

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

NEPR

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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: Response to Resolution and Order of July 20,
2022, and Request for Technical Conference**

**RESPONSE TO RESOLUTION AND ORDER OF JULY 20, 2022, AND
REQUEST FOR TECHNICAL CONFERENCE**

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:

Introduction

1. On July 20, 2022, this honorable Energy Bureau of the Public Service Regulatory Board (the “Energy Bureau”) issued a Resolution and Order (the “July 20th Order”) denying a request from LUMA (filed on June 22, 2022 (“June 22nd Request”)) to reconsider the Energy Bureau’s determination in a Resolution and Order issued on June 13, 2022 in the referenced matter, insofar as it required LUMA to seek federal funding for transmission system network upgrades necessary for the interconnection of certain Tranche 1¹ renewable energy projects and, in the meantime, fund these upgrades with the Capital Budget Non-Federally Funded to be later offset by federal funding if it is obtained.

¹ This is the first of several renewable energy resources procurement Tranches 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, wherein the Energy Bureau approved the current Integrated Resource Plan and Modified Action Plan (“IRP”).

2. As discussed in more detail in this Motion, LUMA respectfully submits that in the July 20th Order this honorable Energy Bureau did not address the valid concerns raised by LUMA in its June 22nd Request regarding the significant risks associated with following the Energy Bureau's approach to funding these upgrades. The purpose of this motion is to respectfully expand on the actions associated with the implementation of this honorable Energy Bureau's directives and the significant impacts these may have on customers and the T&D System under various potential scenarios, as well as providing further context to inform the next steps to be taken by LUMA. In light of the considerations set forth herein, LUMA respectfully requests that this honorable Energy Bureau schedule a Technical Conference to discuss not only the potential effects discussed in this motion but also, and importantly, to share LUMA's proposed tactics and potential solutions that advance the Energy Bureau's stated objective of accelerating the procurement and commissioning of new renewable resources and achieving those goals with prudent cost allocation and equitable treatment of customers. To that end, LUMA makes these requests in parallel to continuing work on the Tranche 1 interconnection processes and so as not to delay or obstruct such processes or these proceedings, which LUMA understands are of utmost importance. Rather, LUMA makes these requests to ensure the course of action taken to address the June 13th and July 20th Orders is appropriate, just, reasonable and responsible and in the benefit of customers and the public interest, and that it takes into account stakeholder concerns and federal funding risks.

II. Procedural and Factual Background

3. The request for proposal for the Tranche 1 procurement ("RFP") was reviewed by this Energy Bureau and approved for issuance through Resolutions and Orders entered on January 5, 2021, January 26, 2021 and February 3, 2021. In what is pertinent here, the RFP contemplates

and provides that all interconnection costs are to be covered by the developers of the projects. After other procedural events, the Energy Bureau entered a Resolution and Order on February 2, 2022, approving eighteen (18) renewable solar photovoltaic (“PV”) energy projects of the Tranche 1 renewable energy procurement (“February 2nd Order”). These projects were identified in a Confidential Appendix A to the February 2nd Order (the “Approved PV Projects”).

4. Subsequently, on the April 27, 2022 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 Purchase Agreements (“PPOAs”) for the Approved PV Projects (“April 27th Order”). *See id.*, pages 1-2. To that end, the Energy Bureau ordered LUMA, among other things, to file with the Energy Bureau a copy of the “technical studies (*i.e.*, Facilities Studies: Network Upgrades and Final Report: Interconnection Studies)” and a copy of the results of the Tranche 1 technical studies for the Approved PV Projects by May 15 and 30, respectively. *See id.*, page 1.

5. After other procedural events, on May 31, 2022, LUMA filed with the Energy Bureau a *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* (“May 31st Motion”) submitting, as Exhibit 1 and under seal of confidentiality, the Final Interconnection Study Reports for the eighteen (18) Approved PV Projects, as well as three (3) projects for Battery Energy Storage Systems (“BESS”) (the “May 31st BESS Projects”)², comprised of 21 studies for 19 points of interconnection, which were also being

² The Final Interconnection Study Reports for each Approved PV Project and May 31st BESS Project included an executive summary and the following appendices: (a) Interconnection Studies Summary Report (b) Facility Study

submitted to PREPA.³ LUMA also included in the confidential Exhibit 1 a report of the results of a System Impact & Facility Study (“System Impact & Facility Study”) conducted by LUMA, including a summary and analytical detail for a cluster study of the system developed to determine required transmission system network upgrades (the “Network Upgrades”) and including cost estimates and cost allocation by project, which informed the Final Interconnection Study Report for each project. *See id.*⁴

6. On June 13, 2022, this Energy Bureau issued a Resolution and Order (“June 13th Order”) making a significant change to the already approved and issued Tranche 1 RFP, ordering LUMA to (i) “proceed with” the Network Upgrades (*see* June 13th Order, page 2); (ii) “fund these projects from the [Capital Budget-Non-Federally Funded (“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” (*id.*); and (iii) reflect these costs in the annual budgets filed with the Energy Bureau pursuant to their determination on LUMA’s Initial Budgets in the 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.*, pages 2-3).

Point of Interconnection (“POI”) Cost Estimates, (c) Facility Study Network Upgrade Cost Estimates, and (d) LUMA Interconnection Facility Works. *See* May 31st Motion, Exhibit 1.

³ 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 30th 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.

⁴ LUMA subsequently filed with the Energy Bureau a Memorandum of Law in support of the request for confidentiality of Exhibit 1 of the May 31st Motion. *See Memorandum of Law in Support of Confidential Treatment of Interconnection Studies Submitted by LUMA on May 31, 2022*, filed with the Energy Bureau on June 10, 2022.

