

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

**SUBJECT:** LUMA’s Response to LECO’s  
Public Comments and Request to Strike

**LUMA’S RESPONSE TO LECO’S SECOND PUBLIC COMMENTS AND REQUEST TO  
STRIKE ATTACHMENTS AND MATERIALS REFERENCED THEREIN**

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

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

**I. Introduction**

Public participation in this proceeding is important and welcomed. But the “Public Comments” submitted by LECO (defined below) are not, in fact, public comments. Instead, they are substantive arguments and evidence that LECO hopes to sneak in through the back door, thus bypassing scrutiny. For good reason, this tactic is contrary to the law.

Following the conclusion of a six-week-long evidentiary hearing held in the captioned proceeding, on December 22, 2025, this Honorable Puerto Rico Energy Bureau (“Energy Bureau”) issued a Resolution and Order, with the subject *Public Hearings and Commenting Period Calendar*, scheduling public hearings between February 2-6, 2026 and establishing a public commenting period from February 1, 2026 to March 6, 2026 in connection with LUMA’s rate review petition.

On March 5 and 6, 2026, Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc., Frente Unido Pro-Defensa del Valle de Lajas, Inc., CAMBIO PR, Inc., and Comité

Yabucoeño Pro-Calidad de Vida, Inc. (jointly, Puerto Rico Local and Environmental Organizations, or “LECO”), filed two (2) documents titled *Public Comments* and *Second Submission of Public Comments* (“LECO’s First Comments” and “LECO’s Second Comments”, respectively).

LUMA respectfully submits that LECO’s Second Comments exceed the proper scope of citizen participation, as they more closely resemble advocacy of an intervenor seeking to promote organizational interests rather than individual citizen concerns. Moreover, LECO’s submissions contain numerous assertions and conclusions wholly unsupported by the evidentiary record, and improperly and untimely introduce extraneous materials – including purported expert reports, news articles, press releases, and other documents – that were never presented, admitted, or subject to cross-examination during the evidentiary hearings. LUMA is mindful that these materials do not constitute exhibits or evidence, and respectfully requests that this Energy Bureau rule that its decision will not consider or rely upon expert opinions or other materials not properly admitted in this proceeding and strike from the record the expert reports tendered by LECO, as well as references to newspaper articles that are inadmissible hearsay, and reports and publications that were not admitted as exhibits in this proceeding.

## **II. LUMA’s Response to LECO’s Second Comments and Request to Strike**

### **A. The Applicable Legal Framework Distinguishes Among Types of Participation, and LECO’s Conduct Is Inconsistent with the Role of a Public Commenter.**

Puerto Rico law establishes a carefully calibrated framework for participation in adjudicative proceedings, including proceedings before this Energy Bureau. This framework distinguishes among three categories of participants (intervenors, amici curiae, and the general public) and assigns distinct rights, obligations, and procedural safeguards to each category.

LECO's Second Comments transgress these distinctions by seeking to exercise the substantive privileges of an intervenor while claiming the procedural informality afforded to members of the public.

Section 1.3(jj) of Act No. 57-2014, known as the *Puerto Rico Energy Transformation and RELIEF Act*, defines "Citizen Participation" as "the various mechanisms that allow customers of PREPA and electric power generation companies certified in Puerto Rico to have a forum to express their concerns, make suggestions, and be included in the decision-making processes." 22 LPRC § 1051a (2025). Moreover, the statute enumerates the mechanisms through which citizen participation is exercised; to wit: "the request and receipt of comments, photographs, and other documents from the public, administrative meetings of PREPA where customer focus groups participate, regional meetings open to PREPA's customers in such region, public hearings, and the establishment of vehicles that enable participation by electronic means." *Id.* The public policy established in Act No. 17-2019, known as the *Puerto Rico Energy Public Policy Act*, further provides that transparency and citizen participation in every process related to electric power service in Puerto Rico shall be promoted. Section 1.5(10)(c), 22 LPRC § 1141d. These provisions contemplate that customers voice concerns and offer suggestions. They do not authorize advocacy organizations, acting through counsel, to submit extensive legal briefs accompanied by commissioned expert analyses.

By contrast, Section 3.5 of Act 38-2017, titled the *Government of Puerto Rico Uniform Administrative Procedure Act*, establishes that any person with a "legitimate interest" in an adjudicative proceeding may file a written, duly substantiated petition for intervention. 3 LPRC § 9645 (2025). The agency evaluates such petitions by considering, among other factors, whether the petitioner's interest may be adversely affected, whether the petitioner can contribute

information, expertise, or specialized knowledge, and whether the petitioner’s participation may help to prepare a more complete record. *Id.* These criteria precisely describe the type of participation LECO is seeking through public commentary: represent organizational interests that may be adversely affected by the rate determination; contribute specialized technical knowledge through third-party expert analyses; and contribute to the development of the administrative record.

