

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

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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: Request for Modification of Energy
Bureau’s Resolution and Order of June 9, 2022, with
Respect to the Composition of the Selection Committee
Established Therein**

**MOTION REQUESTING MODIFICATION OF ENERGY BUREAU’S RESOLUTION
AND ORDER OF JUNE 9, 2022, WITH RESPECT TO THE COMPOSITION OF THE
SELECTION COMMITTEE ESTABLISHED 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:

On June 9, 2022, this Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) issued a Resolution and Order (the “June 9th Order”) in the instant proceeding creating a Selection Committee in connection with the process to select bids submitted in the Tranche 2 and subsequent renewable energy procurement processes, to be composed of six (6) members including one member designated by LUMA (the “Selection Committee”). As will be discussed in more detail below, the inclusion of only one member of the Selection Committee designated by LUMA is not consistent with the role and responsibilities that LUMA has assumed in the Tranche 1 and 2 procurement processes nor with LUMA’s responsibilities pursuant to the *Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement* dated June 22, 2020 (the “T&D OMA”). Consequently, LUMA hereby respectfully requests this honorable Energy Bureau to modify its determination in the June 9th Order providing for only one

LUMA member in the Selection Committee and to determine to include an additional LUMA member therein.

I. FACTUAL AND PROCEDURAL BACKGROUND

On August 24, 2020, the Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) issued the Final Resolution and Order in Case No. CEPR-AP-2018-0001, *In re: Review of the Integrated Resource Plan of the Puerto Rico Electric Power Authority*, regarding the Puerto Rico Electric Power Authority’s (“PREPA”) Integrated Resource Plan (“IRP”) through which it approved in part and rejected in part PREPA’s Proposed IRP (“Approved IRP”) and established a modified action plan (the “Modified Action Plan”) including, among others, a schedule for target quantities of renewable energy and battery storage resources to be acquired through Request for Proposals (“RFP”) processes to be conducted in six Tranches and directing PREPA to submit a procurement plan to achieve these goals.

On October 6, 2020, the Energy Bureau issued a Resolution and Order through which it opened the instant docket to manage the implementation phase of the Approved IRP and the Modified Action Plan (“October 6th Resolution”).

On February 22, 2021, PREPA published the Tranche 1 RFP. *See* PREPA’s *Motion Informing of Issuance of Renewables RFP Tranche 1* of that date.

On September 17, 2021, the Energy Bureau issued a Resolution and Order rescheduling the target date for the Tranche 2 RFP to October 15, 2021, due to delays in implementing the Tranche 1.

On October 12, 2021, the Energy Bureau issued a Resolution and Order rescheduling the target date for the Tranche 2 RFP to October 31, 2021, in light of delays in the Tranche 1 RFP.

On October 15, 2021, PREPA submitted the proposed Tranche 2 RFP document. *See Motion Submitting Tranche 2 Request for Proposals for Renewable Energy and Energy Storage Resources (RFP)* of that date.

On October 29, 2021, the Energy Bureau issued a Resolution and Order (“October 29 Resolution”) in which it determined that the Tranche 2 RFP process shall be executed by the Energy Bureau through an Energy Bureau Independent Coordinator (“PREB-IC”). The PREB-IC’s role would include, without limitation, to:

[...] (a) conduct all steps of the competitive bidding process; (b) manage all communications with proponents; (c) manage all communications protocols with proponents; (d) assure adherence to the code of conduct; (e) submit comments and recommendations to the Energy Bureau concerning the Tranche 2 RFP process; (f) develop in coordination with PREPA the proposal evaluation methodology, models, criteria, and assumptions; (g) evaluate proposals; (h) negotiate with proponents; (i) report to the Energy Bureau on monitoring results during each stage of the RFP process; and (j) assure that the goals of the Tranche 2 RFP and related Updated Procurement Plan provisions were achieved.

October 29 Resolution at page 14. The Energy Bureau also indicated that it would issue a separate resolution detailing the powers and duties of the PREB-IC.

On January 27, 2022, the Energy Bureau issued a Resolution and Order (the “January 27 Order”) describing the specific responsibilities and duties of the PREB-IC. Among other provisions, in the January 27 Order, the Energy Bureau also ordered LUMA and PREPA to “fully collaborate” with the PREB-IC, “provide any needed data and analytical support required to enable successful completion of the RFP process” and provide a point of contact for this purpose.