7. The Energy Bureau also directed LUMA to “investigate whether all or a portion of the [Network Upgrades] can be procured employing federal funds obligated for the reconstruction of the electric grid, or by additionally available supplemental federal funding” (*id.*, page 2) and suggested that the Network Upgrades could 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.*). The Energy Bureau then directed LUMA to file, within 45 days of the June 13th 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.*

8. Also on June 13, 2022, the Energy Bureau issued a Resolution and Order (the “Second June 13th Order”) approving nine (9) four-hour duration utility scale BESS projects with a total capacity of 490 MW (the “Approved BESS Projects”) and one (1) 17 MW Virtual Power Plant (“VPP”), identified in an Appendix A of the Second June 13th Order. The nine (9) Approved BESS Projects, included the three (3) May 31st BESS Projects for which LUMA submitted to this Energy Bureau Final Interconnection Study Reports via the May 31st Motion and which were considered in the System Impact & Facility Study also submitted on that date. *See* Second June 13th Order, Exhibit A. In the Second June 13th Order, the Energy Bureau also ordered PREPA to finalize its negotiations with the proponents of these approved projects, present the final Energy Storage Service Agreements (“ESSAs”) and Grid Services Agreement to the Energy Bureau for their final approval, and thereafter submit to the Energy Bureau each agreement no later than ten (10) days after finalizing such negotiations. *See id.*, page 10.

9. On June 22, 2022, LUMA submitted the June 22nd Request requesting the Energy Bureau to reconsider its determination in the June 13th Order insofar as it required LUMA to seek federal funding for the Network Upgrades for the Approved PV Projects, and in the meantime, fund these upgrades with the Capital Budget Non-Federally Funded to be offset by federal funding that is obtained. *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. Specifically, LUMA raised concerns as to whether these projects would qualify for federal funding, the potential impacts of this approach on the funding for other more critically needed projects and customer rates, and the inconsistency of this approach with customary industry practice of having the developer pay these costs, among others. *See id.*, pages 5 and 8-11. LUMA also respectfully submitted that the June 13th Order was entered without affording all relevant stakeholders the opportunity to express their position in relation to the suggested funding approach and its practical implications. *Id.*, page 6. Given the concerns raised, LUMA also requested the Energy Bureau to stay the directives in the June 13th Order until a conference is held to discuss the implications and practical effects of these directives and these issues are considered and resolved. *See id.*, pages 11-12.

10. On July 13, 2022, LUMA filed a motion (the "July 13th Motion") with the Energy Bureau informing that LUMA had conducted the interconnection studies for three of (3) of the nine (9) Approved BESS Projects but that the interconnection studies of the other six (6) Approved BESS Projects had been requested by PREPA on June 15, 2022 (following the Second June 13th Order) and LUMA would complete these in approximately twenty (20) weeks. *See LUMA's Informative Motion Relating to Energy Bureau's Approval of Nine Tranche 1 BESS Projects of*

that date at page 5. LUMA also informed this Energy Bureau that LUMA would conduct an update of the System Impact & Facility Study (the “Updated Study”) to account for the mentioned six (6) Approved BESS Projects, which study would inform the Final Interconnection Study Report of each of these projects. *Id.*, pages 5-6. LUMA further informed that the Updated Study would take into account the interconnection of the six (6) Approved BESS Projects in conjunction with the interconnection of the eighteen (18) Approved PV Projects and three (3) May 31st BESS Projects and that, as a result, the costs for the Network Upgrades estimated in the original System Impact & Facility Study may substantially change and the components of some of the Final Interconnection Study Reports for Approved PV Projects may need to be revised. *See id.*, page 6. LUMA further expressed the concern that by negotiating final agreements in advance of completion of the Updated Study, PREPA and the proponents would not take into account the data and anticipated costs of interconnection determined by these studies including the potential increase or decrease of the investment required for Network Upgrades for Tranche 1. *See id.*, pages 6-7.

11. On July 20, 2022, the Energy Bureau issued the July 20th Order addressing LUMA’s June 22nd Request and July 13th Motion. In the July 20th Order the Energy Bureau denied LUMA’s June 22nd Request (*see* July 20th Order, page 6) and “reaffirm[ed] its June [13th] Order directing LUMA to proceed with the transmission system network upgrade projects needed to support the Tranche 1 selected resources once an Updated Study is available, and to fund said projects [the “Approved Projects”)] from the Non-Federally Funded Capital Budget, while federal funding is being sought” (*id.*). The Energy Bureau did not acknowledge LUMA’s request for a Conference to facilitate discussion between LUMA and the Energy Bureau of the issues raised in the July 22nd

Request. In the July 20th Order, the Energy Bureau also indicated that it continued to require LUMA to file the roadmap outlining the federal funding options required under the June 13th Order (the “Federal Funding Roadmap”). *See id.*, pages 5-6. In addition, with respect to LUMA’s July 13th Motion, the Energy Bureau indicated that “it [would] not permit the further dilation of the execution of the final Tranche 1 contracts, [and] therefore cannot wait for an [Updated Study] to finalize negotiations (*id.*, page 5) and that “[w]hatever effect the Updated Study has on the original estimated system upgrade costs (i.e., increase or decrease) it will become LUMA's responsibility to fund and develop such upgrades” (*id.*).

12. On July 28, 2022, LUMA filed with the Energy Bureau the Federal Funding Roadmap, in compliance with the June 13th Order and in light of the July 20th Order. *See Motion to Submit Federal Funding Roadmap in Compliance with Energy Bureau Resolution and Order of June 13, 2022* (“July 28th Motion”). As indicated in the July 28th Motion and the Federal Funding Roadmap, LUMA will pursue the type of federal funding contemplated in the June 13th Order for the Network Upgrades, and the proposed federal funding requests thereof will be submitted for this Energy Bureau’s review and approval in Case No. NEPR-MI-2021-0002, *In Re: the Puerto Rico Electric Power Authority 10 Year Implementation Plan*, by using processes consistent and in alignment with the federal funding procurement process presented by LUMA in that case.

