

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

NEPR

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IN RE:

COORDINATION OF SYSTEM
PLANNING EFFORTS-FRONT END
TRANSACTION OF T&D SYSTEM
OPERATION AND MAINTENANCE

CASE NO.: NEPR-MI-2020-0008

SUBJECT:

Motion in compliance with Resolution and Order of February 2, 2021, on the professional services contract executed between the Puerto Rico Electric Power Authority (PREPA) and Burns & McDonnell Caribbean (Puerto Rico) (Burns & McDonnell Contract).

**MOTION IN COMPLIANCE WITH FEBRUARY 2ND RESOLUTION AND ORDER ON
THE BURNS & MCDONNELL CONTRACT**

TO THE PUERTO RICO ENERGY BUREAU:

COME NOW, LUMA ENERGY, LLC, and LUMA ENERGY SERVCO, LLC (collectively, LUMA), through the undersigned legal counsel and respectfully state the following in compliance with the Puerto Rico Energy Bureau's ("Bureau" and or "PREB") Resolution and Order dated February 2, 2021 (February 2nd Order):

I. Introduction

This honorable Bureau has requested that LUMA and PREPA submit documents and explanations on a professional services contract that PREPA executed with Burns & McDonnell for project management services for the revitalization of Puerto Rico's electric grid. In its February 2nd Order, the Bureau included three requests for documents and explanations: "(1) . . . a copy of the Burns and McDonnell contract, including all amendments, exhibits and annexes; (2) . . . a detailed explanation of Burns and McDonnell's tasks and duties under the contract; and (3) a detailed explanation as to any overlaps of the Burns and McDonnell's contract with LUMA's obligations under the [Puerto Rico Transmission and Distribution System Operation and

Maintenance Agreement] OMA. PREPA and LUMA must explain in detail why the Burns and McDonnell contract is not duplicative of LUMA's obligations under the OMA." February 2nd Order at page 2.

LUMA hereby responds to the Energy Bureau's order on the Burns & McDonnell Contract. As a threshold matter, it is respectfully submitted that PREPA is the party ideally situated to provide detailed responses to items (1) and (2) of the Bureau's February 2nd Order requesting copies of the Burns & McDonnell Contract with its annexes and an explanation of the services and tasks that are covered. LUMA defers to PREPA to provide the executed copies of the contract documents and to explain the scope of the specific tasks and duties that Burns & McDonnell has provided or will provide under the contract from its execution up until its intended date of expiration of June 30, 2021.

It bears noting that LUMA did not partake in the negotiation or execution of the Burns & McDonnell Contract and was not afforded the opportunity to meaningfully review the contract prior to its execution. LUMA initially received a partially executed version of the Burns & McDonnell contract (signed by Burns & McDonnell representative) and later obtained a fully executed copy of the same signed by both parties. LUMA has reviewed the scope of work described in Exhibit A to the contract but does not have any additional documentation on Burns & McDonnell's contracted or expected scope of services.

II. Discussion

Upon reviewing the executed version of the Burns & McDonnell contract, LUMA understands that the services that are described as part of the scope contemplated for Burns & McDonnell to perform on administration, implementation and execution of federally-funded projects, *do not duplicate* LUMA's efforts under the OMA during the current Front-End Transition

Period¹, prior to start of LUMA’s delivery of the O&M Services. This, because LUMA’s responsibilities for procurement and administration of federal funding and related project management, as required in Section 5.5 of the OMA, do not begin until the start of the O&M Services.

Because the work to be performed by Burns & McDonnell involves activities that are not part of LUMA’s work and responsibilities in the Front-End Transition Period, LUMA has not identified major overlaps between its current Front-End Transition Period efforts and activities assigned to Burns & McDonnell. The work described in the contract to be performed by Burns & McDonnell is not currently anticipated by LUMA to be *duplicative* or wasteful.

Within the framework of the provisions in the OMA with respect to coordination during the Front-End Transition Period and upon Commencement Date, LUMA is pursuing communications with PREPA on existing contracts that support PREPA’s operations. *See* Sections 4.3(b), 4.3(d), 4.3(e), 4.3(f). This is important for an orderly transition of operations to LUMA under the OMA.

