

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

**NEPR**

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**IN RE:** PERFORMANCE TARGETS FOR  
LUMA ENERGY SERVCO, LLC

**CASE NO.:** NEPR-AP-2020-0025

**SUBJECT:** PREPA's Request to Intervene

**THE PUERTO RICO ELECTRIC POWER AUTHORITY'S REQUEST  
TO INTERVENE AND SUPPORTING MEMORANDUM OF LAW**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority (the "Authority or PREPA) through the undersigned counsel and respectfully submits and requests as follows:

**I. INTRODUCTION**

On June 22, 2020, LUMA<sup>1</sup>, PREPA and P3A, entered into the *Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (OMA)*<sup>2</sup> under which LUMA will operate and maintain PREPA's T&D System. Pursuant to the applicable laws and provisions of the OMA, the Energy Bureau must approve Performance Metrics for LUMA. The Energy Bureau opened the captioned case to evaluate and establish the performance targets and performance incentive mechanisms that will be applicable to LUMA after the Service Commencement Date. Most of the metrics that will be set for LUMA will be based on LUMA's performance that will - directly or indirectly- involve PREPA's assets, including public funds. PREPA understands that its participation in this case is important and, most significantly, will aid the Energy Bureau and

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<sup>1</sup> Capitalized terms not defined herein shall be ascribed the same meaning provided in subsequent sections.

<sup>2</sup> *Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement* dated as of June 22, 2020, by and among the Puerto Rico Electric Power Authority as Owner, the Puerto Rico Public-Private Partnerships Authority as Administrator, LUMA Energy, LLC as ManagementCo, and LUMA Energy ServCo, LLC as ServCo. Copy of the OMA is available for review and download at <https://www.p3.pr.gov/wp-content/uploads/2020/06/executed-consolidated-om-agreement-td.pdf>

LUMA to set Performance Metrics that will be for the benefit of Puerto Rico. PREPA seeks to keep working hand in hand with this Honorable Energy Bureau and LUMA to assist LUMA in its task to transform PREPA's T&D System into a modern, sustainable, reliable, efficient, cost-effective, and resilient electric system. This transformation is of paramount importance for Puerto Rico.

For the reasons herein stated, PREPA asserts that it has a legitimate interest in the process and ultimate resolution in this case and therefore, requests that it be allowed to participate as intervenor.

## **II. HISTORICAL AND LEGISLATIVE BACKGROUND**

### **A. Puerto Rico's Energy Sector Relevant Legal Framework**

Act 83 of May 2, 1941<sup>3</sup>, created the Puerto Rico Water Resources Authority, which, after the enactment of Act 57 of May 30, 1979<sup>4</sup>, was renamed the Puerto Rico Electric Power Authority. The Authority, an electric power generation, transmission, and distribution company, was created to preserve, develop, and use energy sources in Puerto Rico.<sup>5</sup>

With the enactment of the *Puerto Rico Energy Transformation and RELIEF Act* on May 27, 2014<sup>6</sup>, the Puerto Rico Legislature recognized that PREPA needed unprecedented changes and new energy policies that had never been carried out in Puerto Rico before.

Among the changes mandated by Act 57-2014 were: the requirement of an integrated resource plan; changes in the governance of PREPA; mechanisms to promote greater citizen participation and customer's access to information; modifications to the contributions made to

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<sup>3</sup> Act 83 of May 2, 1941, as amended, known as the *Puerto Rico Electric Power Authority Law*, 32 LPR sec. 191 *et seq.*, ("Act 83-1941")

<sup>4</sup> Act 57 of May 30, 1979, 1979 LPR 57.

<sup>5</sup> Act 83-1941, Statement of Motives and Sec. 196.