LUMA also notes that this Energy Bureau has previously further clarified the public participation framework applicable to rate review petitions before its consideration. In Case No. CEPR-AP-2015-0001 – the previous rate review proceeding – the Energy Bureau issued a Policy Statement on public participation.<sup>1</sup> The Energy Bureau specified that “the public interest would be best served if the rate case includes an active, central, and informed role on behalf of the citizenry, in order to present the [Energy Bureau] with a more fully developed record of the facts and different perspectives that will be of assistance in approving and establishing just and reasonable electricity rates.” *Id.*, at p. 4. The Energy Bureau further stated that it “especially welcomes the participation of academics and experts in the economic, financial, environmental, engineering, and planning fields, as well as other similarly related disciplines and areas of expertise.” *Id.* However, the Energy Bureau channeled these different forms of participation into distinct procedural categories, each with its own rights and limitations.

The Policy Statement provides that the rate case proceeding will include “separate citizen input hearings (where citizens can express their views) and technical hearings (where expert witnesses will be cross-examined on their pre-filed testimony).” *Id.*, at p. 3. The general public’s

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<sup>1</sup> See Policy Statement, issued on December 4, 2015, in Case No. CEPR-AP-2015-0001. Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2015/12/3-dic-2015-Policy-Statement-Review-Rate-CEPR-AP-2015-00011.pdf>.

role is thus confined to expressing views at citizen input hearings, a forum designed for articulating concerns and perspectives, not for submitting expert analyses or legal argumentation. Secondly, any person other than a party may petition to participate as an *amicus curiae*.<sup>2</sup> At the third tier, intervenors who are granted intervention become full parties to the proceeding, with “full rights to participate,” including “the right to conduct discovery, present testimony and cross-examine witnesses, participate in any collaborative process, and file pleadings.” *Id.*, at p. 4. The Energy Bureau evaluates petitions for intervention by considering the factors outlined in Section 3.5 of Act 38-2017. *Id.*, at pp. 5-6.

LECO’s Second Comments are fundamentally inconsistent with citizen participation, and instead exhibit the hallmarks of participation reserved for parties. LECO’s comments rely extensively on facts, analyses, and expert opinions that are not in the evidentiary record. Had LECO sought amicus status, it would have been required to disclose whether any party or outside funder contributed resources to the preparation of its brief, and its arguments would have been limited to the evidentiary record. Had LECO sought intervention, its expert analyses would have been subject to discovery, pre-filed testimony requirements, and cross-examination. By filing as a public commenter, LECO has circumvented both sets of procedural safeguards while seeking to inject the very type of substantive expert advocacy that those safeguards are designed to govern.

**Importantly, LECO was aware of these distinctions.** Indeed, on November 21, 2025, LECO

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<sup>2</sup> Per the Policy Statement, Amici “are not considered parties in administrative procedures like rate cases, and therefore, have no procedural rights in the proceeding”. For example, amici “have no right to participate in discovery or to request appellate review.” However, unlike the general public, “an amicus may participate in the technical hearing by giving testimony and participating in any questions and answers session.” Critically, the Policy Statement requires that amicus petitions include a declaration indicating whether any party or lawyer in the rate case helped draft the brief, contributed funds, or provided any other type of resource for its preparation. The Policy Statement further provides that “[t]he arguments made in an amicus brief may not rely on facts that are not in the record of the rate review proceeding.” *See* Policy Statement, at pp. 6-7.

itself filed a *Motion for Public Participation Measures*, in the captioned proceeding, requesting that the Energy Bureau establish guidelines for the filing of amicus curiae briefs and other participation mechanisms. LECO should not be permitted to accomplish through a “public comment” filing what it could only properly accomplish through formal participation in the adjudicative proceeding.

**B. LECO’s Arguments Regarding Generation Procurement Policy Lack Evidentiary Support.**

A substantial portion of LECO’s Second Comments is devoted to advocacy concerning generation procurement policy, including its promotion of the “Queremos Sol” proposal for distributed renewable energy as an alternative to centralized grid infrastructure. These arguments fail for two independent reasons. They bear no established nexus to LUMA’s Revenue Requirement for the T&D System, which is the subject of this rate review proceeding. *LUMA’s Revenue Requirement Brief* addresses T&D operations, capital programs, and the costs necessary to stabilize and improve the T&D System — not generation procurement policy decisions (e.g., procurement of solar generation versus other types of generation). LUMA’s revenue requirement is calculated solely on the costs of maintaining, operating, and investing in the T&D System.

Second, LECO’s assertion of “stranded infrastructure” – the proposition that investments in centralized grid infrastructure will become stranded as distributed solar generation scales – is speculative and unsupported by any evidence admitted in this proceeding. The record is devoid of evidence establishing specific or quantified risks of stranded T&D assets attributable to distributed generation deployment at the levels LECO advocates.

