

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

**NEPR**

**Received:**

**Jun 22, 2022**

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**IN RE:**

IMPLEMENTATION OF THE PUERTO  
RICO ELECTRIC POWER AUTHORITY  
INTEGRATED RESOURCE PLAN AND  
MODIFIED ACTION PLAN

**CASE NO. NEPR-MI-2020-0012**

**SUBJECT: Urgent Request for Reconsideration of  
Energy Bureau's Resolution and Order of June 13, 2022,  
and Stay of All Directives Therein**

**URGENT MOTION REQUESTING RECONSIDERATION OF ENERGY BUREAU'S  
RESOLUTION AND ORDER OF JUNE 13, 2022, AND STAY OF ALL DIRECTIVES  
THEREIN**

**TO THE PUERTO RICO ENERGY BUREAU:**

**COME NOW LUMA Energy ServCo, LLC and LUMA Energy, LLC** (collectively "LUMA"), through the undersigned legal counsel, and respectfully submit the following:

**I. INTRODUCTION AND PROCEDURAL BACKGROUND:**

On April 27, 2022, this honorable Puerto Rico Energy Bureau of the Public Service Regulatory Board (the "Energy Bureau") issued a Resolution and Order (the "April 27<sup>th</sup> Order") in connection with the eighteen (18) renewable energy projects of the Tranche 1 renewable energy procurement<sup>1</sup> that were approved by the Energy Bureau by Resolution and Order of February 2, 2022 (the "Approved Projects").

In the April 27<sup>th</sup> Order, the Energy Bureau issued separate orders to LUMA and PREPA with the purpose of expediting the work necessary to lead to PREPA's execution of the Power

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<sup>1</sup> This is the first procurement tranche to be conducted by the Puerto Rico Electric Power Authority ("PREPA") contemplated under the Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan, *In re: Review of the Integrated Resource Plan of the Puerto Rico Electric Power Authority*, Case No. CEPR-AP-2018-0001, of August 24, 2020.

Purchase Agreements (“PPOAs”) for the Approved Projects. To that end, the Energy Bureau ordered LUMA, among other things, to file with the Energy Bureau copy of the “technical studies (*i.e.*, Facilities Studies: Network Upgrades and Final Report: Interconnection Studies)” and copy of the results of the Tranche 1 technical studies for the Approved Projects by May 15 and 30, respectively. *See* April 27<sup>th</sup> Order at page 1.

After other procedural events, on May 31, 2022, LUMA submitted under seal of confidentiality the Final Interconnection Study Reports for the Approved Projects and three Battery Energy Storage Systems (BESSs), comprised of 21 studies for 19 points of interconnection.<sup>2</sup> *See* LUMA’s *Motion Submitting Final Interconnection Studies for Eighteen Tranche 1 Projects Required under Energy Bureau’s Resolution and Order of April 27, 2022, and Request for Confidential Treatment* of that date (“May 31<sup>st</sup> Motion”).

The Final Interconnection Study Report for each project, included as Exhibit 1 of the May 31<sup>st</sup> Motion, included an executive summary and the following appendices: (a) Interconnection Studies Summary Report (b) Facility Study Point of Interconnection (POI) Cost Estimates, (c) Facility Study Network Upgrade Cost Estimates, and (d) LUMA Interconnection Facility Works. The executive summary presented an overview of the findings and a cost estimate for the necessary improvements in the POI and transmission network upgrades needed to safeguard system reliability. *See* May 31<sup>st</sup> Motion, Exhibit 1. LUMA also included a System Impact & Facility

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<sup>2</sup> The technical studies regarding the network upgrades requested by PREB were included in this report. Prior to this filing, LUMA had informed that the report for the final technical interconnection study for each of the Approved Projects, including the network upgrades studies, would be submitted as a single package by the May 30<sup>th</sup> deadline, and requested therefore that the deadline to submit the network upgrades studies be changed to that date rather than May 15. *See* LUMA’s *Motion in Compliance with the Progress Report and Updated Task Schedule Requirements of the Energy Bureau’s Resolution and Order of April 27, 2022* filed on April 29, 2022.

Study Results report (“System Impact & Facility Study Results Report”) including a summary and analytical detail for a cluster study of the system developed to determine required transmission system network upgrades (“Network Upgrades”) and including cost estimates and cost allocation by project, which information was used in the Final Interconnection Study Report for each project. *See id.*

On June 13, 2022, this Energy Bureau issued a Resolution and Order regarding the funding for the Network Upgrades necessary to interconnect the Approved Projects. In what is pertinent here, the Energy Bureau indicates that, upon a review of the System Impact & Facility Study Results Report, it determined that:

(i) the transmission system network upgrades identified by LUMA as necessary to integrate the Tranche 1 projects shall be undertaken by LUMA; and (ii) ***LUMA shall investigate whether all or a portion of the transmission system network upgrade facilities can be procured employing federal funds obligated for the reconstruction of the electric grid, or by additionally available supplemental federal funding.*** (Emphasis added).