III. Analysis of Impacts of Energy Bureau’s July 20th Order

13. LUMA has conducted an analysis of the actions that will be required to comply with the Energy Bureau’s directives in the June 13th and July 20th Orders and the potential impacts thereof. Based on this analysis, and as further discussed below, these actions will impact the timeline to achieve reliability and resiliency of the grid, , the availability of federal and non-federal

funding for other T&D System projects, the T&D System Annual Budgets, LUMA's ability to comply with the Puerto Rico Transmission and Distribution Operation and Maintenance Agreement executed on June 22, 2020, by and among PREPA, the Puerto Rico Public-Private Partnerships Authority ("P3 Authority") and LUMA (the "T&D OMA"), including Contract Standards, the System Remediation Plan ("SRP") and Performance Metrics, and the Tranche 1 and other Energy Bureau initiatives, among others. Therefore, these honorable Energy Bureau's directives will have significant and serious impacts on customers and the T&D System.

14. LUMA respectfully submits that, as in the case with the July 13th Order, the July 20th Order was entered without affording all relevant stakeholders the opportunity to express their position in relation to the Energy Bureau's funding directive and its practical implications for customers. In neither the June 13th Order nor the July 20th Order did the Energy Bureau acknowledge LUMA's request for a Technical Conference to facilitate discussion between LUMA and the Energy Bureau of the significant impacts associated with these directives. As such, LUMA urgently reiterates its request for a Technical Conference, emphasizing that this requested Technical Conference will not delay the interconnection process or the Approved Projects (the work for which will continue) but rather will afford LUMA and other stakeholders the opportunity to discuss with the Energy Bureau the required actions and potential impacts indicated in this Motion and share LUMA's solutions to advance the Energy Bureau's stated objective of accelerating the procurement and commissioning of new renewable resources and achieving those goals with prudent cost allocation and equitable treatment of customers. This interaction will undoubtedly aid this Energy Bureau in reaching a just, efficient and reasonable determination that will enable the advancement of the Approved Projects while ensuring consistency the current

Tranche 1 RFP, determinations made in other dockets pursuant to public policy and providing the customers the benefit of third parties' access to capital markets.

A. Background on T&D OMA

15. 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 [Puerto Rico transmission and distribution system (“T&D System”)] and to “establish policies, programs and procedures with respect thereto” (the “O&M Services”). T&D OMA, Section 5.1. The O&M Services are to be provided in accordance with Contract Standards⁵ requiring compliance with Applicable Law⁶, Prudent Utility Practice⁷, and other standards, terms, conditions and requirements specified in the T&D OMA.

16. LUMA's O&M Services include being responsible for (i) “maintaining T&D System reliable electric service (including any changes thereto as a result of reconstruction of any section thereof to address reliability, resiliency, efficiency and/or compliance with Applicable Law)” (*see id.*, Annex I, Section I(B)(4)); (ii) “operating within the Contract Standards while

⁵ The OMA specifically defines “Contract Standards” as “the terms, methods, techniques, practices and standards imposed or required by (i) Applicable Law; (ii) Prudent Utility Practice; (iii) applicable equipment manufacturer’s specifications and reasonable recommendations; (iv) applicable insurance requirements under any insurance procured pursuant to [the OMA]; (v) the Procurement Manuals, as applicable; and (vi) any other standard, term, condition or requirement specifically contracted in [the OMA] to be observed by [LUMA].” *Id.*, Section 1.1, page 9.

⁶ This term includes “any foreign, national, federal, state, Commonwealth, municipal or local law, constitution, treaty, convention, statute, ordinance, code, rule, regulation, common law, case law or other similar requirement enacted, adopted, promulgated or applied by any [governmental body][...]” in each case applicable to the parties to the OMA. *Id.*, Section 1.1, page 3.

⁷ “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 [OMA]. [...]” *Id.*, Section 1.1, page 26.

operating to improve: reliability, cost of electricity to end users, cost and impact of planned maintenance and use of load shedding if required” (*see id.*, Annex I, Section I(B)(6)); (iii) “establishing and conducting a continuous improvement program designed to enhance Operator’s performance, operational efficiency and the cost-effective delivery of services to customers” (*see id.*, Annex I, Section III(B)); (iv) “keep[ing] the T&D System in operational condition and repair, in a neat and orderly condition and in accordance with the Contract Standards” (*see id.*, Annex I, Section VIII(A)); (v) and “manag[ing] a transparent, equitable and open generator interconnection process” (*see id.*, Annex I, Section I(C)).

17. LUMA also has important functions relating to the performance and budgeting of capital improvements to the T&D System. LUMA is in charge of “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 Standards [...] 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.*, Annex I, Section I(A)); “prepar[ing] risk assessments and analyses in support of prioritization and planning for Capital Improvements⁸ and other capital projects” (*see id.*, Section 5.5(a) (footnote added)); and “prepar[ing] long and short range transmission and distribution planning analyses and forecasts to determine the need for Federally Funded Capital Improvements and Non-

⁸ “Capital Improvement” is defined, in pertinent part, as “any repair, replacement, improvement, removal and retirement, alteration and addition that (i) constitutes a capital property unit in accordance with the T&D System’s capitalization policy, consistently applied (other than any repair, replacement, improvement, removal and retirement, alteration and addition constituting ordinary course repair or maintenance of the T&D System) [...] and (ii) have an expected useful service life of more than one (1) year from the date of installation.” *See id.*, Section 1.1, page 5.

Federally Funded Capital Improvements, [...]”⁹ (*see id.*). Relatedly, LUMA is responsible for budgeting and longer--term financial forecasting operations, including “preparing and monthly monitoring of budgets necessary for both capital and operating expenses for the services provided by [LUMA] under the [T&D OMA]”. *See id.*, Annex I, Section VI(C)(1).

