and appropriate, or resulted in no additional costs.").

Here, Bondholders filed no evidence showing that the costs were not prudently incurred. Instead, they merely criticized the executability of capital projects, requirements for FEMA funding and legacy debt funding. But those arguments are misplaced in this proceeding. The point of a rate case is to establish the needs of the T&D System and a rate to fund them. *See Wisconsin Elec. Power Co*., 2019 Wisc. PUC LEXIS 704, *52-53 (Wis. Pub. Serv. Comm'n, December 19, 2019) (within the context of a Settlement Agreement in a rate adjustment proceeding, *holding* that "the Commission is tasked with setting a revenue requirement based on projected costs and revenues in the test year and providing utilities with the opportunity to earn a reasonable rate of return . . . The Commission's analysis is limited to the relevant costs and obligations that pertain to the test year."). The only criticism of LUMA's costs that Bondholders note in a footnote to their brief, refers to what they describe as a well-developed "proposal" for Vegetation Management, which they assert is less than what is proposed by the rate applicants. BH's LegalBrief, 40, no. 37. Bondholders, however, do not provide any record citation in support of that claim.

Either way, LUMA put forward evidence to support the fact that its costs were based on prudent utility practice regardless of the presumption. Thus, LUMA supported its burden to show that the costs underlying its filing were prudently incurred. Bondholder, meanwhile, failed to provide evidence to the contrary. *In re: Notice of Intent of Mississippi Power Co.*, 2015 Miss. PUC LEXIS at 49 ("The hundreds of pages of testimony and exhibits filed in Docket No. 2013-UA-189 and adopted by MPC's witnesses at the November 10, 2015, hearing more than satisfied the Commission's prima facie prudence requirements. As such, the burden of production for demonstrating imprudence shifted to the Staff and intervenors.").

1. Bondholders' argument that the presumption of prudence is limited to investor-owned utilities is misguided.

Bondholders assert that the presumption of prudence is, in practice, limited to disallowance proceedings that address already incurred expenditures by Investor-Owned utilities ("IOUs"). They argue that the presumption is that IOUs are subject to market forces that compel efficiency and prudence independent of regulation. Notably, there are no citations in this discussion, and it makes no sense. To the extent it exists at all, the pattern they identify (but don't support) is the result of naturally occurring selection bias, not some sort of reasoned conclusion. Most public utilities are *self-regulating*.[4] They set their own rates and are not regulated by the state public utility commission or the FERC.[5] In other words, don't have a PREB. Thus, the proceedings regarding

[4] *See* U.S. Environmental Protection Agency, *Background Document: An Overview of PUCs for State Environment and Energy Officials* 1 (2010), *https://www.epa.gov/sites/default/files/2016-03/documents/background_paper.pdf* (last visited Mar. 20, 2026) ("PUCs typically regulate all investor-owned utilities (IOUs) in their state. Municipal and cooperative utilities are often exempted from PUC regulation or have limited regulation."), https://www.epa.gov/sites/default/files/2016-03/documents/background_paper.pdf

[5] Natn's Ass'n of Regul. Util. Comm'rs, *PUC Overview Chart: Regulated Industries and Utilities* (Aug. 2021), *available at Find It Fast: Quick Links - NARUC;* https://pubs.naruc.org/pub/B0D1923D-A9C9-592F-8D66-B94F76407910?_gl=1*7bu98h*_ga *NDA2NDQ3MDYzLjE3NzQwMzU4MDY.*_ga_QLH1N3Q1NF*czE3NzQwMzU4MDYkbzEkZzEkdDE3NzQwMzU4MjYkajQwJGwwJGgw

disallowance naturally involve IOUs, which are subject to regulation. Moreover, unlike a public-owned utility, an IOU has an incentive to inflate their costs in the ratemaking process as they earn a return on their investments. Here, the people own the assets and LUMA and Genera only earn their fees, so there is no incentive to inflate their costs. Thus, if anything, the presumption should be even *stronger* in the case where the utility is publicly owned.

The IOU/public utility distinction does not negate application of a presumption. Courts have applied the presumption based on the nature of utility operations and the expertise required for utility management, not on ownership structure. A public utility's management is equally entitled to a presumption that its professional judgments were exercised in good faith.