June 13<sup>th</sup> Order at p. 2.

The Energy Bureau also indicated that it believes the Network Upgrades can be eligible for funding under the Bipartisan Budget Act of 2018 (“BBA”) “as critical facilities under Section 406 of the Stafford Act and under the BBA.” *See id.* In support of this argument, the Energy Bureau explained that the major reason the Puerto Rico electric system does not meet NERC Transmission System Planning requirements (an industry standard to reliably operate bulk electric systems) is the pronounced resource adequacy shortfall which can be cured with the integration of dependable generation such as renewable generation paired with energy storage. *See id.* The Energy Bureau added that rebuilding to support reliable integration of dependable generation and leading to the phase out of unreliable generation will allow the system to comply with industry

standards and increase its resiliency; therefore, the Network Upgrades in question are required to restore the Puerto Rico electric power system and its critical service functions to an approved industry standard. *See id.*

The Energy Bureau then directed LUMA to file, within 45 days of the June 13<sup>th</sup> Order, a plan “laying out a roadmap for seeking and obtaining federal funding for the transmission system network upgrades identified in the “System Impact & Facility Study Results Report”, and outlining the steps required in that process including expected timelines.” *Id.* The Energy Bureau also directed LUMA to “proceed with the transmission system network upgrade projects needed to support the Tranche 1 selected resource, and to fund these projects from the Non-Federally Funded Capital Budget as needed[,] employing procurement processes that follow federal procurement guidelines, with such expenditures to be offset by federal funds as soon as such funds become available.” Furthermore, the Energy Bureau required LUMA to reflect these costs in the annual budgets filed with the Energy Bureau pursuant to the Determination on LUMA’S Initial Budgets Resolution and Order issued in *In re: Review of LUMA’s Initial Budgets*, Case No. NEPR-MI-2021-0004, on May 31, 2021. *See id.* at pages 2-3. In the June 13<sup>th</sup> Order, the Energy Bureau also required PREPA to file with the Energy Bureau the execution copies of the PPOAs for the Approved Projects on or before June 30, 2022, at 12:00 p.m. *See id.*

LUMA understands the Energy Bureau’s interest in expediting the Approved Projects as they further the objective of installing additional renewable energy to Puerto Rico’s bulk power system and adding energy storage resources that will provide additional flexibility for the system operator. Nonetheless, LUMA hereby respectfully submits its very serious concerns with the determinations

and directives in the June 13<sup>th</sup> Order with respect to the Network Upgrades. Specifically, LUMA is concerned with this honorable Energy Bureau's directive to release the PPOA counterparties from having to contribute to the Network Upgrades funding and to explore the possibility of obtaining federal funding for these upgrades, while in the meantime proceeding to include the cost of the upgrades in LUMA's Non-Federally Funded Capital Budget and to fund the upgrades with funds from this budget.

As will be discussed in more detail below, insofar as the Energy Bureau's approach to the funding of the Network Upgrades would require the commitment of the Non-Federally Funded Capital Budget, the Energy Bureau's determination will inevitably impact other projects conditionally approved by this Energy Bureau by Resolution and Order dated June 23, 2021, in Case No. NEPR-MI-2020-0019, *In Re: System Remediation Plan*, that are considered critical for the T&D System's reliability and to LUMA operating consistent with Prudent Utility Practice. Moreover, the funding strategy contemplated in the June 13 Order could potentially delay the Network Upgrades and consequently the Approved Projects as it is advisable to secure the federal funding prior to the procurement or implementation of such projects. Based on current experience, in practice, the federal funding process to apply and obligate projects takes approximately one year to complete. Having to responsibly undertake this process would delay the implementation of the Approved Projects by the same period of time. Importantly, insofar as the private parties executing the PPOAs with PREPA are released from the obligation of paying for these Network Upgrades and such federal funding is not approved and obligated, these Network Upgrades will displace or postpone other critically needed activities in the System Remediation Plan and the Initial Budgets such as pole and transformer replacements, energy efficiency programs, and other projects to avoid

having to revise customer rates. To put this in perspective, the estimated cost of the Network Upgrades approaches the total amount of the Capital Budget Non-Federally Funded that LUMA submitted for Fiscal Year 2023 on April 1 to this Energy Bureau.