18. Under the T&D OMA, LUMA is also responsible for “contracting for any Capital Improvement financed in full or in part with available Federal Funding, and (iii) ensur[ing] that all contracting [...] related to such Capital Improvements the cost of which may be submitted for Federal Funding [...] is done **in compliance with the Federal Funding Requirements**¹⁰ **to maximize the potential realization of the Federal Funding anticipated or received and ensure such funding is administered in accordance with all such requirements.**” *See id.*, Section 5.9.

19. Furthermore, as this honorable Energy Bureau is aware, under the T&D OMA, LUMA¹¹ was required to prepare and submit to the P3 Authority and subsequently to the Energy Bureau a 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) “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). Accordingly, LUMA, after review thereof by the P3 Authority, submitted to the

⁹ “Federally Funded Capital Improvement” is defined as “Capital Improvements that are funded with Federal Funding.” *Id.*, Section 1.1, page 13. “Non-Federally Funded Capital Improvement is defined as “all Capital Improvements other than Federally Funded Capital Improvements.” *Id.*, Section 1.1, page 21. “Federal Funding” is defined as “any funding for the repair, replacement, restoration, improvement, resiliency, construction or hazard mitigation of the T&D System received or to be received by or for the benefit of Owner from any U.S. federal agency, including FEMA and HUD.” *Id.*, Section 1.1, page 12.

¹⁰ “Federal Funding Requirements” are “federal agency requirements, including any requirements set forth in the Federal Funding Procurement Manual” required under the T&D OMA. *See id.*, Section 5.5(b).

¹¹ Particularly, LUMA Energy, LLC.

Energy Bureau, on February 24, 2021, the proposed 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 approved base rate revenue requirement limit from PREB's Resolution and Order in Case No. CEPR-AP-2015-0001 (the "2017 Rate Order"). *See* LUMA's *Submittal and Request for Approval of System Remediation Plan* filed by LUMA on that date in Case No. NEPR-MI-2020-0019, *In Re: System Remediation Plan*. This honorable Energy Bureau approved the SRP by Resolution and Order dated June 23, 2021, in Case No. NEPR-MI-2020-0019. The T&D OMA provides that "LUMA shall implement the System Remediation Plan in accordance with such plan." *See id.*, Section 5.4.

20. In addition, the T&D OMA required LUMA¹² to submit to the Energy Bureau, during the period before commencing O&M Services, proposed Performance Metrics based on the Performance Metrics set forth in Annex IX of the T&D OMA, for review by this Energy Bureau (*see id.*, Section 4.2(f)). Specifically, the T&D OMA states that such Performance Metrics shall include a proposed baseline, target and minimum performance levels for certain Performance Metrics; Key Performance Metrics (as defined therein) and Major Outage Event Performance Metrics (as defined therein). *Id.* To that end, Annex IX of the T&D OMA provides for the establishment of metrics under three major performance categories: (i) Customer Satisfaction, (ii) Technical, Safety and Regulatory, and (iii) Financial Performance (*see id.*, Annex IX, Section II). Accordingly, on February 25, 2021, LUMA submitted proposed Performance Metrics to this Energy Bureau in Case No. NEPR-AP-2020-0025, *In re: Performance Targets for LUMA Energy*

¹² Particularly, LUMA Energy, LLC.

ServCo LLC which was subsequently revised and updated through a *Submittal of Request for Approval of Revised Annex IX of the T&D OMA* of August 9, 2021 (“Proposed Performance Metrics”) and through a subsequent *Motion Requesting Authorization to Submit Revised Pre-filed Testimony of Melanie Jeppesen, Second Amended Revised Annex IX to the OMA, and Redline of Second Amended Revised Annex IX to the OMA* filed on September 24, 2021. The Proposed Performance Metrics are under review by this honorable Energy Bureau. *See LUMA’s Submittal and Request for Approval of Revised Annex IX to the OMA* of that date in Case No. NEPR-AP-2020-0025 and its Exhibit 1. Among the various proposed metrics included in the Proposed Performance Metrics are the System Average Interruption Frequency Index (“SAIFI”), which “indicates how often the average customer experiences a sustained interruption over a predefined period of time” (*see id.*, Exhibit 1, LUMA’s Performance Metrics Targets February 24, 2021 (“LUMA’s PM Targets”), page 21) and the System Average Interruption Duration Index (“SAIDI”), “which indicates the total duration of interruption for the average customer during a predefined period of time” (*see id.*, LUMA’s PM Targets, pages 21-22).

21. Under Section 4.2(e) of the T&D OMA, LUMA¹³ was also required to submit to the Energy Bureau, during the period prior to commencing the O&M Services, Initial Budgets, comprising the Operating Budget, the Capital Budgets¹⁴ and the Generation Budget, in each case for the initial Contract Year¹⁵ and a projected budget for the subsequent two (2) Contract Years.

¹³ Particularly, LUMA Energy, LLC.

¹⁴ The Capital Budgets are required to include the Capital Budget – Federally Funded and the Capital Budget – Non-Federally Funded. *See id.*, Section 1.1, page 18.

¹⁵ The T&D OMA defined “Contract Year” as “the period from July 1 through June 30 for each year during that portion of the Term commencing on the Service Commencement Date; provided, however, that (i) the initial Contract Year shall commence on the Service Commencement Date and (ii) the final Contract Year shall end on