**C. LECO's Death Spiral and Affordability Arguments Were Already Addressed Through Testimony and Briefing.**

LECO's Second Comments suggest that rate increases of the magnitude proposed will drive grid defection and precipitate an alleged "death spiral" in which declining consumption leads to further rate increases, in turn driving further defection. These contentions are refuted by the evidentiary record, *see* LUMA Exhibit 72, at pp. 52-59; *LUMA's Revenue Requirement Brief*, pp. 132-133.

The premise of a price-driven death spiral does not hold in Puerto Rico. As LUMA witness, Ms. Joseline Estrada testified, "the current adoption of distributed energy systems is driven less by rising electricity rates and more by concerns over grid reliability, particularly its resilience during and after severe weather events or widespread outages caused by failures in the electric system." Exhibit 72, at p. 52, lines 851-854. Bondholders' witness, Dr. Susan Tierney, similarly testified that "there has never been a U.S. utility that failed due to a death spiral." Exhibit 52, at p. 29, line 16, p. 30, line 1..

Moreover, full grid defection remains "economically and technically impractical for most households due to the storage needed for reliability during low-solar periods," with an estimated off-grid lease cost of \$535 per month compared with roughly \$200 per month at current grid rates. Exhibit 72, at p. 53, lines 862-866. Even among large industrial and commercial customers with combined heat and power systems, fewer than 5 out of 43 fully disconnected from the grid. *Id.*, at p. 41, lines 623-627. Finally, LECO's implied reliance on the affordability analysis of the Institute of Competitiveness and Economic Sustainability ("ICSE")'s expert, Dr. Ramón Cao García, is undermined by the record. Ms. Joseline Estrada demonstrated that using updated 2024 data, the average residential customer pays approximately 4.3% of median household income on electricity, below the 6% threshold. *Id.* at p. 38, lines 577-579. Under the constrained scenario (\$0.32/kWh),

the average burden rises only to 5.9%, remaining within the recommended limit. Only under the optimal scenario (\$0.37/kWh) does the average burden reach 6.9%, slightly exceeding the threshold. *Id.*, lines 579-582. Dr. Cao’s analysis used outdated income data, failed to account for low-income subsidized-rate programs that cap household bills between \$30 and \$50 per month, and inappropriately treated the FOMB’s 6% affordability guideline as a binding cap rather than a rule of thumb. *Id.*, pp. 38-39, lines 590-600; *see also* LUMA’s RR Brief, at pp. 131-34.

Additionally, LECO’s Second Comments reference proposals attributed to Dr. Agustín A. Irizarry Rivera, including a “Percentage Income Payment Plan” that would cap residential electricity charges based on household income. The Energy Bureau should reject this proposal. It was not presented through proper evidentiary channels, was not subject to cross-examination, and constitutes a substantive rate design proposal that falls outside the scope of public comments. As *LUMA’s Revenue Requirement Brief*, at pp. 127-134, demonstrates, affordability-based rate caps are not an appropriate ratemaking mechanism. Rate design and revenue allocation, and not reductions to the revenue requirement, are the proper avenues for addressing affordability concerns. Dr. Tierney testified that cutting required revenue based on affordability “is not used anywhere in the United States” for ratemaking, among other reasons, because there is no standard formula to evaluate the income thresholds for an average customer or household. Tr. 12/11, 437:9-25, 438:1-10.

The Energy Bureau should not entertain an untested rate design proposal that was introduced without the procedural protections necessary to evaluate its feasibility, its impact on revenue sufficiency, or its consistency with the statutory requirement that rates be just and reasonable and consistent with sound fiscal and operational practices that provide for a reliable and adequate service at the lowest reasonable cost.

**D. The Kunkel, Irizarry, and George Expert Reports and Quoted Newspaper Articles and Publications, are Inadmissible and Exceed the Scope of Public Comments**

LECO's Second Comments rely extensively on three "expert reports", authored by Cathy Kunkel and Dr. Agustín A. Irizarry Rivera, that were submitted as attachments to LECO's Second Comments, Attachments 1, 2, and 3. LECO's Second Comments also reference an expert report by Dr. Glenn George, filed before the Title III Court, United States District Court for Puerto Rico. *See* LECO's Second Comments, at pp. 8-10. LUMA objects to the consideration of these materials on multiple grounds.

**i. The reports constitute inadmissible hearsay.**

The George, Kunkel, and Irizarry reports were not submitted through the evidentiary hearing process. Their authors were not presented as witnesses, were not subject to cross-examination, and their analyses were not subjected to the procedural safeguards that govern expert testimony in adjudicative proceedings. Permitting commissioned expert analyses to enter the record through public comments – where they are shielded from cross-examination and rebuttal – would circumvent these fundamental protections and deprive parties of due process rights. *See* Section 3.13(b), Act 38-2017, 3 LPRA § 9653.