LUMA, as Operator of the T&D System, enjoys unique expertise in grid management, subject to contractual performance standards and regulatory oversight. Its cost projections reflect professional judgment and are entitled to deference, either applying the procedural mechanism of a presumption or adopting the well-established standard that grants deference to the utility's judgment on prudency of its costs and investments.

2. The presumption also aids the PREB.

Prospective ratemaking equally benefits from the presumption.[6].

(last visited Mar. 20, 2026).

[6] *See Potomac Elec. Power Co. v. Public Serv. Comm*., 661 A.2d 131, n. 9 (D.C. App. 1995) (PEPCO's test year included actual and projected costs. The Order noted that "pursuant to D.C. Code § 43-402 (1990), the Commission is obligated to ensure that utility rates are 'reasonable, just, and non-discriminatory.' The 'prudent management' standard is therefore a means of determining which costs are reasonable and ensuring that only those costs are passed on to customers.").

Despite putting forth their own rationalizations of the presumption of prudence, Bondholders neglect to consider that the presumption serves as a procedural aid to commissions and would assist PREB in reviewing the utility's proposals in this rate case:

> The Commission's prima facie procedure is Commission-made. It is not established by statute or prior court decision, it was specially crafted by the Commission to aid in the trial of utility prudence reviews. It is a tool to assist in conducting efficient hearings. It is crafted to accommodate the voluminous, highly technical evidence required to establish the prudence of investment in electric power plants. The Commission's prima facie procedure allows the utility to establish the prudence by introducing evidence that is comprehensive, but short of proof of the prudence of every bolt, washer, pipe hanger, cable tray, I- beam, or concrete pour.

Entergy Gulf States, Inc. v. PUC, 112 S.W.3d 208, n. 5 (Tex. Ct. App. 2003); *see also In re Citizens Communications Co.*, 220 PUC 4th 280, *37 (Vt. 2002) ("to reasonably manage the ratemaking process, we rely upon the use of evidentiary presumptions to facilitate reaching a conclusion about the overall justness and reasonableness of rates without requiring an exhaustive review of hundreds or thousands of detailed cost of service items in every rate case . . . .").

3. The presumption does not violate Act 57.

Act 57-2014's requirement that the utility demonstrate its rates are just and reasonable, establishes who bears the burden of proof—not what evidentiary standards or procedural mechanisms apply. A rate applicant can satisfy its burden by presenting competent evidence of costs, at which point the presumption attaches and challengers must identify specific grounds for disallowance. Act 57-2014 neither addresses presumptions nor negates them, as long as the burden of proof remains on the applicant.

Bondholders' protestations that the clear text of the law precludes an interpretation to incorporate the presumption hold no water. The law does not preclude adoption of procedural mechanisms such as a rebuttal presumption or application of a deferential prudency standard.

Second, the nature of the rate review process, including the requirement of an evidentiary process that allows for intervention, shows that Act 57-2014 is consistent with procedural and evidentiary mechanisms for PREB to conduct prudency review and allow parties to file opposing evidence. Bondholders cannot advocate for a robust adversary process while at the same time pretending that they can overcome a cogent, complete evidentiary record simply by lodging criticism. They had the opportunity to present contrary evidence and didn't do it. It is not the critic who counts.

PREB naturally has broad authority and discretion to exercise the statutory mandate to review costs proposals under prudence standards. Jurisdictions have adopted the prudence presumption as a Commission-made procedural convention, and not by legislative mandate, recognizing it as a practical and longstanding tool for the efficient adjudication of utility rate proceedings. *See Office of the Pub. Coun. v. Missouri Pub. Serv. Comm'n*, 409 S.W.3d 371, 376 (Mo.2013) ("While the burden of proof rests on the [utility], the PSC's practice has been to apply a 'presumption of prudence' in determining whether a utility properly incurred its expenditures. The presumption of prudence is not a creature of statute or regulation."); *Entergy Gulf States, Inc.*, 112 S.W.3d, at 215 n. 5 (Tex. Ct. App. 2003) ("The Commission's prima facie procedure is Commission-made. It is not established by statute or prior court decision, it was specially crafted by the Commission to aid in the trial of utility prudence reviews. It is a tool to assist in conducting efficient hearings."); *State ex rel. Util. Com. v. Conservation Council of North Carolina*, 320 S.E.2d 679, 683 (N.C. 1984) ("The wording used by the legislature makes it clear that the Commission must include all reasonable CWIP expenditures in the rate base. The only matter left to the discretion of the Commission is whether such expenditures are reasonable and prudent . . . Costs are presumed to be reasonable unless challenged and there was no challenge to the reasonableness.").