See T&D OMA, Sections 4.2(e) and 1.1, page 18. On February 24, 2021, LUMA submitted its Initial Budgets in Case No. NEPR-MI-2021-0004, *In Re: Review of LUMA's Initial Budgets*. See *Petition for Approval of Initial Budgets and Related Terms of Service* filed by LUMA on that date in Case No. NEPR-MI-2021-0004 (“IB Petition”). These Initial Budgets were the result of a process undertaken by LUMA of (1) assessing the utility’s physical assets and management practices (referred to as a “gap assessment”), (2) analyzing this information to compare it to industry standards, understand root causes and develop potential solutions resulting in specific initiatives consolidated into programs, and (3) planning, using a strategic framework for recovery and transformation (referred to as the “Recovery and Transformation Framework”), for the prioritization and sequencing of these programs to enhance value to customers within annual budget constraints and consistent with the public interest, Contract Standards and energy public policies and requirements (including taking into consideration the Performance Metrics and the SRP) See IB Petition, Exhibit 1, Section 1.4.3. The Recovery and Transformation Framework was guided by the mission of recovery and transformation of the T&D System to deliver customer-centric, reliable, resilient, safe, and sustainable electricity at reasonable prices. See *id*, Figure 1-5. This process resulted in the establishment of programs (“System Improvement Programs”) in seven portfolios covering the areas of (1) Customer Service; (2) Transmission; (3) Distribution; (4) Substations; (5) Control Center and Buildings; (6) Enabling; and (7) Support Services, covering SRP and non-SRP initiatives. See *id*. The Initial Budgets submitted by LUMA were within the limits of the previously approved base rate revenue requirement limit in the 2017 Rate Order. See

the fifteenth (15th) anniversary of the Service Commencement Date. Any computation made on the basis of a Contract Year shall be adjusted on a Pro Rata basis to take into account any Contract Year of less than 365/366 days.” *Id.*, Section 1.1, page 9.

id., Section 3.2.2. These Initial Budgets were conditionally approved by this Energy Bureau by Resolution and Order of May 31, 2021, in Case No. NEPR-MI-2021-0004 (“May 31st Initial Budgets Resolution and Order”), where the Energy Bureau determined that LUMA’s IB Petition “appropriately identifie[d], prioritize[d] and sequence[d] capital and operational expenditures to improve reliability and resiliency of the Puerto Rico power system” (*id.*, page 20).¹⁶

22. The T&D OMA also requires that LUMA prepare Annual Budgets for each Contract Year¹⁷ (*see* T&D OMA, Section 7.3(a)) and that “[t]he Budgets and the related [LUMA] staffing levels for each Contract Year [...] be designed to be adequate in both scope and amounts to reasonably assure that [LUMA] is able to carry out the related O&M Services in accordance with the Contract Standards and have a reasonable opportunity to earn the Incentive Fee for achieving the Performance Metrics.” *See id.*, Section 7.4. In accordance with these provisions, on April 2, 2022, LUMA submitted to the Energy Bureau the Annual Budgets for FYs 2023 through 2025 (the “2023-2025 Annual Budgets”) prepared by LUMA pursuant to the T&D OMA. *See Submission of Annual Budgets for Fiscal Years 2023 Through 2025* filed by LUMA on that date in Case No. NEPR-MI-2021-0004 (“Annual Budget Submission”). The Fiscal Year (“FY”) 2023 Budget was approved by the Financial Oversight and Management Board for Puerto Rico (“FOMB”) on June 30, 2022 (“Certified FY 2023 Budget”), which certified the budget submitted by LUMA to the Energy Bureau on July 13, 2022. *See Motion Submitting Fiscal Year 2023 Annual Budget As Approved and Certified by the Financial Oversight and Management Board for Puerto*

¹⁶ The Energy Bureau further found that “LUMA’s Initial Budgets filing appropriately prioritize[d] capital investments and spending initiatives, with the goals of making high priority investments first, so that safety and reliability of the Puerto Rico electric system is substantially improved, and so that the power system is more resilient in the face of any future hurricane and/or earthquake events.” *Id.*, p. 36.

¹⁷ These must be submitted to the P3 Authority to review for compliance with the applicable Rate Order. *See id.*

Rico of that date in Case No. NEPR-MI-2021-0004. These 2023-2025 Annual Budgets cover reasonable forecast costs to deliver electricity by carrying out the operational and capital work described for FYs 2023-2025, and consistent with the T&D OMA (*see* Annual Budget Submission, page 7) and are within the approved base rate revenue requirement limit as determined in the 2017 Rate Order (*see id.*, Exhibit 1, 2023-2025 Annual Budgets, Schedule 5.6). The Capital Budget in the 2023-2025 Annual Budgets includes the Capital Budget – Federally Funded (“Federally Funded Capital Budget”) and the Capital Budget – Non-Federally Funded (or “Non-Federally Funded Capital Budget”). Capital work includes the System Improvement Programs under the following improvement portfolios: (1) Customer Experience portfolio; (2) Transmission and Distribution portfolios; (3) Substation portfolio; (4) Control Center and Buildings portfolio; (5) Enabling portfolio; and (6) Support Services portfolio. *See id.*, Sections 2.3.1 and 4.2, Appendix C and Schedules 5.4 and 5.5. These are the programs developed based on the Recovery and Transformation Framework roadmap proposed by LUMA (*see id.*, Section 4.2), and include activities to provide key outcomes of: increased service reliability and more effective utility services; system rebuild and resiliency by completing work across Puerto Rico that includes a coordinated and efficient remediation of the highest risk infrastructure outlined within the SRP and facilitating the deployment of significant federal funding; and sustainable energy transformation which include incorporating solutions where effective, for grid modernization, digital transformation and renewable energy, among others. *See id.*, Section 2.3.1. In sum, the 2023-2025 Annual Budgets were designed in adequate scope and amounts to reasonably assure LUMA is able to carry out the O&M Services in accordance with Contract Standards, as well as

the opportunity to achieve the Performance Metrics, as required under Section 7.4 of the T&D OMA.

B. The June 13th and July 20th Orders will require a fundamental change in LUMA's capital expenditures for FYs 2023 and 2024.