<sup>6</sup> Act. 57-2014, as amended, known as *Transformation and Energy Relief Act*, 22 LPR sec. 1051 *et seq.* ("Act 57-2014"), Statement of Motives.

municipal governments; specific provisions with measurable criteria and parameters to attain a reduction in energy consumption in the offices of the Executive, Legislative, Judicial Branches and in the municipal governments; the adoption of expedited procedures for the interconnection of renewable energy generation systems with nameplate capacity of one (1) MW or less; among others. Act 57-2014 also created the Puerto Rico Energy Commission, currently known as the Puerto Rico Energy Bureau (the “Energy Bureau” or PREB), the Independent Consumer Protection Office and the Commonwealth Energy Public Policy Office.<sup>7</sup>

In September 2017, Puerto Rico suffered the powerful and devastating impact of Hurricane Maria. Following suit, on January 22, 2018, then Governor of Puerto Rico, Hon. Ricardo Rosselló-Nevares announced one of the initiatives that would be critical for building a new and modern Puerto Rico: the transformation of our electric power system. The effect this event bestowed upon the energy infrastructure in Puerto Rico prompted a sense of urgency and the Puerto Rico Legislature responded by enacting Act 120 of June 21, 2018, the Puerto Rico Electric System Transformation Act<sup>8</sup> and declared in the statement of motives that “in overcoming adversity, great opportunities to build a new Puerto Rico have also presented themselves. The development of Puerto Rico must start now. There is no time for delay.”<sup>9</sup>

The Puerto Rico Legislature identified that the effects of Hurricane Maria revealed that PREPA lacked the conditions to offer an efficient service at a reasonable cost for residential, commercial, and industrial customers. At that time, given the budgetary and financial uncertainties that had built up over the last decade, neither PREPA, nor the Government, had the necessary financial resources to carry out PREPA’s operational restructuring, achieve financial

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<sup>7</sup> See generally Act 57-2014.

<sup>8</sup> Act 120 of June 21, 2018, as amended, known as the *Puerto Rico Electric Power System Transformation Act*, 22 LPRR sec. 1111 (“Act 120-2018”), Statement of Motives.

<sup>9</sup> *Id.*

recovery, and make the substantial infrastructures changes it requires.

Accordingly, the Legislature identified the need to approve a new structure to reform PREPA and, with the enactment of Act 120-2018, the Legislature and the Government of Puerto Rico permitted a legal framework for the sale, disposition, and/or transfer of the assets, operations, functions, and services of the Authority; established the necessary safeguards to ensure a fair and transparent process in the implementation of the aforementioned transactions and; provided for the applicability of Act 29-2009, as amended, known as the Public-Private Partnership Act<sup>10</sup>, in the process of transferring assets, operations and functions of the Authority.

Thereafter, Act 17-2019 was enacted and empowered the Energy Bureau “to develop regulations to establish incentive and penalties based on the electric power companies’ performance and compliance with the metrics the Energy Bureau approve[d], pursuant to the energy public policy.”<sup>11</sup> In compliance with the mandate of Act 17-2019, on December 2, 2019, the Energy Bureau adopted Regulation 9137<sup>12</sup>, setting “forth the reporting requirement for all eligible Electric Power Service Companies and outlin[ing] the process by which Metrics, Targets, and Financial Incentives shall be established.”<sup>13</sup> Regulation 9137 is applicable to all Electric Power Service Companies<sup>14</sup>. The captioned case was opened in compliance with the aforementioned legislations and Regulation 9137.

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<sup>10</sup> Act 29 of June 8, 2009, as amended, known as the *Public-Private Partnerships Authority Act*, 27 LPRA 2601 *et seq.* (“Act 29-2009”).

<sup>11</sup> *Resolution and Order* entered on April 8, 2021 (the “April 8 Order”), p. 1 (citing Sec. 5.21 of Act. 17-2019).

<sup>12</sup> Energy Bureau, *Regulation for Performance Incentive Mechanisms*, Regulation No. 9137 (Dec. 2, 2019) (“Regulation 9137”).

<sup>13</sup> April 8 Order.

<sup>14</sup> “[A]ny Person, engaged in the rendering of electric power generation, transmission, and distribution services, billing, wheeling, grid services, energy storage, the resale of electric power, and any other electric power service as defined by the Energy Bureau in Regulation 8701, PREPA and the Transmission Distribution Provider/System Operator shall be deemed to be Electric Service Companies.” Regulation 9137, Sec. 1.7(6).