Also, the presumption does not "handcuff" the regulator as Bondholders suggest. PREB retains authority to examine rate applications, and reject costs that are unreasonable or unsupported, even without intervenor opposition. The presumption applies to costs supported by competent evidence; it does not prevent PREB from exercising independent judgment or requiring utilities to substantiate their proposals.

If utility managers cannot rely on any presumption that their good-faith professional judgments will be respected, they face impossible uncertainty in making operational decisions. This uncertainty could cause underinvestment in necessary infrastructure, deferred maintenance, and degraded service quality—all outcomes contrary to the public interest.

4. The burden of proof does not mandate a showing that non-rate financing is not available.

Bondholders also assert that the burden of proof requires a showing of the unavailability of "outside funding," but cite no statutory or precedential authority. That's because there is none. PREB has a statutory duty to set rates consistent with sound fiscal and operational practices. Hoping that FEMA will pay for all the costs to transform the PREPA system is inconsistent with prudent utility practice and sound fiscal practice, as shown by extensive record evidence of the dire condition of the system. *See e.g.,* LUMA's RRBrief, 4-6. Bondholders also assert that this is necessary to avoid double dipping for capital expenditures based on a preference by LUMA to spend ratepayer funds instead, but the record demonstrates that $2.2 of the $2.7B or 81% of the funds that LUMA has spent on capital expenditures was paid for with federal funding sources. LUMA's RRBrief, 134.

5. Bondholders' rationalizations on alleged absurd results are themselves absurd.

Bondholders argue that intervention is not guaranteed. BHs Legal Brief, 49. That is true, but irrelevant. Permissive intervention doesn't explain why PREB should reject a presumption of

prudence where, as here, the utility met its prima facie burden. And, of course, Bondholders had the opportunity to participate at every material point—and did so vociferously. They cannot now pretend they lacked an opportunity to oppose costs. They were afforded every opportunity to present evidence or at least identify costs that they deemed imprudent.

Bondholders also assert that allowing a presumption of prudence would lead to automatic approval of the utility's rate filing. This is nonsensical as the PREB still has the authority to set just and reasonable rates based on the evidence before it whether or not the costs are challenged by the intervenors based on its determination of whether the utility supported its filing.

Finally, Bondholders' claimed concerns about so-called "perverse" incentives are pure unsupported speculative. The argument that applicants would "obstruct intervention" and "stonewall parties" improperly assumes bad faith. Act 57-2014 has procedural safeguards given that rate applicants are subject to discovery obligations and regulatory oversight. The presumption establishes a framework for analysis of properly supported costs.

In sum, PREB's judgment should be informed by well-established principles that afford deference to managerial prudency in cases such as this one, where no party filed affirmative evidence that costs are "exorbitant, unnecessary, wasteful, extravagant, or incurred in abuse of discretion or in bad faith or that they exceed either the cost of the same or similar goods or services on the open market or the cost similar utilities pay to their affiliated companies for the same or similar goods or services." *State ex rel. Utils. Com. v. Intervenor Residents of Bent Creek/Mt. Carmel Subdivisions*, 286 S.E.2d 770, 779 (N.C. 1982) *(citation omitted*); *see also In re Application of Dominion Energy South Carolina, Incorporated for Adjustment of Rates and Charges*, 2021 S.C. PUC LEXIS 274, *24-25 (S.C. Pub. Serv. Comm'n. 2021) (*approving* a settlement agreement in a rate review process and *stating* that "although the burden of proof in

showing the reasonableness of a utility's costs that underlie its request to adjust rates ultimately rests with the utility, the South Carolina Supreme Court has concluded that the utility is entitled to a presumption that its expenses are reasonable and were incurred in good faith." (*citing Hamm* v. *S.C. Pub. Serv. Comin'n,* 309 S.C. 282, 286, 422 S.E.2d 110, 112 (1992)).