**ii. These are paid expert opinions by third parties, not expressions of concerned citizens.**

The reports by Kunkel and Irizarry that are attached to LECO's Second Comments were commissioned by LECO and thus are not the spontaneous expressions of customer concern contemplated by the citizen participation framework under Act 57-2014, Section 1.3(jj). They are paid professional opinions presented through advocacy, bypassing procedural requirements to

submit expert evidence, including the requirements for pre-filed testimony, discovery, and cross-examination that apply to intervenors and their expert witnesses.

**iii. The reports exceed the scope of citizen participation.**

As previously explained, the statutory definition of citizen participation envisions customers expressing “concerns” and making “suggestions.” Submitting commissioned expert reports with grid modeling and cost analyses through a public comment mechanism exceeds the scope of what citizen participation is designed to accommodate. These materials constitute substantive proposals and expert evidence. If LECO desired that the reports be included in the record, it should have sought intervention and filed them in the evidentiary hearing process, subject to the procedural safeguards that protect all parties and the integrity of the adjudicative record.

**iv. At least one set of comments appears on the public docket, creating a risk of confusion.**

The filing and resubmission of extensive expert-backed advocacy as “public comments” risks creating confusion regarding the boundaries of the evidentiary record and the basis for the Energy Bureau’s decision. LECO’s First Comments were filed on December 18, 2025, and then resubmitted on March 5, 2026, expressly “so that they may form part of the record.” The Energy Bureau should take care to ensure that the presence of these filings on the public docket does not blur the critical distinction between the evidentiary record upon which the decision must be based and materials filed outside the evidentiary process.

Section 3.1 of Act 38-2017 establishes as fundamental rights in adjudicative proceedings the right to “present evidence” and the right to a decision based on the record. 3 LPRa § 9641 (2025). Section 3.18 of Act 38-2017 provides that “[t]he agency’s record shall constitute the exclusive basis for the agency’s action in an adjudicative proceeding under this Act and for subsequent judicial review.” 3 LPRa § 9658 (2025). LUMA is mindful that public comments are

not exhibits and do not constitute admitted evidence. However, given the nature and scope of LECO's submissions – which include commissioned expert reports, detailed legal arguments, and specific regulatory proposals – LUMA respectfully requests that the Energy Bureau clarify that its final determination will not consider, nor be based on, expert evidence or factual assertions that were not presented and admitted through the evidentiary hearings conducted in this proceeding.

**v. LECO's reliance on newspaper and media articles is improper and unsupported by law.**

Throughout its comments, LECO cites multiple newspaper and media articles to support factual assertions concerning, among other matters, LUMA's alleged operational deficiencies and alleged conflicts of interest.<sup>3</sup> These articles are not cited as background context but as substantive evidence to support LECO's policy arguments and factual claims. This practice is impermissible under Puerto Rico law.

The Puerto Rico Supreme Court has expressly rejected taking judicial or administrative notice of the content of newspaper articles. In *UPR v. Laborde*, 180 DPR 253, 279 (2010), the Puerto Rico Court ruled that newspaper articles with quotations of what someone allegedly said are inadmissible hearsay to prove the accuracy of what was quoted in the article. Earlier, in *Pons v. Rivera Santos*, 85 DPR 524, 542 (1962), the Puerto Rico Supreme Court established the general rule that newspaper articles are not admissible to establish what is reported therein because they are hearsay. These precedents are directly applicable: LECO's citations to news articles all seek to establish the truth of the matters reported, the very use that the Supreme Court has proscribed.

Notably, the Energy Bureau has already adjudicated this precise issue in a proceeding in which LECO itself participated as an intervenor. In Case No. NEPR-AP-2020-0025, LECO

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<sup>3</sup> See footnotes 59, 65, 68, 120, 121.

requested that the Energy Bureau take administrative notice of seventeen newspaper and media articles from local and mainland outlets.<sup>4</sup> LUMA opposed the request, arguing that the articles constituted inadmissible hearsay, that LECO had not established their relevance, and that their accuracy could not be verified as required by Rule 201 of the Puerto Rico Rules of Evidence. The Energy Bureau agreed with LUMA and denied LECO's request in its entirety, finding that LECO was attempting to avoid the process already established for all the parties and that the evidentiary and public hearing phases – not belated requests for administrative notice – were the proper mechanisms for introducing evidence into the record.<sup>5</sup> The Energy Bureau emphasized that the argumentative phase of the proceeding “does not contemplate that the parties indiscriminately and substantially introduce evidence they should have presented during the previous phases of the administrative process.”<sup>6</sup>