23. LUMA currently estimates that the cost of the Network Upgrades would be approximately \$71.2 million, however this estimate could change with the new projects added to the analysis. This amount approaches the total amount of the Non-Federally Funded Capital Budget in the Certified FY 2023 Budget of \$80 million. As a result, the implementation of the directives in the June 13th and July 20th Orders will require a fundamental change in LUMA's capital expenditures for FYs 2023 and 2024, including the reprioritization (resulting in cancellation or delay) of Improvement Programs approved in the Initial Budgets and already included in LUMA's Certified FY 2023 Annual Budget, which are programs necessary to reasonably assure that LUMA is able to carry out its responsibilities under the T&D OMA, including increasing reliability and reducing outages impacting customers and the implementation of the SRP- that is, a fundamental change to a budget designed to allow LUMA to carry out O&M Services in accordance with Contract Standards and enable achievement of Performance Metrics, as per Section 7.4 of the T&D OMA. The reprioritization of capital expenditures for these System Improvement Programs will also impact energy public policy requirements and initiatives established by the Energy Bureau such as Electric Vehicle Infrastructure Deployment (in Case No. NEPR-MI-2021-0013) and Energy Efficiency and Demand Response (in Case No. NEPR-MI-2021-0006).

(1) The Programs or Projects to be funded with the Non-Federally Funded Capital Budget cannot be funded with the Federally Funded Capital Budget

24. This Energy Bureau suggests in the July 20th Order that some of the capital expenditures currently included in the Non-Federally Funded Capital Budget could be covered by federal funding. This proposed approach of utilizing the Federally Funded Capital Budget to cover Non-Federally Funded Capital Budget System Improvement Programs or projects thereunder that are displaced by allocating this funding to the Network Upgrades is not feasible. Not all of the necessary System Improvement Programs fall under federal funding eligibility. For this reason, LUMA has included several necessary and impactful System Improvement Programs or projects thereunder in its Non-Federally Funded Capital Budget- that is, System Improvement Programs approved by this Energy Bureau determined to be necessary to recover and transform the T&D System to deliver customer centric, reliable, resilient, safe and sustainable electricity reasonable prices. These programs were deemed properly prioritized by this Energy Bureau under the May 31st Initial Budgets Resolution and Order. *See* May 31st Initial Budgets Resolution, page 20. LUMA carefully compared the specific required non-federally funded projects with the eligibility criteria for the applicable federal funding programs and determined that these projects are both necessary and not eligible for federal funding. Each proposed non-federally funded project was evaluated in the course of LUMA's budget preparation process and a specific determination was made. In general, projects fell into one of the categories listed below:

- (a) Projects that do not involve facilities, equipment, or systems that would be addressed in a proposed, contemplated, or eligible federally funded projects. Examples include: (i) Replacing single substation circuit breakers or transformers in a substation not

planned for a federally funded reconstruction project to reduce the potential for public and employee safety risk and major customer and system outages; (ii) replacing functional but obsolete protection equipment to reduce the potential for a major customer and system outage similar to the April 6, 2022 event, in a substation not planned for a federally funded reconstruction project; or (iii) repairing or replacing failed underground distribution cable or equipment damaged during normal operations to reduce public safety risk and long-duration customer outages.

(b) Programs to conduct studies, assessments, or analyses (“assessments”) to develop optimal engineering solutions for subsequent federally funded project scopes and specifications. These assessments are required to enable appropriate and cost-effective federally funded projects by including necessary preparatory work that applies broadly across asset classes or facilities and is not associated with a specific federally funded construction or reconstruction project. Without this work, federally funded projects cannot be developed and justified with adequate specificity to meet federal funding requirements. Examples include: (i) Technical and engineering studies of electric grounding systems; or (ii) system planning and engineering studies to identify critical infrastructure facilities requiring additional physical and cyber security measures.

(c) Projects implementing interim solutions to address immediate safety, reliability, and security risks pending the development and implementation of the proposed comprehensive construction or reconstruction project. Examples include: (i) Installing padlocks on unsecured substations to address immediate safety and security risks to secure federal funding for fencing, gates, lights, signage, electronic control access, and other

security improvements; and (ii) installing animal guards in substations to address immediate reliability risks and customer outages and to prevent further damage to substation while federally funded upgrades are under development.

25. Specific examples of System Improvement Programs in the Certified FY 2023 Budget' Non-Federally Funded Capital Budget that in their entirety are not proposed, contemplated or eligible for federal funding include, among others: (1) Under the Customer Experience portfolio: the Modernize Customer Service Technology program to develop and implement LUMA's cloud-based contact center platform allowing for better management of a high volume of inbound and outbound customer communications and mitigating the risk of customers being unable to report emergency situations such as hurricanes (*see* Annual Budgets Submission, Exhibit 1, 2023-2025 Annual Budgets, Appendix C, Section C.1)- a program for improved customer service (2) under the Substations portfolio, the Substation Reliability program to reinforce and upgrade the existing and aging system infrastructure to improve system reliability programs aimed at reducing public safety risk and customer outages; this program includes replacing transformers, oil circuit breakers, distribution circuit breakers, other high voltage equipment, AC/DC systems, standby generators, relays, Remote Terminal Units and auxiliary systems, along with protection and control upgrades and procurement of emergency spares (*see id.*, Section C.4); and (3) under the Support Services Portfolio, the Renewables Integration, Minigrids & Generation Studies involving completing planning, technical studies, program development, and pilot implementation to support compliance with the IRP and regulatory requirements related to renewable integration, distributed energy resources and generation (*see id.*, Section C.7)- a program that funds energy public policy requirements and initiatives established

by the Energy Bureau with respect to Demand Response and Energy Efficiency (in Case No. NEPR-MI-2021-0006) and Electric Vehicle Infrastructure Deployment in Case No. NEPR-MI-2021-0013, the reprioritization of which may impact or delay these requirements or initiatives.

26. Examples of specific System Improvement Programs or projects thereunder that are non-federally funded but are interdependent with federally funded programs or projects include, under the Compliance, Studies, and Technology program (which is a program containing both federally funded and non-federally funded projects in the Certified FY 2023 Budget),¹⁸ the non-federally funded project to conduct technical and engineering studies of electric grounding systems that are necessary to assess the actual condition and effectiveness of the grounding system to determine the extent of the reconstruction necessary to bring the system up to working order. *See id.*, Section C.6. Not completing these studies would delay the deployment of federal funding until the studies can be completed. Reconstruction projects would either result in the entire grounding system being replaced and a greater and unnecessary cost or being inadequately rebuilt not resulting in an effective grounding system at the facility.