B. Refunds to Customers outside of the provisional rate period.

Bondholders, ICPO and Genera propose that refunds to customers after permanent rates are implemented would be lawful, subject to affording customers notice that the approved capital costs are subject to refund. BHs Legal Brief, 52, Genera's Legal Brief, 27-29, ICPO's Legal Brief, 30-32. As LUMA argued in its Legal Brief, that proposal is contrary to Act 57-2014. The only scenario under Act 57-2014 whereby PREB may alter an approved rate retroactively, including through refunds, is Section 6.25(f), which governs the final reconciliation of provisional rates. *See* LUMA's Legal Brief, 17. Genera effectively concedes this point when it acknowledges that provisional rates "are subject to reconciliation against the permanent revenue requirement and that reconciliation during the provisional rate period does not implicate retroactivity concerns because provisional rates are interim by design." Genera's LegalBrief, 26.

Once PREB approves the cost-of-service study and establishes the authorized revenue requirement, Act 57-2014 does not provide a mechanism to condition base rate recovery on future contingencies with refund obligations. The distinction between a rider with built-in reconciliation and a base rate is critical: riders are designed to be trued-up periodically, while base rates represent a final determination of the revenue requirement.

The refund mechanism that ICPO, Bondholders and Genera entertain conflates regulatory notice with statutory authority. The fact that PREB could inform customers that rates are conditional does not vest PREB with the legal authority to order refunds absent an express statutory

grant. PREB cannot circumvent Act 57's carefully delineated ratemaking framework simply by including conditional language in a rate order.

The statutory "just and reasonable" framework is forward-looking and revenue-sufficient; it does not contemplate retroactive clawbacks from permanent rates. Moreover, the conditional refund mechanism would mean that the utility would operate under uncertainty about its actual authorized revenue, undermining the stability that prospective ratemaking is designed to provide. If PREB can attach any contingency to base rate recovery and later require refunds, there is no principled limit on PREB's ability to rewrite final rate orders based on post-hoc developments. The utility would be deprived of the reasonable expectation that the approved revenue requirement will remain stable during the rate period to allow operational and financial planning, as is required by Section 6.25(b) of Act 57.

Finally, the cases that Genera cites in note 53 of its legal brief are distinguishable. *Fed. Power Comm'n v. Tenn. Gas Transmission Co.,* 371 U.S. 145*,* 152-53 (1962), involved an order under Section 4(e) of the Natural Gas Act, 15 U.S.C. § 717c(e) (2026).[7] Pursuant to Section 4(e),

[7] Said Section 4 (e) of the Natural Gas Act provides in relevant part:

> **(e) Authority of Commission to hold hearings concerning new schedule of rates.** Whenever any such new schedule is filed the Commission shall have authority, either upon complaint of any State, municipality, State commission, or gas distributing company, or upon its own initiative without complaint, at once, and if it so orders, without answer or formal pleading by the natural-gas company, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the natural-gas company affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of the suspension period, on motion of the natural-gas company making the filing, the proposed change of rate, charge, classification, or service shall go into effect. Where increased rates or charges are thus made effective, the Commission may, by order, require the natural-gas company to furnish a bond, to be approved by the Commission, to refund any amounts ordered by

when a natural gas utility files a rate increase, the FERC issues a hearing order accepting a rate increase, suspending the effectiveness of the rate increase during the five-month statutory suspension period, setting a hearing to establish if the rates are justified, and providing for refunds if the Commission determines in the hearing that the rate increase is not justified based on the outcome of the hearing. Thus, these suspension orders are issued to begin the hearing process to set the rates. In *Tenn. Gas Transmission Co.*, the FERC held a hearing, found that the return on investment used in calculating the rate was not a just and reasonable return and ordered refunds from the end of the five-month suspense period (i.e. the effective rate of the rate increase) and ordered a refund of the excessive amounts collected since that date. Act 57-2014 contains no analogous statutory authority for refunds outside of the provisional rate context. Thus, the *Tenn. Gas Transmission Co.,* decision that involves a statute foreign to Puerto Rico, is inapposite.