The same reasoning applies even more forcefully here. If LECO, as a full intervenor with party status and procedural rights, was denied the ability to introduce newspaper articles through administrative notice in Case No. NEPR-AP-2020-0025, it cannot introduce hearsay evidence on the record through public comments. The news articles cited in LECO's Second Comments are inadmissible hearsay, their accuracy has not been established, and statements contained therein were not subject to any of the procedural safeguards, including cross-examination and rebuttal,

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<sup>4</sup> See *Local Environmental and Civic Organization's Response to Resolution for Official Notice and Request to Take Official Notice and Additional Information*, pp. 8-12, 141-15, available at <https://energia.pr.gov/wp-content/uploads/sites/7/2023/06/20230609-Local-Environmental-and-Civic-Organizations-Response-to-Resolution-for-Official-Notice-and-Request-to-Take-Official-Notice-and-Additional-Information.pdf>, and *LUMA's Response and Opposition to LECO's Request on Taking of Administrative Notice*, available at <https://energia.pr.gov/wp-content/uploads/sites/7/2023/06/20230629-LUMAs-Response-and-Opposition-to-LECOS-Request-to-Take-Administrative-Notice.pdf>, pp. 23-25.

<sup>5</sup> See Resolution issued on August 17, 2023, in Case No. NEPR-AP-2020-0025. Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2023/08/20230817-AP20200025-Resolution.pdf>.

<sup>6</sup> *Id.*, p. 3.

that protect the integrity of the evidentiary record. The Energy Bureau should disregard LECO's reliance on newspaper and media articles and strike those references from the record.

**vi. The Energy Bureau should disregard and strike references to press releases and public filings that were not admitted into evidence.**

In Section III of the Second Comments, LECO puts forth arguments on LUMA's and Genera's alleged structural conflicts of interest. This Energy Bureau must disregard and strike the references on pages 18 through 21<sup>7</sup>, to press releases and public filings that were not presented as exhibits during the evidentiary hearing, nor admitted through other means such as administrative notice.

The Hearing Examiner has consistently held that the integrity of the evidentiary process depends on the parties' ability to confront and test the evidence presented against them. Similarly, the Hearing Examiner rejected efforts to admit alleged expert reports as to which "LUMA was not afforded the opportunity to prepare discovery questions and cross-examination questions about the bases for the numerous statements" contained therein. *See* Hearing Examiner's Order on LUMA's Objections to Admissibility of Requests of Information, dated November 5, 2025. Consideration of these materials is barred by these rulings and would strip LUMA of its procedural rights.

**vii. The Energy Bureau should disregard arguments on estimated billing.**

LECO's Second Comments reference the investigation conducted by the Energy Bureau in Case No. NEPR-IN-2023-0003, *In Re: Práctica de Estimaciones de Consumo y Posteriores Correcciones de Facturas en Cuentas Comerciales Empleada por LUMA*. That proceeding was an investigative matter – not an adjudicative one – initiated on July 14, 2023, following a request by the Independent Consumer Protection Office ("ICPO"), and conducted pursuant to Article XV of

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<sup>7</sup> *See* notes 59, 60, 63, and 65.

Regulation 8543. Its findings were based exclusively on the information available to the Energy Bureau at the time, and, critically, the Final Report and Order issued on January 27, 2025, did not find that LUMA violated any law, regulation, or energy public policy. The investigation did not result in the issuance of a Notice of Noncompliance, the remedy contemplated by Section 15.09 of Regulation 8543 when a violation is found, because no such violation was established. Moreover, the underlying concern that prompted the investigation was rendered largely academic by the enactment of Act No. 36-2024, which extended the 120-day limitation on retroactive billing corrections to commercial and industrial customers.

Case No. NEPR-IN-2023-0003, thus, yielded no finding of a violation, addressed matters now governed by subsequent legislation, and bears no nexus to the determination of LUMA's revenue requirement for the T&D System in this rate review proceeding. LECO's attempt to import the conclusions of a separate investigative proceeding into this adjudicative rate review is yet another instance of reliance on extra-record materials that fall outside the scope of citizen participation and should be disregarded by the Energy Bureau.

**E. LECO's Second Comments on Performance Exceed the Scope of the Matters to be Adjudicated in the Rate Case.**

LECO's performance-related allegations, *see* LECO's Second Comments, 3-4, 10-11, 35-37, are procedurally improper, factually uncontested in the record due to structural limitations, and substantively beyond the scope of this rate case as the Hearing Examiner repeatedly established.

First, the purpose of this proceeding is rate-setting, not a performance audit. The Hearing Examiner has repeatedly and unequivocally established that the statutory purpose of this proceeding is to set just-and-reasonable rates based on a revenue requirement – not to conduct a management audit or performance review of LUMA or any other utility operator. The Hearing Examiner has further elaborated that the focus of the rate case must be on prediction – projecting

costs and revenues – rather than on evaluating past performance for its own sake. *See* Hearing Examiner’s Informal Thoughts on the Federal Funds Panel, dated November 25, 2025.