27. Furthermore, the Renewables Integration, Minigrids & Generation Studies program, which is a completely non-federally funded program under the Certified FY 2023 Budget, includes demonstration projects to properly identify and evaluate the most effective

¹⁸ This is a program comprised of (1) distribution studies focused on eliminating major cascading outages and implementing new procedures and standards to ensure the distribution system complies with regulations and Prudent Utility Practice; (2) studies, procedures and standards for substation and transmission compliance; and (3) transmission and distribution compliance programs. *Id.*, Section C.6. The technology portion of this program will support distribution planning and protection studies, produce hosting capacity information and procure power quality monitoring equipment and meters as well as transmission technology that will improve the mechanisms to collect digital data and enable access to critical assets. *Id.* This program also has a performance portion including the development of processes and tools to measure and report Key Performance Metrics and other Performance Metrics. *Id.*

solutions, such as demand response and energy efficiency programs, to issues expected to occur because of changing demands on the electric system. *See id.*, Section C.7. These demonstration projects inform the scope and specifications for federally funded projects to implement technologies on a wider scale with confidence that the solutions are effective and cost efficient for the actual conditions experienced in Puerto Rico. Without these non-federally funded demonstration projects, proposed federally funded projects will be delayed.

28. Among the projects providing interim measures, are the initiatives to improve existing physical security at substations through repairing fences and lighting, replacing or installing padlocks and installing new signage, which is a project that is not federally funded under the Substation Security program of the Substation portfolio. *See id.*, Section C.4. These physical security activities are a precursor to protective measures associated with a federally funded component of the Substation Security program covering replacement and addition of new security technology and hardware to deter, detect and delay security incidents at Substations and associated with the fully federally funded Substation Rebuilds program consisting of the repair and rebuilding of substations.

29. In sum, the programs and projects described above, among others, that are included in the Non-Federally Funded Capital Budget will need to be delayed. The delay or of some of these programs or projects will result in a delay or inability to implement several associated federally funded capital programs or projects.

(2) **LUMA could not have anticipated the Network Upgrades in its planning prior to the June 13th Order**

30. In the July 20th Order, the Energy Bureau suggests that LUMA should have anticipated the need for the Network Upgrades in its planning. *See July 20th Order*, page 4. LUMA

respectfully submits that the standard utility practice is for large scale generation developers to pay for network upgrades related to the interconnection of their projects. *See* discussion on this subject in Section III.G. below. In fact, the request for proposals (“RFP”) for the Tranche 1 procurement, provides that all interconnection costs are to be covered by the developers. This RFP was reviewed by this Energy Bureau and approved for issuance. *See* Energy Bureau’s Resolutions and Orders of January 5, 2021, January 26, 2021 and February 3, 2021. LUMA has been rigorous in its planning function, and specifically in the integration of new distributed generation resources, and their associated network upgrades, but reiterates its understanding that planning for network upgrades for utility scale resources depends on results of the ongoing Tranches and that those would be paid by the resource providers that benefit from them. LUMA did not, and should not be expected to, reasonably anticipate that these costs would have to be included in the Budgets. Additionally, the costs were not anticipated in the 2017 Rate Order.

C. Impacts of using the Non-Federally Funded Capital Budget while federal funding is being pursued to fund the Network Upgrades

31. LUMA has conducted an analysis of the implications of using the Non-Federally Funded Capital Budget while federal funding is being pursued to fund the Network Upgrades under the following three scenarios in terms of impacts to customers and to LUMA’s long-term investment plan: Federal Funding analysis, Non-federal funding analysis, and non-federally funded capital and operations maintenance funding analysis. *See* Exhibit 1 (“Funding Impact Analysis”).

32. The federal funding scenario analysis examined the overall reliability and non-reliability impact of using the existing Federally Funded Capital Budget for the Network Upgrades. *See id.*, page 3. In this scenario, funding for key reliability programs would be largely consumed,

significantly impacting planned T&D system reliability improvements. *See id.* The unrealized reliability improvements associated with delaying the reliability improvement programs in FY23 are estimated to be 640 million customer minutes interrupted (CMI) of outage reduction and 1,620,000 customer interruptions (CI) reduction that LUMA forecast by the end of FY24. *Id.* Additional adverse reliability impacts are expected in the years beyond FY24. *Id.* Other impacts beyond reliability impacts include reduced availability of FEMA Section 428 funds for restoration projects over the longer term, significant delays in reliability improvement project development impacting future year investments, and higher cost to rework already completed planning and engineering work. *See id.*

33. The non-federal funding scenario analysis examined the overall reliability and non-reliability related impacts of using allocated non-federally funded capital programs on the Network Upgrades in lieu of allocating the funds to budgeted transmission line, substation, distribution line improvement programs if no federal funding nor incremental funding is obtained. *See id.*, page 4. The Network Upgrade costs would need to be entirely allocated as non-federally funded capital. *See id.* In that case, the costs would defer nearly all of the non-federally funded capital budget for transmission line, substation and distribution line improvement programs for approximately two years. *See id.* The unrealized reliability improvements associated with deferring the non-federally funded projects have been estimated to be 87 million customer minutes of outage reduction and 110,000 customer interruptions reduction forecasted by LUMA through the end of FY24. *Id.* Additional adverse reliability impacts are expected in the years beyond FY24. *Id.* Other impacts beyond reliability include continued public and employee safety risk, increased major customer

outage event risk, increased system operating tariff compliance risk, slower renewable distributed generation interconnection pace, and continued Outage Management System limitations. *See id.*