With respect to federal funding, as per the OMA, after the Front-End Transition Period and upon start of operations, LUMA will be required to recommend capital improvements, Section 5.5(a) of the OMA; will assume a lead role and cooperate with PREPA to comply with Federal Funding Requirements, *id.* Section 5.5(b); and will be responsible for contracting and ensuring that works financed in full or in part with available Federal Funding, comply with Federal Funding

¹ Front-End Transition Services,” which are services to “complete the transition and handover to [LUMA] of the operation, management and other rights and responsibilities with respect to the T&D System pursuant to [the OMA], including the services contemplated by the Front-End Transition Plan; provided that the Front-End Transition Services shall not be O&M Services.” *Id.*, Section 1.1 These services are “intended to ensure an orderly transition of the responsibility for the management, operation, maintenance, repairs, restoration and replacement of the T&D System to [LUMA] by the Target Service Commencement Date, without disruption of customer service and business continuity [...]” *Id.*, Sections 1.1 (definition of “Front-End Transition Period”), 4.1(a)

Requirements, *id.* Sections 5.5 and 5.9(a) of the OMA. In sum, LUMA will be the agent for PREPA on all federal funding activities relating to the T&D System, Section 5.9 (e) of the OMA.

LUMA is currently working closely with PREPA to better understand the PREPA project management structure, project controls and project details for near-term work identified in PREPA's 10-Year Plan. Understanding the services performed by Burns & McDonnell and other PREPA contractors on recovery activities is part of that process. The goal is to work through any discrepancies to allow for the implementation of LUMA's System Remediation Plan (SRP) and strategy on capital investment (Initial Budgets) –federally funded and non-federally funded– with the benefit of having evaluated the tasks and projects that were assigned to Burns & McDonnell and that this firm –and others–are currently set to provide. This process will assist in avoidance of duplication of work and unnecessary expenditures when LUMA starts operations and alignment with the plans assigned to LUMA to be approved the Bureau. In fact, PREPA has recently begun to give LUMA greater access to the information necessary to evaluate PREPA's proposed implementation of federally funded work. LUMA's analysis is ongoing.

As coordination with PREPA continues in the coming months, LUMA will continue to decide the proper role of the contractors under System Contracts², including Burns & McDonnell,

² System Contracts is defined in the OMA as: “(i) the contracts, leases, licenses, permits and other similar arrangements of all types related to the T&D System that have been entered into by Owner (or pursuant to which Owner otherwise has rights) and remain in effect as of the [Commencement Date] and (ii) any other contracts, leases, licenses, permits and similar arrangements of all types entered into by Owner, or by Operator on behalf and as agent of Owner, related to the T&D System or O&M Services pursuant to Section 4.3(d) . . . and/or Section 5.2(d) . . .including contracts related to:

- (A) the ownership and operation and maintenance of the T&D System (including interconnection and other related agreements);
- (B) the ownership of or access to any T&D System Sites (including all right of way, crossing, access, Easement and other related agreements);
- (C) all information technology hardware and software used to operator or administrate the T&D System;
- (D) vegetation management, fuel for fleet vehicles, fleet vehicles, meters, call centers and engineering, procurement and construction;
- (E) T&D Customers; or
- (F) T&D System operation or ancillary services.”

all with the goal of enhancing transition work and in anticipation of the duties that LUMA will assume at the Commencement Date under the OMA, particularly, Sections 5.5 and 5.9, that involve procurement and management of federal funds.

LUMA is currently focused on the initial implementation of federal funding and is taking steps to better understand how PREPA has assigned projects, the scope for the A&E firms and the sequencing of projects. LUMA is optimistic that coordination on capital investments and investment of federal funds can improve and that reliance on the procedures set forth in the OMA regarding notice on System Contracts will aid in a smooth transition to LUMA providing the O&M Services.

WHEREFORE, LUMA respectfully requests that the Bureau take notice of the aforementioned and deem that LUMA complied with the February 2nd Order, granting LUMA and PREPA fifteen days to submit documents and explanations on the Burns & McDonnell contract.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 17th day of February 2021.

I hereby certify that I filed this motion using the electronic filing system of this Energy Bureau and that I will send an electronic copy of this motion to the attorneys for PREPA, Joannely Marrero-Cruz, jmarrero@diazvaz.law; and Katuska Bolaños-Lugo, kbolanos@diazvaz.law.

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