## B. Procurement Process to Award the OMA

Following Act 120-2018's mandate, in June 2018, the Puerto Rico Public-Private Partnerships Authority (P3A) launched the procurement process to select a company to operate and administer PREPA's transmission and distribution system. On May 15, 2020, following a process of more than eighteen (18) months, the P3A's Partnership Committee voted unanimously to recommend to the P3A Board that the consortium formed by ATCO Ltd., Quanta Services Inc. and Innovative Emergency Management, Inc. be selected to execute the O&M Agreement for the Project.

On May 18, 2020, P3A filed the *Puerto Rico Public-Private Partnerships Authority's Request for Issuance of Certificate of Energy Compliance and Request for Confidential Treatment of Documents Submitted to PREB* with the Energy Bureau (the "Energy Certificate Petition").<sup>15</sup> Through the Energy Certificate Petition, P3A requested the Energy Bureau to issue a Certificate of Energy Compliance<sup>16</sup> for a Preliminary Contract<sup>17</sup>, related to a PREPA Transaction<sup>18</sup>, in accordance with the provisions of Act 120-2018, Act 29-2009 and Act 57-2014. *Id.* On June 17, 2020, the Energy Bureau granted the Energy Certificate Petition and issued an Energy Compliance Certificate in connection with the Preliminary Contract, as modified in the Resolution and Order.<sup>19</sup>

Thereafter, on June 22, 2020 the Board of Directors of the P3A, the PREPA Governing Board and the Government of Puerto Rico, pursuant to the procedures set forth in Act 29-2009, approved the T&D Contract. Following these approvals, on June 22, 2020, LUMA Energy LLC

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<sup>15</sup> *In Re: Certificate of Energy Compliance*, case no.: NEPR-AP-2020-0002 (the "Energy Certificate Petition")

<sup>16</sup> As defined in the Energy Certificate Petition.

<sup>17</sup> *Id.*

<sup>18</sup> As defined in Act 120-2018.

<sup>19</sup> See Energy Certificate Petition, *Resolution and Order* entered on June 17, 2020.

as ManagementCo, LUMA Energy ServCo, LLC as ServCo (collectively, LUMA), PREPA and P3A, entered into the OMA under which LUMA will manage PREPA's T&D System.<sup>20</sup>

Pursuant to the OMA, PREPA intends and expects that LUMA will achieve the following goals, among others: transform PREPA's T&D System into a modern, sustainable, reliable, efficient, cost-effective, and resilient electric system consistent with prudent utility practices to increase electric service quality; increase T&D System resiliency, achieving performance in line with codes, specifications and standards consistent with mainland U.S. electric utilities; increase T&D System reliability; deploy new technologies; and implement industry best practices and operational excellence through managerial continuity and long-term planning.

### **C. Responsibilities of PREPA and LUMA under the OMA**

Pursuant to the OMA,

[LUMA] shall be responsible for all electric transmission, distribution, load serving and related activities for the safe and reliable operation and maintenance of the T&D System, subject to the terms and conditions of the main body of the [OMA], including (1) expansions and replacements to meet the Contract Standards, including fleet, asset management, asset acquisition/procurement, IT infrastructure, as further provided in this document and preparation and implementation of required components of the Integrated Resource Plan, while prioritizing expansion and replacement projects that improve the safe, reliable and economic dispatch of the T&D System's connected generating units; (2) management and performance of construction of improvements thereto, including compliance with approved FEMA scope of work for projects that are eligible for Federal Funding and required maintenance; (3) delivery of electricity to customers, including the implementation of the activities set forth in Sections II.A and II.B of this Annex I (*Scope of Services*); (4) billing and collections implementation and optimization; (5) maintenance and improvement of public lighting system; (6) maintenance of fiber optic cable structure infrastructure, as set forth in lease agreement between Owner and PREPA Networks, LLC, a wholly-owned subsidiary of Owner incorporated in April 2004 to execute the Optical Telecommunications Infrastructure Lease Agreement for dedicated provision of local wholesale telecommunication services (for the avoidance of doubt, the Parties acknowledge and agree that, except as

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<sup>20</sup> Capitalized terms that have not been defined before and appear from here on in shall be ascribed the meaning provided to them in the OMA.

specified in this item (6), Operator shall have no other responsibility relating to PREPA Networks, LLC); (7) compliance with interconnection of renewables in accordance with Applicable Law; (8) management of the System Operation Principles to meet safe and reliable system operations in accordance with Prudent Utility Practices and the System Operation Principles; and (9) recordkeeping and reporting in accordance with Applicable Law or Prudent Utility Practices.