On February 2, 2022, the Energy Bureau issued a Resolution and Order (the “February 2 Resolution and Order”) approving eighteen (18) solar photovoltaic projects submitted in response

to the Tranche 1 procurement process for renewable energy and storage resources, detailed in Attachment A therein (the “Approved Projects”).

On April 11, 2022, the Energy Bureau issued a Resolution and Order (the “April 11th Order”) ordering PREPA and LUMA to, on or before April 19, 2022, answer specific technical questions included in a list of questions relating to certain aspects of the Tranche 1 Procurement submittals from respondents and PREPA’s evaluation of those submittals. LUMA’s questions pertained to the threshold values associated with certain minimum technical requirements (“MTRs”) and the FERC large generator interconnection standards. *See* April 11th Order at page 3.

On April 27, 2022, the Energy Bureau issued a Resolution and Order (the “April 27th Order”) that included separate orders to LUMA and PREPA whose purpose was to expedite the work necessary for PREPA to execute the Power 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 27th Order at page 1.

On April 28, 2021, LUMA and PREPA separately submitted their respective responses to the technical questions in the April 11th Order, following an extension provided by the Energy Bureau. *See* LUMA’s *Motion Submitting Complete Responses to Questions 6 and 7 in Energy Bureau’s Resolution and Order of April 11, 2022 and Requesting Confidential Treatment* and PREPA’s *Informative Motion and Responses to Resolution and Order Issued on April 11, 2022*, both of that date.

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. *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. The Final Interconnection Study Report for each project included an executive summary and the following reports as appendices: (a) Interconnection Studies Summary Report (b) Facility Study POI Cost Estimates, (c) Facility Study Network Upgrade Cost Estimates, and (d) LUMA Interconnection Facility Works. LUMA also included a System Impact & Facility 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 and including cost estimates and cost allocation by project, which information was used in the Final Interconnection Study Report for each project.

On June 9, 2022, the Energy Bureau issued the June 9th Order, object of this Motion. In it, the Energy Bureau constituted a Selection Committee for the evaluation and selection of bids for the Tranche 2 procurement and subsequent RFP processes. *See* June 9th Order at pages 3-4. This Committee is to be comprised of six (6) members selected as follows:

- (i) the Executive Director of the P3 Authority or his/her delegate;
- (ii) one (1) officer of PREPA directly concerned with the RFP process or his/her delegate;
- (iii) one (1) member of PREPA’s Governing Board, selected from the members appointed by the Governor at his sole discretion;
- (iv) two (2) officials from other government entities, chosen by PREB for their knowledge and/or experience in similar transactions;
- and (v) one (1) representative from LUMA, chosen by LUMA for their knowledge and/or experience in similar transactions.

Id. at page 3.

The Energy Bureau also set forth in the June 9th Order the process for evaluation and selection of proponents associated with the Tranche 2 procurement, which includes that: (i) the PREB-IC will conduct the bid evaluation process; (ii) once this evaluation is completed, the PREB-IC will submit their input and recommendations to the Committee for its consideration; (iii) the Committee is then required to prepare a report regarding the reasons for the selection, procedures followed, and comparisons between proponents, among others; and (iv) the Committee's report is to be submitted to the Energy Bureau for "the final determination on the selection of the most favorable proposals". *See id.* at pages 3-4.

In addition, in the June 9th Order, the Energy Bureau describes, separately, the responsibilities and duties of each PREPA and LUMA in connection with the procurement process. LUMA's role is described as including "provid[ing] any data and information required by the PREB-IC"; "[p]rovid[ing] guidance and input to the Energy Bureau and PREB-IC concerning the lessons learned of Tranche 1 regarding interconnection studies, system impacts and other related technical matters to ensure they are incorporated in future tranches"; "[p]articipat[ing] in meetings or provid[ing] information requested by the PREB-IC or PREB staff related to the RFP process"; "[c]ollaborat[ing] effectively and efficiently with the PREB-IC for a timely and successful execution of the RFP process"; and "[t]imely provid[ing] to the PREB-IC any required studies and data to obtain the information necessary to evaluate the interconnection of projects". *See id.* at page 5.

