

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

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**IN RE: PUERTO RICO
ELECTRIC POWER
AUTHORITY RATE REVIEW**

CASE NUM. NEPR-AP-2023-0003

Subject:

**SUN-SESA Reply Brief on Legal and
Policy Issues**

**JOINT SUN-SESA REPLY BRIEF ON LEGAL AND POLICY
ISSUES**

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TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

Comes now SOLAR UNITED NEIGHBORS and the SOLAR AND ENERGY STORAGE ASSOCIATION OF PUERTO RICO, represented by the undersigned attorneys, and very respectfully STATE, ALLEGE and PRAY:

1. SOLAR UNITED NEIGHBORS (“SUN”) is a nonprofit corporation dedicated to creating a clean, equitable, resilient energy system that benefits everyone. It helps people go solar, join, and fight for their energy rights. SUN’s vision is a clean, equitable energy system that directs control and benefits back to local communities, with solar on every roof and money in every pocket.

2. The SOLAR AND ENERGY STORAGE ASSOCIATION OF PUERTO RICO (“SESA”) is a nonprofit association that represents Puerto Rico’s solar and energy storage industries. SESA advocates for solar and storage technologies as a central solution to Puerto Rico’s energy needs, promoting public policy that will benefit the growth of these industries.

3. As per the *Hearing Examiner's Order on Exhibits, Miscellaneous Post-Hearing Matters, and Legal Issues* issued on December 22nd, 2025, SESA and SUN file this Reply Brief on Legal and Policy Topics jointly, considering the positions of the other intervenors that also filed legal briefs.

I. AGREEMENTS WITH OTHER PARTIES

4. SUN and SESA agree with PREPA, OIPC, and UCC that the Bureau should not establish a Legacy Debt Rider (LDR) now.¹ Those positions are based on said parties' reading of PROMESA, the Title III process, the Fiscal Plan, and the absence of an adequate evidentiary record supporting such a ratemaking vehicle for future legacy debt recovery. Although SUN and SESA's position is solely based on the illegality of the LDR as currently proposed (as proposed it would be based on gross, not net consumption, thus clashing with Section 4(c) of Act 114-2007), the result would be the same: the Bureau cannot authorize the LDR as proposed.

5. SUN and SESA also agree with OIPC's strong criticism of certain fixed charges and with OIPC's concern that overuse of fixed charges discourages and weakens energy conservation, energy efficiency, distributed-generation, disproportionately burdening low-usage customers.² SUN and SESA's position against these charges is not merely a

¹See, PREPA's Initial Brief in Response to the Legal and Policy Questions in the "Hearing Examiner's Order on Exhibits, Miscellaneous Post Hearing Matters, and Legal Issues" at 5-8, In re P.R. Elec. Power Auth. Rate Review, Case No. NEPR-AP-2023-0003 (P.R. Energy Bureau Mar. 6, 2026); Indep. Consumer Prot. Office's Legal Issues Brief at 15-16, In re P.R. Elec. Power Auth. Rate Review, Case No. NEPR-AP-2023-0003 (P.R. Energy Bureau Mar. 6, 2026); Initial Brief on Legal & Policy Issues and Partial Joinder of Official Comm. of Unsecured Creditors of PREPA at 1-3, In re P.R. Elec. Power Auth. Rate Review, Case No. NEPR-AP-2023-0003 (P.R. Energy Bureau Mar. 6, 2026).

²See, Indep. Consumer Prot. Office's Legal Issues Brief, *supra* note 1, at 20-21.

policy posture, but a clear legal objection as they would breach Law 114-20017;³ but the result would be the same: the Bureau must not authorize new fixed charges.

6. SUN and SESA also generally agree with OIPC and the Bondholders that the burden of proof remains on the rate applicant. No party proposing novel rate structures, riders, or automatic recovery tools should benefit from any presumption of prudence or legality.⁴ That principle is especially important where the proposed mechanism threatens statutory protections afforded to net-metering and distributed-generation customers.

II. FIXED CHARGES, AFFORDABILITY AND LAW 114

7. SUN and SESA question the positions advanced by LUMA, the Bondholders and Genera to the extent those parties treat affordability solely as a rate-design issue and not as part of a broader analysis.⁵ The Bureau cannot legally disregard the practical implications and harms of rate structures that recover excessive revenue through unavoidable fixed charges that undermine certain types of users, such as low-consumption customers (related to low-income), energy efficient customers and solar customers).⁶

³ Section 4(c) of Act 114-2007 2007 (22 L.P.R.A. § 1014) prohibits (1) charges applicable to net-metering customers that modify the export credit formula or net-consumption structure (2) direct or indirect charges on renewable generation, (3) discriminatory charges, (4) and any charge that discourages entering into net metering agreements).