OMA, Annex I, I(A).

Notwithstanding the broad responsibilities LUMA will partake pursuant to the OMA, PREPA will remain owner of the transmission and distribution system and related facilities, equipment and other assets related to the transmission and distribution system, power plants and any facilities, equipment as well as other assets related to the generation of power and electricity in which PREPA has an ownership or leasehold interest. OMA, Recitals.

In addition to retaining ownership of all PREPA's assets, PREPA has, among others, the following rights and responsibilities with respect to the operation, management and maintenance of the T&D System:

- (i) grant and assure Operator access to the T&D System for the performance of Operator's obligations hereunder;
- (ii) pay the Service Fee and any other amounts due Operator, and fund the Service Accounts, all in accordance with the terms and conditions of this Agreement;
- (iii) ensure that, to the extent PROMESA requires Owner to submit any budget to the FOMB for approval, such budget provides that Owner is authorized to pay amounts due to Operator under this Agreement and fund the Service Accounts in accordance with Section 7.5 (*Service Accounts*);
- (iv) cooperate with Operator such that the budgets and funds in support of O&M Services are sufficient in amount to enable Operator to meet the Contracts Standards and provide a reasonable opportunity for Operator to achieve the Performance Metrics;
- (A) respond promptly (and in any event within thirty (30) days or shorter period required by this Agreement) to all requests of Operator with respect to all matters requiring the approval, review or consent of Owner (and in each such case, unless otherwise specifically stated in this Agreement, Owner shall not unreasonably withhold, delay or condition any such approval, review or consent) and as to such other matters relating to the obligations of Operator hereunder in respect of which

Operator shall reasonably request the response of Owner in accordance with the provisions of this Agreement, (B) provide Operator with such information, data and assistance as may be reasonably necessary or appropriate for Operator to perform its obligations (including with respect to any PREB rate or other proceeding or requirement) hereunder, and (C) from time to time, as and when requested by Operator, execute and deliver, or cause to be executed and delivered, all such documents and instruments and take, or cause to be taken, all such reasonable actions, as may be reasonably necessary for Operator to perform its obligations under this Agreement;

(v) except as otherwise contemplated by Section 5.12 (*Legal Matters*), manage Owner's legal matters, including Owner's reporting and related legal compliance;

(vi) cooperate with Operator and Administrator in obtaining and maintaining all Governmental Approvals;

(vii) audit Operator's compliance with Federal Funding Requirements; provided that Owner shall reasonably coordinate with Administrator to avoid duplicative audits;

(viii) ensure that Operator, as an independent contractor, remains at all times during the Term a beneficiary to all Easements vested on Owner as provided in Regulation 7282 of January 25, 2007;

(ix) execute and file any condemnation proceeding reasonably requested by Operator to acquire any fee interest, real property right, including leasehold estates, or Easement; provided that (A) Operator shall submit a request to Administrator to approve such condemnation proceeding, including a statement of reasons supporting, and justification of Owner's right to initiate, any such proceeding, and (B) the cost and expense related to such condemnation proceeding shall be included in an amendment to then-current approved Budgets in accordance with Section 7.3(e) (*Budgets – Amendments to Budgets*);

(x) take all other actions, and cause its employees and other Representatives to take all other actions, reasonably required or reasonably requested by Operator to permit Operator to perform the O&M Services in compliance with the Contract Standards and this Agreement, including with respect to (A) the constitution of Easements and enforcement of rights thereunder and (B) the acquisition of fee interests or real property rights, including leasehold estates;

(xi) exercise its statutory powers pertaining to any and all rights and remedies granted to it under Applicable Law, including doing so promptly when requested by Operator;