On June 13, 2022, this Energy Bureau issued a Resolution and Order ("First June 13th Order") ordering LUMA to proceed with the transmission system network updates identified by

LUMA in the Final Interconnection Study Reports to integrate the approved Tranche 1 projects and investigate whether these costs can be paid with federal funding, among others, and to file a plan, within 45 days of the June 13th Order, laying out a roadmap for seeking and obtaining federal funding for the transmission system network upgrades and outlining the steps required in that process including expected timelines.¹

Also on June 13, 2022, the Energy Bureau issued another Resolution and Order approving nine four-hour duration utility scale battery energy storage system (“BESS”) projects and one 17 MW virtual power plant submitted in the Tranche 1 procurement, listed in an Appendix A of the Resolution and Order, and ordering PREPA to finalize its negotiations with the proponents of these projects, present final Energy Storage Service Agreements and the Grid Services Agreement to the Energy Bureau for their final approval and present each agreement no later than ten (10) days after finalizing such negotiations.

II. DISCUSSION

LUMA respectfully submits that the number of members in the Selection Committee allocated to LUMA, as established by this honorable Energy Bureau in the June 9th Order, does not adequately reflect the contribution and expertise that LUMA brings with respect to the matters to be considered by this Committee consistent with its responsibilities pursuant to the T&D OMA nor the role and responsibilities that this Energy Bureau has bestowed upon LUMA in this proceeding to date.

¹ On June 22, 2022, LUMA submitted a motion to the Energy Bureau requesting it reconsider the First June 13th Order and stay the directives therein until the issues raised by LUMA in this motion regarding the availability of funding for the required transmission network upgrades are resolved. *See LUMA’s Urgent Motion Requesting Reconsideration of Energy Bureau’s Resolution and Order of June 13, 2022, and Stay of All Directives Therein* of that date.

- a. *As Operator of the T&D System pursuant to the T&D OMA, LUMA is in a distinct position to make valuable technical contributions to the Tranche 2 and subsequent procurement processes.*

A review of LUMA’s role and responsibilities as T&D System Operator under the T&D OMA clearly demonstrates the importance of LUMA’s role in this Committee. Under the T&D OMA, LUMA is charged with providing “management, operation, maintenance, repair, restoration and replacement and other related services for the T&D System” and to “establish policies, programs and procedures with respect thereto” (the “O&M Services”). T&D OMA, Section 5.1. LUMA’s O&M Services include being responsible for “all electric transmission, distribution, load serving and related activities for the **safe and reliable operation and maintenance of the T&D System**”, including, among others, “(1) expansions and replacements to meet the Contract Standards² [...] while **prioritizing expansion and replacement projects that improve the safe, reliable and economic dispatch of the T&D System’s connected generating units**”. *See id.* at Annex I, Section I(A) (footnote and emphasis added).

Furthermore, as T&D System operator LUMA is charged with “managing control center operations, **including generation scheduling and economic/reliable T&D System dispatch**”;

² “Contract Standards,” is defined as including the “terms, conditions, methods, techniques, practices and standards imposed or required” under applicable laws and “Prudent Utility Practice,” among others. *Id.* at Section 1.1, page 9. A “Prudent Utility Practice” is defined, in 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].” *Id.* at Section 1.1, page 26.

“conduct[ing] T&D System planning activities”; and “manag[ing] a transparent, equitable and open **generator interconnection process**”. *See id.* at Annex I, Section I(C) (emphasis added). LUMA is also “responsible for the furtherance or **development of (1) necessary generator interconnection agreements** for new generation or in the event of the sale of an Owner generating unit, [and] (2) appropriate points of generator interconnections demarcation points, where the point is not clearly defined”. *See id.* at Annex I at Section I(G) (emphasis added).

LUMA is also “responsible for all engineering activities related to the operation of the T&D System”, including: (1) “standards for design and engineering, design standards, construction standards, system mapping and related information, system performance, reliability, root cause analysis, equipment ratings” and “expansions and replacements to meet the Contract Standards and [the IRP]...”. *See id.* at Annex I, Section I(D). Relatedly, LUMA is also in charge of the “improvement of existing, or development of additional/new, and the on-going maintenance of revisions to all T&D System [technical documentation], including: (1) **management of T&D System generation interconnection applications and processing thereof** (including negotiation and administration of generation interconnection agreements of any voltage class connected to the T&D System)”. *See id.* at Annex I, Section I(E) (emphasis added). LUMA is further charged with the “continuous improvement of the T&D System”, including “research and development” to increase “operational efficiency” and providing “**cost-effective delivery of services to customers**”. *See id.* at Annex I, Section III (emphasis added).