PREB should also reject the proposition that *Natural Gas Clearinghouse v. FERC,* 965 F.2d 1066 (D.C. Cir. 1992) supports a broad principle to allow refunds of past rates. In that case, the court found only that the FERC had authority to order retroactive rate surcharge or refund adjustments when its earlier order reversed on appeal improperly disallowed a higher rate. *See Indiana & Michigan Elec. Co. v. FPC*, 502 F.2d 336, 339 n. 8 (D.C. Cir. 1974), cert. denied, 420 U.S. 946, 95 S. Ct. 1326 (1975). Viewed in proper context, the *Natural Gas Clearinghouse* decision involves the principle that an agency has the ability to go back and correct its legal errors. The case involved a rate that was reviewed by the court and found to be the result of a legal error by the FERC in modifying the rates as it was filed in error, meanwhile the scenario that the Hearing

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> the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and, upon completion of the hearing and decision, to order such natural-gas company to refund, with interest, the portion of such increased rates or charges by its decision found not justified.

15 USCS § 717c (underlined emphasis provided).

Examiner raised in the December 22nd Order and that ICPO, Bondholders and Genera embrace, would be open ended, and subject to contingencies that are not under PREB's control or the control of any of the parties in this proceeding. The *Natural Gas Clearinghouse* decision does not support a refund mechanism without defined reconciliation periods that converts permanent rates into *de facto* provisional rates.

Finally, *Exxon Co. v. FERC,* 182 F.3d 30 (D.C. Cir. 1999), entailed a situation not here present: a correction of a methodological error in a prior FERC order. Here, the potential refund mechanism would not entail PREB correcting an error. It would be requiring refunds based on the occurrence of a future contingent event (receipt of federal funds) that has nothing to do with whether the original rate determination was correct.

None of these cases involved permanent rates approved after a full rate case with subsequent refund obligations based on whether external funding from third parties (like FEMA) might later become available. Similarly, the cases did not consider an indefinite refund obligation that could extend beyond the rate period. Moreover, ratemaking precedent under the Natural Gas Act is not binding on PREB's interpretation of Act 57-2014.

As LUMA argued in its Legal Brief, the record does not support any proposal for a refund mechanism. Approval of that mechanism would violate settled due process and administrative law mandates. *See* LUMA's Legal Brief, 18-19.

C. Decoupling

ICPO also takes issue with the PREB's ability to authorize decoupling-related adjustments, in the form of surcharges or credits when actual revenues differ from the authorized revenue requirement. For purposes of this legal issue, ICPO incorporates by reference the arguments presented in Part B *Annual Updates of Billing Determinants and the Energy Bureau's Statutory*

Authority of its brief concerning the statutory limitations on annual updates to billing determinants and the modification of approved rates. As LUMA explained in detail in its Legal Brief, there is precedent for holding that a decoupling mechanism is not retroactive rate change.

The ability to approve such a mechanism is supported by SUN/SESA's initial legal brief, where they correctly note that "so long as the decoupling mechanism—including its formula, triggers, reconciliation process, and adjustment methodology—is fully described and explained in the rate order that creates it, such adjustments do not constitute retroactive ratemaking. They are prospective, formula-driven, and pre-authorized, placing them within the category of lawful ratemaking mechanisms." SUN/SESA Initial Legal Brief at 10; *see id.* at 11 (further supporting the legality of a revenue decoupling mechanism).

SUN/SESA is not correct, however, in its conclusory statement that "LUMA has not proposed any details of how the decoupling would be calculated, and stakeholders have not been afforded the opportunity to comment on how they would want the actual decoupling to be calculated and occur." *Id.*, 11-12. SUN/SESA's suggestion for "submission of a draft revenue decoupling proposal for the Bureau's formal review and deliberation" separate in timing and consideration from the other issues in this proceeding is contrary to the principles of administrative efficiencies and ignores the extensive work done on decoupling in this proceeding to date. *See id.*, 12. In fact both LUMA's and PREB's experts expended considerable time on the decoupling issue, covering multiple exhibits and discussion at hearing. *See, e.g.,* Exhibit 59, Exhibit 73, Transcript 12/16. If SUN/SESA feel they did not "comment on how they would want the actual decoupling to be calculated and occur" in this proceeding it was not for lack of opportunity to do so.