(xii) comply with all Applicable Law;

(xiii) coordinate any Audits that Owner is entitled to perform hereunder with any Audits being undertaken by Administrator and any other Governmental Body that has the right under Applicable Law to perform an Audit; and

(xiv) to the extent reasonably requested by Operator, and to the extent consistent with Applicable Law, cooperate with Operator in its efforts to obtain and effectuate approvals of any Governmental Body having competent jurisdiction for the establishment of measures to prevent erosion of revenue associated with the T&D System or to enhance System Revenues, including attending meetings with appropriate officials of Governmental Bodies as may be reasonably requested by

Operator for such purposes, identifying historical and potential governmental and quasi-governmental measures relevant to such purposes, and providing other cooperation, as may be reasonably requested by Operator, in pursuit of such purposes.

OMA, Art. 6, Sec. 6.1(a).

Accordingly, PREPA, as the governmental entity who owns the assets, maintains duties and responsibilities in relation to the T&D System.

#### **D. The Captioned Proceeding**

On December 23, 2020, the Energy Bureau entered *Resolution and Order* commencing the adjudicative proceeding of caption “to establish performance-based incentive mechanisms for LUMA.”<sup>21</sup> The Energy Bureau further established the principles LUMA must take into consideration in the development of the revised performance metrics that would be beneficial to the public interest. *Id.*, pp. 5-6. Further, the Energy Bureau ordered LUMA and PREPA to attend a Pre-filing Technical Conference that was to be held on January 14, 2021 (the “Conference”). *Id.* Both LUMA and PREPA appeared and participated.

On February 25, 2021, LUMA presented a request for the Energy Bureau to approve the revised Annex IX, Performance Metrics, of the OMA, as required by Section 4.2(f) of the OMA.<sup>22</sup> Pursuant to Annex X of the OMA, LUMA shall be eligible to receive an Incentive Compensation Pool based on its performance during the year as measured against the performance goal set forth by the Performance Metrics. OMA, Annex X, Sec. I.

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<sup>21</sup> Resolution and Order entered on December 23, 2020 (the “December 23 Order”).

<sup>22</sup> LUMA’s Submittal and Request for Approval of Revised Annex IV to the OMA filed by LUMA on February 25, 2021 (the “LUMA Petition”)

On April 8, 2021, the Energy Bureau entered a *Resolution and Order* establishing the procedural calendar in the instant case to evaluate the LUMA Petition. The procedural calendar provides that petitions for intervention are due on April 30, 2021.<sup>23</sup>

PREPA has a legitimate interest in the captioned case and, therefore, in compliance with the April 8 Order, it respectfully requests that the Energy Bureau grant PREPA's request to appear as intervenor in the captioned case. The justification for PREPA's request follows.

### III. APPLICABLE LAW

Act 38-2017<sup>24</sup> and Section 5.05 of Regulation 8543<sup>25</sup>, provide that any person who has a legitimate interest in a case may present a duly grounded petition to intervene or participate in said case.<sup>26</sup> Further, Section 3.5 of Act 38-2017, provides that the Energy Bureau may grant or deny the petition at its discretion taking the following factors into consideration, among others:

- (a) That the interest of the petitioner may be adversely affected by the adjudicative process.
- (b) That no other means exist in law for the petitioner adequately protect their interest.
- (c) That the petitioner interest is already adequately represented by the parties in the proceeding.
- (d) The participation of the petitioner may reasonably help preparing a more complete proceeding record.
- (e) That the petitioner participation may excessively extend or reduce the proceedings.
- (f) That the petitioner represents or may be the speaker of other groups or community entities.
- (g) That the petitioner may contribute information, expertise, specialized knowledge or technical advice that may not be available otherwise.

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<sup>23</sup> April 8 Order, *supra*, p. 2.

<sup>24</sup> Act 38-2017, as amended, known as *Puerto Rico Uniform Administrative Procedure Act*, 3 LPRA sec. 9601 *et seq.* ("Act 38-2017").

<sup>25</sup> Puerto Rico Energy Bureau, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*, Regulation No. 8543 (Dec. 18, 2014).