This principle was reiterated during the Evidentiary Hearings. On November 24, 2025, during the hearing on budget and efficiency matters, the Hearing Examiner stated on the record:

I’ve said several times that a rate case is not a management audit case. Our job in this case is to determine revenue requirement for fiscal year ‘26, possibly to get very close to revenue requirement for fiscal year ‘27, and, perhaps in the process of doing that, learning something about procedures which the... for which the Energy Bureau can offer, in its order, some improvements and requirements. But I do not view this panel as a time to debate whether efficiencies have occurred or not.

Tr. 11/24, 294:4-14.

Again, on December 19, 2025, when confronted with an attempt to introduce evidence critiquing a party’s performance based on a letter that had not been subjected to the evidentiary process, the Hearing Examiner ruled:

[T]here’s just no way that in the Energy Bureau’s order there could be language supporting critique of anybody’s performance based on a letter where there was no opportunity to actually assess the thinking that is behind it. . . . That would be a management audit proceeding; we just can’t do it here. And we didn’t do it here.

Tr. 12/19, 495:2-16.

Pursuant to these rulings, LECO’s allegations regarding LUMA’s operational performance – including claims about outage frequency and duration, SAIDI and SAIFI indices, ratepayer complaints, and media coverage – fall squarely outside the purpose and scope of this proceeding as defined by the Hearing Examiner and should be stricken from the record.

Second, LECO’s performance allegations are procedurally deficient. LECO asserts that “LUMA’s performance deficiencies have been extensively documented, including more frequent and prolonged outages, deteriorating SAIDI and SAIFI indices, numerous ratepayer complaints,

widespread media coverage, and formal findings reflected in official documentation.” *See* LECO’s Second Comments, at pp. 3-4. LECO further alleges that grid reliability has worsened, citing the System Average Interruption Duration Index as having “hit its highest peaks in years.” *Id.*, at p. 11.

These assertions are drawn from sources exogenous to the evidentiary record – including quarterly reports filed in a separate performance docket, public-private partnership authority dispute notices, and media coverage. *See* LECO’s Second Comments, at pp. 3-4. LECO’s expert reports, attached to their public comments submission, were not subject to discovery, were not offered through pre-filed testimony in this proceeding, and were not available for cross-examination by LUMA or any other party.

The public comments process, while an important mechanism for public participation, is not a substitute for the formal evidentiary process. As the Energy Bureau’s Resolution and Order of December 22, 2025, made clear, the public hearings are “designed to obtain opinions and comments from the public,” and intervenors, LUMA, Genera, PREPA, and their representatives “will not be allowed to participate in the Public Hearings.” *See* Resolution and Order dated December 22, 2025. This structural separation means that LUMA has had no opportunity to rebut LECO’s performance allegations, present countervailing evidence, cross-examine LECO’s experts, or provide the proper context necessary for the Energy Bureau to evaluate performance data in a balanced and informed manner.

The above is especially significant given that performance data, such as SAIDI and SAIFI metrics, can be highly misleading when presented without context. External factors, including the degraded condition of the grid inherited by LUMA, the ongoing effects of prior storms, supply chain disruptions, delays in the arrival of federal funds, and the constraints of operating under

budgets that “haven’t changed since 2017,” all materially affect reliability outcomes. *See* Hearing Examiner’s Order on Miscellaneous Substantive and Procedural Matters, dated December 9, 2025. Without the opportunity to present this context, the Energy Bureau risks interpreting performance data in an incomplete and potentially prejudicial manner to LUMA.

Third, LECO argues that LUMA’s proposals are “structurally flawed and destined to fail” and urges the Energy Bureau to dismiss LUMA’s rate petition on the basis of alleged performance deficiencies. *See* LECO’s Second Comments, p. 3. This argument fundamentally conflates two distinct regulatory functions: rate-setting—which this proceeding is designed to accomplish—and performance evaluation, which the Hearing Examiner has expressly reserved for a separate proceeding. *See* Appendix B to the Hearing Examiner’s Order Establishing (a) Agenda for the September 29 Conference, and (b) Certain Procedures for the Evidentiary Hearing, dated September 29, 2025.

Act 57-2014 requires that the Energy Bureau determine whether proposed rates are “just and reasonable, consistent with sound fiscal and operation practices that provide for a safe and adequate service at the lower reasonable cost.” PR Laws Ann. Tit. 22 § 1054x. This statutory standard requires the Energy Bureau to assess the reasonableness of proposed costs and the adequacy of the revenue requirement—not to use a rate proceeding as a vehicle for comprehensive performance auditing. To the extent that LECO seeks to use performance arguments as a basis for denying the rate petition, it is effectively asking the Energy Bureau to deprive the electric system of necessary revenues as a punitive measure—a result the Hearing Examiner has cautioned against for obvious reasons. As he stated, depriving the system of projected revenues based on aspirational rather than realistic assessments “will deprive the system of the revenues that it needs.” *See* Hearing Examiner’s Informal Thoughts on the Federal Funds Panel, dated November 25, 2025.