As part of the O&M Services, LUMA also acts “as agent for and on behalf of [PREPA] [...] “for the purpose of entering into System Contracts on behalf of and for the account of

[PREPA], as may be necessary or appropriate to operate and maintain the T&D System and to make such additions and extensions thereto in accordance with the terms of the [T&D OMA]” (*see id.* at Section 5.2(b)). “System Contracts” include “contracts related to: (A) the ownership and operation and maintenance of the T&D System (**including interconnection and other related agreements**)”. *See id.* at Section 1.1, page 29 (emphasis added).

LUMA also has important functions regarding capital improvements to the T&D System and generation, including, “prepar[ing] risk assessments and analyses in support of **prioritization and planning for Capital Improvements** and other capital projects”; “prepar[ing] long and short range transmission and distribution planning analyses and **forecasts to determine the need for Federally Funded Capital Improvements and Non-Federally Funded Capital Improvements**, including the introduction of smart grid and other emerging technologies and project management services to ensure the technical performance and reliability of the T&D System”; and “prepar[ing] **analyses and forecasts to determine the need for generation-related capital projects**, if applicable [...]”. *Id.* at Section 5.5(a) (emphasis added). The T&D OMA also establishes that LUMA is to provide generation-related services, as agent for PREPA, and in accordance with the System Operation Principles, including “dispatch[ing], schedule[ing] and coordinat[ing] Power and Electricity³ from available generation assets and provide related services; [...] **coordinat[ing] the scheduling of load requirements and Power and Electricity, with [independent power**

³ “Power and Electricity” is defined as “the electrical energy, capacity and ancillary services available from the System Power Supply. *Id.* at Section 1.1, page 25.

producers (“IPPs”)] pursuant to their respective Generation Supply Contracts⁴ [...]; and “perform[ing] any other services related to the dispatch, scheduling or coordination of Power and Electricity from existing and future available generation assets”. *Id.* at Section 5.13(a) (footnotes and emphasis supplied.). The T&D OMA further provides, among others, that LUMA shall “prepare long and short-range transmission and distribution planning analyses and forecasts to **determine the need for Generation Project or Generation Supply Contract procurement which shall take into account the [IRP] to the extent applicable”; and “**coordinate any start-up related services required from [PREPA] in connection with any such Generation Project or Generation Supply Contract.**” *Id.* at Section 5.13(d) (emphasis added). “Generation Project” is defined to include all projects or transactions with respect to any function, service or facility of PREPA related to the generation of Power and Electricity...” *Id.* at Section 1.1, page 17.**

LUMA respectfully submits that given LUMA’s functions and responsibilities under the T&D OMA, LUMA has a central role in the process leading to the implementation of all Tranche projects. Specifically, LUMA is charged with the development, execution, and administration of the Interconnection Agreements with generators interconnecting with the T&D System. As administrator of the System Contracts, LUMA is also charged with administering other contracts related to the operation of the T&D System. Accordingly, LUMA will be responsible for the development, execution, and administration of the Interconnection Agreements with the selected

⁴ “Generation Supply Contracts” is defined as “any contract between [PREPA] and an [independent power producer] relating to the sale and purchase of Power and Electricity including power purchase agreements”. *Id.* at Section 1.1, page 17. Regarding these contracts, the T&D OMA provides that “[p]ursuant to the terms and conditions of each Generation Supply Contract [...] Operator shall have such power and authority as delegated to it pursuant to the respective agreement [...]”. *Id.* at Section 5.13(f).

proponent generators in all the Tranches and any other associated agreements and technical documents. In addition, LUMA is currently charged with administering the Generation Supply Contracts and, therefore, will similarly administer the power purchase agreements ultimately executed in connection with the awarded projects under the various Tranches. Based on this knowledge and these responsibilities, LUMA respectfully submits that it can provide valuable input in connection with the development and standardization of the agreements to be executed with the selected Tranche generation resources.