<sup>26</sup> Act 38-2017, Art. 3.5; *Comisión de Ciudadanos v. G.P. Real Property*, 173 DPR 998, 1009-1010 (2008); *JP Plaza Santa Isabel v. Cordero Badillo*, 177 DPR 177, 189 (2009); *San Antonio Maritime v. P.R. Cement Co.*, 153 DPR 374, 391 (2001); *Asoc. Residentes v. Montebello Dev. Corp.*, 138 DPR 412, 420 (1995).

Act 38-2017, Art. 3.5.

The Energy Bureau shall apply the above criteria liberally and may require that additional evidence be submitted to it in order to issue the corresponding determination with regard to the application to intervene. *Id.* A denial to the request for intervention must be notified to the affected party, in writing, with the basis for the determination and the revision mechanisms available.<sup>27</sup>

#### IV. REQUEST AND PLEA

Although PREPA understands that it has already been included by this Honorable Energy Bureau as party or participant in the captioned matter, *arguendo* that it is not the case, and in an abundance of caution, PREPA respectfully asserts that it has a legitimate interest in the process and ultimate resolution in this case and therefore, requests that it be allowed to participate as intervenor. Further, PREPA respectfully affirms that it complies with the legal requirements to be joined as intervenor as established in Section 3.5 of Act 38-2017, pursuant to Regulation 8543, as well as the applicable case law and thus, the Energy Bureau should grant PREPA's request to be allowed to participate as intervenor in the captioned matter for the following reasons:

##### 1. **The interest of PREPA may be adversely affected by the adjudicative process.**<sup>28</sup>

PREPA should be granted leave to participate as intervenor in the captioned matter because most of the metrics that will be set for LUMA will be based on LUMA's performance that will - directly or indirectly- involve PREPA's assets, including public funds. PREPA, in representation of the People of Puerto Rico, is the sole owner of the T&D System that LUMA will operate and maintain in accordance with the OMA. The ownership of all the assets remains with PREPA after

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<sup>27</sup> Act 38-2017, Art. 3.6; *JP Plaza Santa Isabel v. Cordero Badillo*, *supra*, p. 190; *Junta Dir. Portofino v. P.D.C.M.*, 173 DPR 455, 461 (2008).

<sup>28</sup> Act 38-2017, Sec. 3.5(a).

the Service Commencement Date. Through the OMA, LUMA will execute responsibilities and implement strategies that have a direct impact on PREPA's assets (*i.e.*, expansions and replacements to meet the Contract Standards, including fleet, asset management, asset acquisition/procurement, IT infrastructure, among other).<sup>29</sup> Through the captioned process, the Energy Bureau will establish performance metrics in key performance areas that are inevitably related to PREPA's assets, like grid maintenance and restoration.

Another area that will be directly affected by the establishment of performance metrics for LUMA is the Capital Budget – Federally Funded. This metric is tied to LUMA's overall recovery and transformation efforts. LUMA Petition, p. 19. After Service Commencement Date, in compliance with its responsibilities under the OMA, LUMA will be in charge of the management and performance of construction of improvements thereto, including compliance with approved FEMA scope of work for projects that are eligible for Federal Funding and required maintenance.<sup>30</sup> The role of LUMA is strategically important to PREPA given LUMA's proven experience and capacity to manage large federally-funded projects and the associated project management capacity needed to execute important reconstruction work on the island's grid. LUMA's role in this regard will reassure funding agencies that there is an independent operator with proven and verifiable experience to deploy grid modernization plans effectively, efficiently and in a compliant manner. Delivering major grid modernization capital projects on time and on budget will be essential to protect Puerto Rico from future devastation from hurricanes and other natural disasters.

PREPA as owner of the assets, is the recipient of those funds and thus, the ultimate responsible party to secure those funds. Moreover, and as an example, one of PREPA's responsibilities under the OMA is auditing LUMA's compliance with Federal Funding

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<sup>29</sup> OMA, Annex I, I(A)(1).

<sup>30</sup> *Id.*, I(A)(2).