In this case, there are also important factual differences between the PREB consultant's proposal to change approved per unit customer rates based upon annual new forecasts of load

versus the decoupling mechanism. As explained in LUMA's Initial Rate Design Brief, the decoupling mechanism, as proposed by all parties, does not change the customer charges during the three-year period. Rather, the decoupling mechanism would be implemented through a rider which would be approved as part of the rate case, this rider would have the target revenue of the pre-authorized revenue requirement. As indicated in Mr. Figueroa's testimony, "The target revenue number(s) would be the yardstick for comparing actual billed revenue to authorized revenue to determine the annual surcharge (if any). However, the decoupling rate calculation would be based on the total variance in revenue for all classes." LUMA Ex. 73, 4:73-80. Thus, the rider will impose a surcharge that would be approved in this case that allows a reconciliation to actual billed revenue and would be based upon only up to 3% of the approved revenue requirement versus actual revenues each year. This surcharge would not change the approved rate retroactively but rather constitute a surcharge with a reconciliation mechanism based on revenues. *See* Tr. 12/16, 153:23-154:8.

Also, the decoupling proposal, unlike the PREB consultant proposal on updating load forecasts annually, does not result in a complete re-computation of the rates based on a forward-looking test period billing determinant forecast that would have to be approved each year and would introduce great instability into the rates for consumers and the revenues to the utility. Instead, the decoupling mechanism is based upon actual billed revenues and includes a reconciliation and only could result in surcharge or credit based on actual billing that resulted in an under-collection or over-collection of 3% of the authorized target revenue requirement and is aimed at encouraging the utility to support energy efficiency while stabilizing revenue to the utility.

For those reasons, the decoupling mechanism, unlike the billing determinant proposal, meets the goals of the statutory framework established by Act 57-2014, in that it is designed to

provide stability, predictability, and transparency in electricity rates. Also, unlike a re-computation of the rates based on a forward-looking test period forecast that would have to be approved each year and would introduce great instability into the rates for consumers and the revenues to the utility, the decoupling mechanism includes a reconciliation and only could result in a surcharge or credit based on actual billing that resulted in an under-recovery or over-recovery of 3% of the authorized target revenue requirement.

D. ICPO's contentions on PREB's authority to impose fines.

ICPO's legal brief addresses PREB's authority to impose administrative fines and the source from which such fines must be paid. *See* ICPO Legal Brief, pp. 4, 8-9. Discussion regarding the treatment and payment of fines in this proceeding is premature. *See* LUMA's Brief in Response to Legal Questions, p. 2. LUMA's proposed revenue requirement does not include a line item to pay a fine imposed by PREB; thus, any discussion concerning the classification, payment, or recovery of fines is speculative and lacks a concrete factual predicate.

ICPO asserts that contractual provisions under the OMA "cannot override the Energy Bureau's statutory authority over ratemaking and cost recovery." *See* ICPO LegalBrief, p. 12. While LUMA acknowledges PREB's ratemaking authority, ICPO's analysis ignores critical provisions of the OMA that govern the treatment of fines and penalties and protect LUMA's contractual rights.

For example, Section 7.6 of the OMA specifies that Disallowed Costs include: "(ii) any and all fines, penalties or other similar payments or charges imposed by PREB on Operator, except to the extent Operator is performing its obligations under this Agreement in accordance with this Agreement." Ex. 489, Section 7.6(a)(ii). This language creates a critical caveat: fines imposed by PREB are treated as Disallowed Costs only to the extent the operator failed to perform its

obligations under the OMA in accordance with the agreement. As LUMA's witness, Mr. Alejandro Figueroa, explained, the OMA treats PREB penalties as disallowed costs, provided they result from actions that are inconsistent with the OMA. Tr. 11/24, 182:4-8.

Furthermore, the ICPO fails to properly consider that the OMA establishes a separate process for resolving disputes about whether a particular cost constitutes a Disallowed Cost. Section 7.6(b) provides: "The Parties hereby agree that, in the event that a dispute arises in connection with Disallowed Costs, the matter shall be subject to resolution as a Technical Dispute in accordance with Article 15 (Dispute Resolution)." Ex. 489, Section 7.6(b). Consequently, as Mr. Figueroa testified, the fact that PREB imposes a penalty does not automatically make it a disallowed cost under the T&D OMA. Tr. 11/24, 188:12-21.

ICPO's proposal that PREB should somehow supersede OMA provisions would impair LUMA's contractual rights and expectations in violation of Section 7 of Article I of the Constitution of the Commonwealth of Puerto Rico and Section 10 of Article I of the Constitution of the United States, as LUMA discussed in its Legal Brief, p. 4.