For the foregoing reasons, LUMA respectfully requests that the Energy Bureau decline to consider and strike from the record LECO’s allegations of performance deficiencies. The Hearing Examiner has drawn a clear and principled line between rate-setting and performance auditing, and the public comments process – however valuable for democratic participation – cannot substitute for the procedural safeguards of formal evidentiary adjudication. This Energy Bureau should ensure that any evaluation of LUMA’s performance is conducted through the proper channels, with full evidentiary protections, so that it can assess performance arguments from the correct perspective and with all relevant evidence available to interpret the performance data.

**WHEREFORE**, LUMA respectfully requests that this Energy Bureau and the Hearing Examiner **take notice** of the aforementioned; and **decline** to consider LECO’s Comments to the extent they exceed the permissible scope of citizen participation.

**RESPECTFULLY SUBMITTED.**<sup>8</sup>

In San Juan, Puerto Rico, this 27<sup>th</sup> day of March, 2026.

**WE HEREBY CERTIFY** that this document was filed using the electronic filing system of this Energy Bureau and that electronic copies of this document will be served to the following: 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;

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<sup>8</sup> On May 9, 2025, this Energy Bureau issued a Resolution and Order, requiring that all substantive English-language filings be accompanied by concise Spanish summaries to enhance public accessibility and participation. *See also* Energy Bureau Resolution and Order of June 4, 2025 (clarifying that full translations are optional but summaries are mandatory). In compliance with the Energy Bureau’s standing directives regarding accessibility and ensuring citizen participation, LUMA is hereby submitting the corresponding Spanish-language summary of this Response. *See Exhibit A.*

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We will also serve notice of this motion to the following counsels who filed comments on behalf of LECO: [larroyo@earthjustice.org](mailto:larroyo@earthjustice.org); [lvelez@earthjustice.org](mailto:lvelez@earthjustice.org); [rstgo2@gmail.com](mailto:rstgo2@gmail.com); [pedrosaade5@gmail.com](mailto:pedrosaade5@gmail.com).

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### ***Exhibit A***

*Respuesta de LUMA a los comentarios públicos de LECO,*  
presentada por LUMA Energy, LLC y LUMA Energy ServCo, LLC (conjuntamente, “LUMA”)

LUMA presenta respuesta al documento titulado “Second Submission of Public Comments” (“Segundos Comentarios de LECO”) presentados el 6 de marzo de 2026, ante el Negociado de Energía de Puerto Rico (“Negociado”), por Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc., Frente Unido Pro-Defensa del Valle de Lajas, Inc., CAMBIO PR, Inc., y Comité Yabucoño Pro-Calidad de Vida, Inc. (conjuntamente, “LECO”).

LUMA sostiene que los Segundos Comentarios de LECO exceden el alcance permisible de la participación ciudadana, ya que se asemejan más a la argumentación y litigación propia de un interventor que busca promover intereses organizacionales, en lugar de reflejar las preocupaciones individuales de ciudadanos. Los Segundos Comentarios de LECO contienen numerosas aseveraciones y conclusiones que carecen de respaldo en el expediente probatorio, e introducen de manera impropia y tardía, materiales extrínsecos (incluyendo presuntos informes periciales, artículos de prensa, comunicados de prensa y otros) que nunca fueron presentados, admitidos ni sujeto a conainterrogatorio durante las vistas evidenciarias.

LUMA plantea que la ley de Puerto Rico establece un marco cuidadosamente calibrado para la participación en procedimientos adjudicativos, el cual distingue entre tres categorías de participantes: interventores, *amici curiae* y público en general, asignando derechos, obligaciones y salvaguardas procesales distintas a cada categoría. La Ley Núm. 57-2014, que define el concepto de “Participación Ciudadana” contempla que los clientes expresen preocupaciones y ofrezcan sugerencias; no autorizan a organizaciones, actuando mediante representación legal, a someter escritos legales acompañados de análisis periciales comisionados por una organización.

LECO busca ejercer los privilegios sustantivos de un interventor mientras reclama la informalidad procesal concedida al público general. De haber solicitado estatus de *amicus curiae*, LECO habría estado obligada a revelar si alguna parte o financiador externo contribuyó recursos a la preparación de su escrito, y sus argumentos habrían estado limitados al expediente probatorio. De haber solicitado intervención, sus análisis periciales habrían estado sujetos a descubrimiento de prueba, réplica y oposición mediante la presentación de testimonios escritos, y conainterrogatorio. LECO presentó el 21 de noviembre de 2025 una Moción de Medidas de Participación Pública solicitando al Negociado establecer guías para la presentación de escritos de *amicus curiae*, lo que demuestra que LECO estaba al tanto de los requisitos procesales.