⁴See, Indep. Consumer Prot. Office's Legal Issues Brief, *supra* note 1, at 24-26; Bondholders' Initial Legal & Policy Brief, *supra* note 4, at 35-50.

⁵See, LUMA's Brief in Response to Legal Questions at 6-8, In re P.R. Elec. Power Auth. Rate Review, Case No. NEPR-AP-2023-0003 (P.R. Energy Bureau Mar. 6, 2026); Bondholders' Initial Legal & Policy Brief, *supra* note 4, at 4-9; Genera's Initial Legal & Policy Issues Brief, *supra* note 4, at 11-15.

⁶ Law 17-2019, § 1.4(vi) (rate structure must account for "affordable electricity prices to all consumers, particularly to low-income consumers"); § 1.5(1)(a) (rates and charges must be "affordable, just, reasonable, and nondiscriminatory"); Law 114-2007, § 4(c) (net-metering rate may not be discriminatory or discourage participation); Law 17-2019, § 1.5(2)(e) (Puerto Rico's policy is to empower consumers through "energy efficiency strategies, demand response, [and] the installation of distributed generators.")

9. Furthermore, neither the Bureau nor the parties can disregard the legal or statutory realities that inform and constrain the rate-making process. Simply put, utilities may not recover costs through structures that Law 114 forbids. That is why the legal question is not merely how to spread recovery, but whether the proposed fixed charges and the gross-consumption based (*non-bypassable*) LDR are lawful in the first place, and they are not.

10. Thus for legality to be upheld, SUN and SESA reaffirm that, if costs like pensions (as well as the other charges proposed, i.e. SUBA, CILT, LDR, Storm/Outage) are recovered from customers, such recovery must remain volumetric and tied to net consumption. PREPA and OIPC both note that the existing provisional pension rider has functioned as a volumetric charge, and that history reinforces the core point here: a charge tied to consumption is legally and economically distinct from the fixed-per-customer charges or non-net-consumption based designs urged elsewhere in this case.

III. DECOUPLING ADJUSTMENTS

11. SUN and SESA continue to support the proposition that Puerto Rico law can authorize a prospective, formula-based decoupling mechanism established in advance by final order, provided the mechanism is fully defined, transparent, and subject to an adequate administrative record. In that limited respect, SUN and SESA partially agree with LUMA that decoupling is not inherently unlawful or retroactive if it is properly structured.⁷

12. SUN and SESA, however, oppose any attempt to use decoupling as a vague placeholder or as an automatic true-up without a fully specified methodology. On this

⁷See, LUMA's Brief in Response to Legal Questions, *supra* note 6, at 14-15.

point, SUN and SESA share part of OIPC's concern: the Bureau cannot approve a skeletal mechanism that leaves core terms unresolved or that effectively insulates the utility from scrutiny whenever sales deviate from forecast.⁸

13. The proper reconciliation of those positions is straightforward. The Bureau may authorize decoupling only after the mechanism's formula, baseline, deadband, frequency, customer impacts, and interaction with Law 114 are fully presented and tested. That is why SUN and SESA urged a dedicated stakeholder process in our Initial Legal Brief. Decoupling may reduce utility resistance to distributed energy resources, but only if designed openly and in a way that does not become a device for shifting more charges into unavoidable bill components.

IV. CONCLUSION

16. In sum, SUN and SESA respectfully submit that the Bureau should: (i) reject any fixed charges and charges that are not based on net consumption, as substantially also held by OIPC; (ii) reject any placeholder Legacy Debt Rider, as held by multiple parties; and (iii) permit decoupling only, if at all, through a fully defined prospective mechanism developed on a complete record.

WHEREFORE, SOLAR UNITED NEIGHBORS and the SOLAR AND ENERGY STORAGE ASSOCIATION OF PUERTO RICO respectfully request that this Honorable Bureau consider this Joint Reply Brief, reaffirm the positions advanced in the Joint SESA-SUN Initial Brief, and adopt the relief requested herein.

RESPECTFULLY SUBMITTED.

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

⁸See, Indep. Consumer Prot. Office's Legal Issues Brief, *supra* note 1, at 26-28.

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CERTIFICATE OF COMPLIANCE WITH WORD-COUNT LIMIT

SOLAR UNITED NEIGHBORS and **SOLAR AND ENERGY STORAGE
ASSOCIATION OF PUERTO RICO CERTIFY** that this document has 2823 words,
excluding the caption, table of contents, signature blocks, and service information.

s/Javier Rúa-Jovet
s/Ramón Luis Nieves
s/Carlos J. Fernández Lugo
s/André J. Palerm Colón

CERTIFICATION

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 notified to Hearing

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