E. LUMA partially agrees with ICPO's statements on negligence liability costs.

ICPO's brief addresses how PREB should treat costs associated with negligence liability, including compensation owed to victims of utility negligence. *See* ICPO LegalBrief, p. 21-24. LUMA respectfully submits that this discussion is premature as is fully discussed in LUMA's Legal Brief, p. 9. Notwithstanding, LUMA agrees with ICPO that PREB should distinguish between different types of negligence and liability costs.

LUMA also agrees with ICPO that PREB has discretion to determine whether negligence-related costs are prudently incurred and reasonably necessary. *See* ICPO Legal Brief, 23. However, PREB must also recognize that operational costs for claims processing represent legitimate

business expenses necessary for the utility to comply with its legal obligations. Tr. 12/2, 50:3-12. The operational costs associated with claims processing represent a necessary component of utility operations, particularly in light of the Puerto Rico Supreme Court's decision on the liability waiver.

Actual damages awards, by contrast, are contingent on litigation outcomes and may require different treatment. *Id*., 13:19-23. The determination of whether such costs are recoverable requires consideration of the facts regarding the alleged negligent action; thus, it is improper for PREB to answer this question in this rate case, absent a live and real controversy that could trigger discussion of Disallowed Costs under the T&D OMA.

In sum, PREB should consider the timing and evidentiary requirements for addressing costs of negligence liability. *Id*., 22:12-19. As LUMA has noted, quantifying certain costs—particularly damages—may not be feasible within the current rate period. *Id*., 22:1-19.

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

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 20th day of March, 2026.

WE HEREBY CERTIFY that this document was filed using the electronic filing system of this Energy Bureau and that electronic copies of this document will be served onto the following mailing list: mvalle@gmlex.net; alexis.rivera@prepa.pr.gov; jmartinez@gmlex.net; jgonzalez@gmlex.net; nzayas@gmlex.net; Gerard.Gil@ankura.com; Jorge.SanMiguel@ankura.com; Lucas.Porter@ankura.com; mdiconza@omm.com; golivera@omm.com; pfriedman@omm.com; msyassin@omm.com; regulatory@genera-pr.com; legal@genera-pr.com; mvazquez@vvlawpr.com; gvilanova@vvlawpr.com; dbilloch@vvlawpr.com; ratecase@genera-pr.com; jfr@sbgblaw.com; hrivera@jrsp.pr.gov; gerardo_cosme@solartekpr.net; contratistas@jrsp.pr.gov; victorluisgonzalez@yahoo.com; Cfl@mcvpr.com; nancy@emmanuelli.law; jrinconlopez@guidehouse.com; Josh.Llamas@fticonsulting.com; Anu.Sen@fticonsulting.com; Ellen.Smith@fticonsulting.com; 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; varoon.sachdev@whitecase.com; javrua@sesapr.org; 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; kbailey@acciongroup.com; zachary.ming@ethree.com; PREBconsultants@acciongroup.com; carl.pechman@keylogic.com; bernard.neenan@keylogic.com; tara.hamilton@ethree.com; aryeh.goldparker@ethree.com; roger@maxetaenergy.com; Shadi@acciongroup.com; MWhited@synapse-energy.com.

DLA Piper (Puerto Rico) LLC
B7 Tabonuco Street, Suite 1501
Guaynabo, Puerto Rico 00968-3349
Teléfono: (787) 945-9122
Facsímil: (939) 697-6092

/s/ Margarita Mercado Echegaray
Margarita Mercado Echegaray
RUA 16,266
margarita.mercado@us.dlapiper.com

/s/ Yahaira De la Rosa Algarín
Yahaira De la Rosa Algarín
RUA 18,061
yahaira.delarosa@us.dlapiper.com

/s/ Jan M. Albino López
Jan M. Albino López
RUA 22,891
jan.albinolopez@us.dlapiper.com

Pro Hac Vice
/s/ Andrea J. Chambers
Andrea J. Chambers
DC-405613
Andrea.Chambers@us.dlapiper.com

DLA Piper LLP (US)
500 Eighth Street, NW
Washington, DC 20004
United States of America
Tel. +1 202.799.4440

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LUMA hereby **CERTIFIES** that this document has 7,255 words, excluding the caption, table of contents, signature blocks, and service information, in compliance with the word limit imposed by the *Hearing Examiner's Order on Exhibits, Miscellaneous Post-Hearing Matters, and Legal Issues*, issued on December 22, 2025.

/s/ Margarita Mercado Echegaray