Requirements.<sup>31</sup> Assessment of Federal Funding Requirements will also be achieved through the implementation of performance metrics. PREPA has a vested interest in the use and management of federal funds, given that it is of the utmost importance for Puerto Rico that those funds are adequately allocated. LUMA's experience in the management of federal disaster relieve funds makes it the ideal entity to manage these funds. However, PREPA understands that, given the responsibility that it has as recipient of the billions of dollars that will be received to reconstruct and rebuild its assets, the Energy Bureau should allow PREPA to participate in the captioned process as intervenor to cooperate with any information or input that may be required to develop the metrics that will be established.

**2. PREPA does not have other means to adequately protect its interest in the development of LUMA's performance metrics.**<sup>32</sup>

LUMA's performance metrics must be approved by this Honorable Energy Bureau pursuant to applicable law, regulations, and specific provisions of the OMA. The OMA provides that, after its execution, PREPA, P3A and LUMA must meet to discuss the revision of the performance metrics attached as Annex IX of the OMA. OMA, Sec. 4.2(f). Thereafter, ManagementCo has to present the proposed revised performance metrics to P3A for its comments and proposed revisions or modifications. *Id.* Also, P3A and ManagementCo have to agree on the revised performance metrics and, after an interactive process, LUMA had to submit the revised performance metrics for the Energy Bureau's approval. *Id.*

Given that the OMA allocates the responsibility of developing and presenting revisions to Annex IX exclusively on LUMA, PREPA did not have any role in the final version of the revised

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<sup>31</sup> OMA, Sec. 6.1(viii).

<sup>32</sup> Act 38-2017, Art. 3.5(b).

performance metrics that LUMA submitted. Further, the only legal and binding process in which LUMA's performance metrics will be evaluated and established is in the captioned matter. The Energy Bureau is the only entity with jurisdiction to approve performance metrics for electric service companies. Therefore, this is the only process in which PREPA can collaborate with LUMA and the Energy Bureau to adequately protect its interests.

**3. PREPA is not adequately represented by the parties in the proceeding.**<sup>33</sup>

There is no party participating in the captioned matter that may adequately represent PREPA.

**4. PREPA's participation will reasonably help preparing a more complete proceeding record<sup>34</sup> and may also contribute information, expertise, specialized knowledge, or technical advice that may not be available otherwise.<sup>35</sup>**

PREPA has been the owner of electric production, transmission, and distribution assets for over 180 years, when it was entrusted to create and manage the electric service in Puerto Rico. Despite the historic challenges it has faced and that are publicly known, PREPA has managed to provide and keep the electric system running until recently, as the sole administrator operator, owner and provider. This offers PREPA a unique knowledge of the Puerto Rico electric system.

PREPA holds the historical data and expertise to identify areas of opportunity to help and contribute with LUMA to achieve the development of adequate performance metrics to consistently and promptly achieve the level of modernization, functionality, resilience and service

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<sup>33</sup> *Id.*, 3.5(c).

<sup>34</sup> *Id.*, 3.5(d).

<sup>35</sup> *Id.*, 3.5(g).

that the People of Puerto Rico deserve, particularly now that a considerable funding allocation will permit these major improvements.

Additionally, as the owner of the electric distribution, transmission, and generation system<sup>36</sup>, and as an entity subject to the jurisdiction of this Honorable Energy Bureau PREPA has appeared, and continues to appear, before this Energy Bureau in a broad range of matters, investigations and proceedings that have permitted PREPA to obtain, produce, organize and study a comprehensive range of information that may be of great use during the establishment of LUMA's performance metrics. For example, recently PREPA has actively participated, and is still participating, in proceedings for the evaluation of its own performance<sup>37</sup> and also the current and future use of the electric system components, such as *Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*<sup>38</sup> and *In re: Implementation of the Puerto Rico Power Authority Integrated Resource Plan and Modifies Action Plan*<sup>39</sup>. PREPA's input and information could be invaluable to the Energy Bureau and LUMA in this process.