De otra parte, LUMA señala que la argumentación sobre la política de adquisición de generación. Primero, no guarda relación con el Requisito de Ingresos de LUMA para el Sistema de Transmisión y Distribución, que es el objeto de este procedimiento de revisión tarifaria. Además, la aseveración de LECO sobre “infraestructura abandonada” es especulativa y carece de respaldo en evidencia admitida en este procedimiento.

LECO sugiere que los aumentos tarifarios propuestos provocarán una deserción de la red y precipitarán una alegada “espiral de muerte.” LUMA sostiene que estas alegaciones están refutadas por el expediente probatorio. La testigo de LUMA, Sra. Joseline Estrada, testificó que la adopción de sistemas de energía distribuida está motivada más por preocupaciones sobre la confiabilidad de la red que por el aumento de tarifas eléctricas. La testigo de los Bonistas de la Autoridad de Energía Eléctrica, Dra. Susan Tierney, testificó que nunca ha existido una empresa de servicio público en los Estados Unidos que haya fracasado debido a una espiral de muerte.

En cuanto a la asequibilidad, datos actualizados de 2024 demuestran que el cliente residencial promedio paga aproximadamente el 4.3% del ingreso medio del hogar en electricidad, por debajo del umbral del 6%. LUMA arguye que el análisis del Dr. Ramón Cao García, citado por LECO, utilizó datos de ingresos anticuados, no tomó en cuenta los programas de tarifas subsidiadas para personas de bajos ingresos, y trató inapropiadamente la guía de asequibilidad del 6% de la Junta de Control Fiscal como un tope vinculante en vez de una referencia orientadora. De otra parte, la propuesta de un “Plan de Pago según Porcentaje de Ingresos” atribuida al Dr. Agustín A. Irizarry Rivera no fue presentada a través de canales probatorios adecuados y constituye una propuesta sustantiva de diseño tarifario que está fuera del ámbito de los comentarios públicos.

Los Segundos Comentarios de LECO se apoyan extensamente en tres “informes periciales” de Cathy Kunkel y el Dr. Agustín A. Irizarry Rivera, así como en un informe pericial del Dr. Glenn George presentado ante el Tribunal federal de Título III. LUMA objeta la consideración de estos materiales por múltiples fundamentos: (i) los informes constituyen prueba de referencia inadmisibles, ya que sus autores no fueron sometidos a contrainterrogatorio; (ii) son opiniones periciales pagadas por terceros, no expresiones espontáneas de preocupación ciudadana; (iii) exceden el alcance de la participación ciudadana tal como está definida por ley; y (iv) su presencia en el expediente público crea riesgo de confusión respecto a los límites del expediente probatorio.

Con relación a los artículos periodísticos y de medios citados por LECO, LUMA señaló que el Tribunal Supremo de Puerto Rico ha rechazado expresamente tomar conocimiento judicial del contenido de artículos de prensa, y el hecho de que, notablemente, el Negociado ya adjudicó esta misma cuestión en el Caso Núm. NEPR-AP-2020-0025, donde denegó la solicitud de LECO de tomar conocimiento administrativo de artículos periodísticos. LUMA también solicita que el Negociado rechace las referencias a comunicados de prensa y documentos de otros expedientes, pues no fueron introducidos como *exhibits* durante la vista evidenciaría. Asimismo, LUMA arguye que el Negociado debe descartar los argumentos de LECO sobre facturación estimada basados en el Caso Núm. NEPR-IN-2023-0003 deben ser obviados, ya que dicho procedimiento investigativo no resultó en hallazgo alguno de violación por parte de LUMA y no guarda nexo con la determinación del requisito de ingresos en este procedimiento.

Por último, LUMA plantea que las alegaciones de LECO relacionadas con el desempeño operacional de LUMA son procesalmente impropias y sustantivamente están fuera del alcance de este caso tarifario, según ha establecido reiteradamente el Oficial Examinador. El propósito de este

procedimiento es la fijación de tarifas, no una auditoría de desempeño, según declarado expresa y reiteradamente por el Oficial Examinador.

Las alegaciones de desempeño de LECO se basan en fuentes exógenas al expediente probatorio sin haber sido sometidas a descubrimiento de prueba ni contrainterrogatorio. LUMA no ha tenido oportunidad de refutar las alegaciones de LECO, presentar evidencia contraria ni proporcionar el contexto necesario para una evaluación equilibrada. Datos de desempeño como las métricas SAIDI y SAIFI pueden resultar altamente engañosos sin el contexto de factores externos, incluyendo la condición degradada de la red heredada por LUMA, los efectos de tormentas previas, interrupciones en la cadena de suministros y restricciones presupuestarias.

En atención a todo lo anterior, LUMA le solicita al Negociado que decline considerar los Comentarios de LECO.