Furthermore, LUMA is responsible for conducting T&D System planning activities, including transmission and distribution analyses and forecasts related to the need for generation-related capital projects, as well as determining the need for and planning for other capital improvements of the T&D System, including the introduction of emerging technologies, while prioritizing those that improve the safe, reliable and economic dispatch of the T&D System's connected generating units, as well reducing Power Supply costs. Therefore, LUMA's input in these areas is critical in the evaluation and selection of the Tranche projects, given that this process should involve determining whether these projects require T&D System capital improvements, how these needs fit into the T&D System planning process, and whether these capital improvements will advance the objectives of improving the safe, reliable, and economic dispatch of electricity.

As a corollary to ensuring economic dispatch of electricity, and as part of its responsibilities towards customers, LUMA is also charged with providing cost-effective delivery of electricity to customers and to prepare and discuss with PREB "analyses, demand projections (prepared in

accordance with the Integrated Resource Plan), existing System Power Supply, Legacy Generation Assets and generation assets owned by IPPs related to the supply of Power and Electricity, and determine whether additional power supply sources are needed.” *Id* at Section 5.13 (d). These activities go hand-in-hand with LUMA’s obligation to “maintain Resource Adequacy that may require new generation procurement for Generation Projects or Generation Supply Contracts.” This responsibility requires LUMA to conduct modelling the economic impacts of new generation resources to be connected to the T&D System. Therefore, LUMA’s input with respect to the evaluation and selection of Tranche 2 (and future) projects will take these economic and customer-related factors into consideration. We respectfully submit that LUMA is best suited to bring these economic and customer-centric considerations to the table.

b. Given LUMA’s experience in the Tranche 1 procurement process it can provide valuable insights to the Selection Committee on lessons learned.

Since LUMA commenced providing the O&M Services on June 1, 2021, LUMA has been providing PREPA the requested technical information and studies related to the proposed interconnection of Tranche 1 projects.] LUMA has also provided its assessment to this honorable Energy Bureau in this proceeding on technical questions related to the interconnection of certain Tranche 1 projects. In addition, LUMA recently submitted to the Energy detailed technical interconnection studies for eighteen (18) Tranche 1 solar photovoltaic projects approved by the Energy Bureau and three (3) battery energy storage system projects, including associated cost estimates, which were informed by a study identifying the necessary transmission system network upgrades to interconnect these projects. LUMA will continue to conduct these types of studies for the selected projects for all Tranches and will also have a principal role in conducting/preparing

technical assessments and documentation related to the Interconnection Agreements, the MTRs, relevant operating procedures, relevant testing protocols, design criteria documentation, preferred locations for Points of Interconnection (POI), POI construction contracts, interconnection guidelines for developers, and MTR-compliance assessments. This experience places LUMA in a unique position to provide input on lessons learned from the Tranche 1 process and provides instrumental knowledge to apply in the assessment of future projects.

c. LUMA provides necessary experience and expertise to the Selection Committee of a nature or extent not available from other members.

Finally, LUMA would like to stress that, as current T&D System operator, and in light of the broad responsibilities discussed above, it has in-house staff, as well as advisors, with expertise and experience in the technical, economic, regulatory, legal, procurement and planning aspects associated with the subjects to be considered by Selection Committee in evaluating and selecting Tranche projects. LUMA is currently the only member of the Selection Committee that can provide this breadth of expertise and experience, and therefore, LUMA respectfully submits that LUMA contributing attributes should be more adequately reflected in the Committee's composition.

d. The number of members designated by LUMA for the Selection Committee does not adequately represent its contributions to this proceeding.

In conclusion, LUMA respectfully submits that its participation in the Selection Committee does not adequately reflect LUMA's contribution to the process, nor the expertise that LUMA brings to it. The inclusion of an additional LUMA member will allow for LUMA to have two members covering different but complementary areas of experience and expertise, so that together they can contribute considerably more input to the processes before the Committee in a more efficient and effective manner, than by the presence of only one member, as well as giving more

weight to the valuable perspectives and considerations that LUMA can bring to the table, as discussed above. This addition will also bring the total number of members in the Selection Committee to an odd number (seven (7)) which may benefit the committee's decision-making process.

WHEREFORE, LUMA respectfully requests the Energy Bureau to **take notice** of the aforementioned, modify its determination in its Resolution and Order of June 9, 2022, in the instant proceeding, and increase the number of LUMA participants in the Selection Committee created pursuant to such Resolution and Order from one (1) to two (2) members.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 28th 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 and kbolanos@diazvaz.law.



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