Lastly, LUMA has informed the Energy Bureau that during its assessment, it found significant gaps in processes and data that pose challenges in establishing a baseline performance to set realistic targets for the proposed metrics. LUMA Petition, p. 14. It is LUMA's opinion that this lack of information was due to nonexistent or inadequate data. *Id.* LUMA's statement reinforces PREPA's desire and request to participate in this process. PREPA should be allowed to participate as intervenor because this would facilitate any process should the Energy Bureau or its consultants need to inquire into any information that might be missing or that is necessary to

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<sup>36</sup> Despite the OMA, PREPA continues to be the entity in charge of generation.

<sup>37</sup> *In re: The Performance of the Performance of the Puerto Rico Electric Authority*, Case no.: NEPR-MI-2019-0007.

<sup>38</sup> *In Re: Review of the Puerto Rico Electric power Authority Integrated Resource Plan*, Case no.: CEPR-AP-2018-0001.

<sup>39</sup> *In re: Implementation of the Puerto Rico Power Authority Integrated Resource Plan and Modified Action Plan*, Case no.: NEPR-MI-2020-0012.

complete the review of LUMA's proposed metrics and to assist in the evaluation of the proposed revised Annex IX. PREPA wants to work hand in hand with LUMA and the Energy Bureau in anything that it can and that its directed towards LUMA's success in rebuilding and improving the T&D System.

**5. PREPA's participation will not excessively extend or reduce the proceedings.<sup>40</sup>**

The filing of this petition is being made in accordance with the deadlines established in the Resolution and Order entered on April 8, 2021, which provides that April 30, 2021 is the last day to file petition for intervention. April 8 Order, Sec. II. Therefore, PREPA is filing this petition in a timely manner and is not requesting an amendment to the procedural calendar that the Energy Bureau has already established. Therefore, PREPA's participation as intervenor will not delay the process. To the contrary, PREPA's experience will aid the honorable Energy Bureau which could, in turn, help expedite the matter to complete and establish LUMA's performance metrics before June 1, 2021, the Targeted Service Commencement Date<sup>41</sup>.

**6. PREPA is the only representative of the assets that LUMA will operate and maintain in accordance with the OMA and the performance metrics approved by PREB.<sup>42</sup>**

PREPA is the only governmental entity that is owner of the assets that LUMA will manage in compliance with the OMA. There is no other entity with ownership over those assets and, therefore, PREPA is the only entity qualified to represent the interests of its assets in the captioned matters.

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<sup>40</sup> Act 38-2017, Art. 3.5(e).

<sup>41</sup> As defined in the OMA.

<sup>42</sup> Art. 3.5 of Act 38-2017, *supra*, 3 LPRA sec. 9645 (f).

### III. CONCLUSION

The transformation of the T&D System is of the utmost importance and the top priority for PREPA. The Performance Metrics that will be established in this case will aid in tracking LUMA's performance in the execution of its responsibilities under the OMA. PREPA has shown that it has a legitimate interest in its continued participation in this process and that it complies with the requirements of Section 3.5 of Act 38-2017 to be joined as intervenor, to wit: (1) PREPA's interest might be affected by this process, (2) there are no other means to represent PREPA's interests in regards to the Performance Metrics, (3) PREPA's participation will benefit the Energy Bureau's evaluation, and also (4) PREPA's participation will not delay the process and, on the contrary, could help expedite it.

WHEREFORE, PREPA requests the Energy Bureau to GRANT PREPA's request to intervene in the caption case.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, April 30, 2021.

*/s/ Katuska Bolaños-Lugo*  
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**CERTIFICATE OF SERVICE**

It is hereby certified that, on this same date I have filed the above motion with the Clerk of the Energy Bureau using the Energy Bureau's Electronic Filing System, at the following address: <http://radicacion.energia.pr.gov> and that a courtesy copy of the filing was served on LUMA through its counsel of record, Atty. Margarita Mercado, to her email address [mmercado@mercado-echegaray-law.com](mailto:mmercado@mercado-echegaray-law.com) and <mailto:margarita.mercado@us.dlapiper.com>.

In San Juan, Puerto Rico, 30<sup>th</sup> day of April 2021.

*/s Katuska Bolaños-Lugo*

Katuska Bolaños-Lugo