Given the potential impact of the June 13 Order, LUMA respectfully requests that the same be stayed until the honorable Energy Bureau prudently considers the arguments set forth herein as well as the position of other interested stakeholders, such as the Puerto Rico Electric Power Authority (“PREPA”). To that end, LUMA is available for a conference to further expand on the reasonable concerns set forth herein.

## **II. DISCUSSION:**

The directives in the June 13<sup>th</sup> Order include highly significant policy decisions with potentially very large implications on the planning and operation of the Puerto Rico electrical system and on the transmission and distribution budget. LUMA is very concerned for the potential negative impacts to reliability and resilience of the system, fiscal impacts to PREPA and increased costs to customers if these directives are to be carried out. LUMA is still studying the June 13<sup>th</sup> Order and all the implications to more fully discuss these with the Energy Bureau.

As a threshold matter, however, it is important to note that the June 13<sup>th</sup> Order was entered without affording all relevant stakeholders the opportunity to express their position in relation to the suggested approach to funding and its practical implications. LUMA has reservations specifically as to the feasibility and prudence of the directive to seek federal funding for the Network Upgrades in question, the potential adverse impacts the other directives may have on other critical transmission and distribution system (“T&D System”) projects LUMA is required to

implement, and the consequences on customer rates. LUMA is also concerned that the approach taken by this honorable Energy Bureau is contrary to customary utility industry practice and will affect the competitive nature of the energy procurement processes, as well as quality and pricing of future developer proposals for renewable energy procurements in future procurement tranches.

With respect to the request regarding the procurement and use of federal funding, LUMA has preliminarily consulted with its subject matter experts on federal funding, and they have expressed concerns regarding the substantial risk of the proposed works for Network Upgrades in this scenario not qualifying for FEMA funds under the BBA or Section 406 of the Stafford Act. Such concerns also include limiting funding for, or excluding, other projects that are more critically needed to repair and restore the T&D System from damages caused by Hurricane Maria. Furthermore, LUMA is concerned with utilizing federal funding or, in its absence, funds from the limited Non-Federal Capital Improvement Budget funding available from the base rate for upgrade projects that may be viewed as making private independent power producer projects viable or displacing privately available sources of funding to use federal funds. Additionally, as this honorable Energy Bureau knows, projects benefiting from federal funding are also subject to an administrative process that extends for approximately one year and, in this case, would result in restricting the execution of the Network Upgrades and any projects related to the Network Upgrades until such time as the projects are obligated by FEMA. Engaging in such a process would likely delay the Approved Projects, and create further uncertainty and costs for developers, which runs contrary to the Energy Bureau's interest in expediting these projects. Commencement of works for a project for which federal funding is being requested before approval is not advisable

as it could place the determination of eligibility at risk by limiting the choice of alternatives to be considered when FEMA reviews the project.

The approach proposed by this honorable Energy Bureau in the June 13<sup>th</sup> Order may also have serious adverse effects on the ability of LUMA to pursue and implement other important or critical “System Remediation Plan” projects to repair, restore and modernize the T&D System, which are key responsibilities of LUMA as operator of the T&D System under the *Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement* dated June 22, 2020 (the “T&D OMA”). Under the T&D OMA, LUMA is charged with providing “management, operation, maintenance, repair, restoration and replacement” and other related services with respect to the T&D System and to “establish policies, programs and procedures with respect thereto” (the “O&M Services”). T&D OMA, Section 5.1. As this honorable Energy Bureau is aware, as part of the O&M Services obligations, LUMA submitted to the Energy Bureau its plan to “remediate, repair, replace and stabilize [the current] equipment, systems, practices and services” in the T&D System to enable [LUMA] to perform the O&M Services in compliance with the Contract Standards (including Prudent Utility Practice<sup>3</sup>) “as soon as reasonably possible and at a reasonable cost [...]” referred to as a “System Remediation Plan” or “SRP”. *Id.*, Section 4.1(d)(ii).

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<sup>3</sup> Prudent Utility Practices is defined in Section 1.1 of the T&D OMA, in its pertinent part, as “[...] at any particular time, the practices, methods, techniques, conduct and acts that, at the time they are employed, are generally recognized and accepted by companies operating in the United States electric transmission and distribution business as such practices, methods, techniques, conduct and acts appropriate to the operation, maintenance, repair and replacement of assets, facilities and properties of the type covered by the [T&D OMA]. [...]”



LUMA prepared and submitted to the Energy Bureau an SRP describing a series of portfolios and programs LUMA proposed to implement to achieve these goals while recovering and transforming the T&D System to deliver customer centric, reliable, resilient, safe and sustainable electricity at reasonable prices, *all within the current base rate*. The implementation of the proposed programs was prioritized based on a series of factors including criticality. This honorable Energy Bureau conditionally approved the SRP by Resolution and Order dated June 23, 2021, in Case No. NEPR-MI-2020-0019, *In Re: System Remediation Plan*, including the criticality and proposed prioritization of the various projects included in the SRP. The SRP programs were also included, along with other important programs, in the Initial Budgets submitted to and conditionally approved by this Energy Bureau by Resolution and Order of May 31, 2021, in case NEPR-MI-2021-0004, *In Re: Review of LUMA's Initial Budgets*. LUMA is therefore responsible for implementing the programs identified in the SRP and Initial Budgets as per their terms and established timelines.

This Energy Bureau's directive to utilize funds from the Non-Federal Capital Improvements Budget to pay for the Network Upgrades in question will result in deviating funding that is contemplated to be invested in projects that have been prioritized and that implement the SRP and the Initial Budgets, as approved by this honorable Energy Bureau. LUMA understands that such action would adversely affect LUMA's ability to comply with the SRP and the Initial Budgets orders and, potentially, the evaluation of LUMA's compliance with the relevant performance metrics. It may also result in a need to revise customer rates in order to assure implementation of all required projects, including projects that are more critical to the resilience and reliability of the Puerto Rico electrical system than the Network Upgrades required for

interconnection of certain specific generation projects for which private operators will secure long term contracts and could also secure Network Upgrades financing. As such, LUMA understands the approach of utilizing federal funds (or in their absence, funds from the Capital Budget-Non-Federally Funded) for the Network Upgrades to be contrary to LUMA achieving milestones towards operating the electrical system consistent with Prudent Utility Practice.

While PREPA is in Title III, as it currently is, PREPA does not have access to debt financing and all capital expenditures must be fully expensed in the period that they are invested. The proponents for the Approved Projects will be counterparties to long term power purchase agreements. The counterparties, as opposed to PREPA, can access debt financing and incorporate the costs of the Network Upgrades over the 20-year plus initial term of the agreement. Incorporating the costs of the Network Upgrade in the base rate in order to enable private developer projects would not be prudent.

Finally, it is standard industry practice to have private independent power producers, not the utility, pay for the costs of interconnecting to the transmission system. In fact, the FERC Standard Large Generator Interconnection Agreement for interconnection of large generating facilities to a transmission system provides that the interconnection customer is responsible for all costs related to network upgrades, unless the transmission owner elects to fund the capital for the upgrades. *See* LGIA, Section 11.3.<sup>4</sup> The latter is typically agreed upon in negotiations with the interconnection customer, but is the exception, not the norm. Relieving the generation developer from responsibility for this cost disincentivizes prudent and competitive siting and pre-engineering

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<sup>4</sup> <https://www.ferc.gov/sites/default/files/2020-04/LGIA-agreement.pdf>.

work by the developer. The Request for Proposal for this Tranche 1 states that each proponent is responsible for all interconnection costs.

Network Upgrades that were identified to connect the Approved Projects are only a fraction of the upgrades that are required to connect the subsequent Tranches. Therefore, the Energy Bureau's directives must be reconsidered from a broader perspective as they could impact the procurement process for subsequent tranches. It is reasonable to expect that a large amount of network upgrades will have to be implemented in order to interconnect all the renewable generation targeted in subsequent tranches.

Based on all of the above, LUMA hereby respectfully requests, with urgency, that this honorable Energy Bureau re-assess its determinations in the June 13<sup>th</sup> Order, specifically those relating to the funding of the Approved Projects and issue a stay of the directives to LUMA and PREPA in the June 13<sup>th</sup> Order until a conference is held to discuss their implications and practical effect and additional guidance is provided in connection thereto. Not doing so could result in unwanted adverse impacts on delaying the Approved Projects, hinder available funding for critical T&D System Projects (which, as anticipated, would delay operating the electrical system in accordance with Prudent Utility Practice) and/or force a revision in customer rates, and affect the cost-effectiveness of project proposals for future Tranches of procurement.

**WHEREFORE**, LUMA respectfully requests the Energy Bureau to **take notice** of the aforementioned, **reconsider** its determinations in its Resolution and Order of June 13, 2022, in the instant proceeding, in accordance with LUMA's input and comments in this Motion, and **issue a stay** of all the directives in such order, including the directive to have PREPA file for final approval

the execution copies of the 18 PPOAs for the Approved Projects by June 30, 2022, until such time the issues raised in this Motion pertaining to the funding of the Approved Projects are duly considered and resolved after the celebration of a conference to that end.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 21<sup>st</sup> of June 2022.

We hereby certify that we filed this motion using the electronic filing system of this Puerto Rico Energy Bureau and that copy of this motion was notified to PREPA counsel [mvazquez@diazvaz.law](mailto:mvazquez@diazvaz.law) and [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law).



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