34. The non-federally funded capital and operations maintenance funding scenario analysis considered funding the Network Upgrades from a combination of the transmission line, substation and distribution line non-federally funded budget and LUMA's Operating and Maintenance (O&M) Budget. *See id.*, page 5. This approach represents a LUMA-wide effort to reprioritize its non-federally funded budget to mitigate some of the adverse reliability and other impacts identified in the other two scenarios described. *See id.* The analysis included reducing proposed spending in LUMA's electric transmission line, substation, and distribution non-federally funded capital budget but to a lesser extent in combination with reduced spending across LUMA's other operating department budgets. *See id.* The LUMA department O&M budgets reduced in this scenario included Operations, Customer Experience, Information and Operating Technology (IT-OT), Utility Transformation, and Engineering. The unrealized reliability improvements associated with deferring the non-federally funded programs and O&M activities have been estimated to be 100 million customer minutes of outage reduction and 198,000 customer interruptions reduction LUMA forecast by the end of FY24. *Id.*, page 6. Additional adverse reliability impacts are expected in the years beyond FY24. Other impacts beyond reliability impacts include higher than planned major customer and grid outage event risk, greater than planned distribution system vegetation management risk and inefficiency due to 500 fewer miles of line with vegetation management work completed, reduced distribution system maintenance, reduced customer service, and reduced IT-OT applications support and maintenance. *See id.*

D. Customer Impacts and Potential of Rate Increase

35. With the customer in mind and consistent with the public policy of providing electricity at just and reasonable rates, LUMA prepared the Initial Budgets and the 2023-2025 Annual Budgets within the approved base rate revenue requirement limit in the 2017 Rate Order, while ensuring it would be sufficient to enable it to meet its T&D OMA responsibilities. 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 or spent. Therefore, if the customer will pay for the costs in the year they are incurred, then current customers will pay the full cost of the Network Upgrades before receiving the benefit of those Network Upgrades (energy from new generators which will only occur after the Network Upgrades are complete). This creates inter-year inequity for customers. As an example, a customer that is currently living in Puerto Rico will pay, over the next two years, for Network Upgrades, and say in late 2024, before the new generation facilities are connected to the T&D System, this customer departs Puerto Rico, they will have paid for all of the Network Upgrades and will not have received any benefit. Furthermore, a person who moves to Puerto Rico in 2025 will receive the benefits of the Network Upgrades in the form of renewable energy from the new facility, without paying for any of the Network Upgrades. This situation is contrary to the impartiality guiding principle of the Puerto Rico electrical system under Act 17-2019 which requires that, “under the same conditions, consumers are treated equally regardless of their social condition and purchasing power, or the technical conditions or characteristics of the service rendered”. *See* Act 17-2019, as amended, Section 1.4.

36. If the Non-Federal Funded Capital Budget is used for the Network Upgrades, and a Budget amendment is insufficient to address the funding shortfalls, a rate increase may be needed to generate additional revenues. LUMA understands that such an increase could be achieved through either a base rate increase, which would require a rate review proceeding, or through a rate rider. Since the purchased energy rider would not apply in this case (because these Network Upgrade costs would not be reflected in the PPOA prices), a new rider would have to be approved. If the costs of the Network Upgrades are allocated by \$30 million for FY 2023 and \$41.2 million for FY 2024, it is roughly estimated that the rider would be approximately \$0.0018 per kWh to \$0.0027 per kWh over a two-year period. A household with a 500 kWh per month consumption would expect to pay an additional \$1.35 per month.

37. Alternatively, if the infrastructure is financed by the project developer, the economic impact to the customer would be significantly lessened and the costs and benefits will be timing-aligned. The proponents for the Approved Projects are or will be counterparties to long-term PPOAs and may access debt financing to incorporate the costs of the Network Upgrades over the 25-year initial term of the PPOAs- that is the developer may amortize the costs for the 25 year-term of the PPOA. If the infrastructure financing agreement used with recently executed PPOAs, for which we have an established precedent, were applied, a 25-year rate rider of \$0.0004 per kWh would cover the cost of the Network Upgrades. The same household in the example above would only pay an additional \$0.20 per month. Furthermore, the household would be receiving the benefit of the new renewable energy at the same time that they are paying the costs associated with interconnecting this new renewable energy. Therefore, incorporating the costs of the Network Upgrades directly into the customer rates in the years that the costs are incurred, as directed by the

Energy Bureau, is not cost-efficient for the customer when compared with the approach of having the private developer pay for these costs directly under the above scenario. Developers are better suited to take long-term risks and have access to capital markets at competitive rates and incorporating the costs of these Network Upgrades into the PPOAs. This will allow customers to benefit from developers access capital markets at competitive rates. At this time, PREPA (and therefore LUMA) does not have access to debt financing. Therefore, the impact of the costs of the Network Upgrades to the customer is more significant if the Non-Federally Funded Capital Budget is used to fund the Network Upgrades as opposed to having the private project developers fund, as is standard utility practice.

38. Among the powers and duties of this honorable Energy Bureau under Act 57-2014, as amended (“Act 57”) are “formulat[ing] and implement[ing] strategies to achieve the objectives of [Act 57], including, but not limited to, attaining the goal of reducing and stabilizing energy costs permanently, and controlling volatility in the price of electricity in Puerto Rico”. Act 57, Section 6.3. In exercising its powers and authorities under Act 57, the Energy [Bureau] “shall require that the prices included in any power purchase agreement, wheeling rate, and interconnection charge are fair and reasonable, consistent with the public interest, and compliant with the parameters established by [the Energy Bureau] through regulations.” *See id.* It is respectfully submitted that imposing the full Network Costs on customers in the front-end, rather than including them as part of the power purchase price under the PPOAs, results in an unfair and unreasonable higher cost imposition on the customers and is contrary to the public interest and the duties established under Act 57.

E. Risks that the Network Update Projects are Not Eligible for Federal Funding

39. As LUMA indicated in its June 22nd Motion, LUMA’s federal funding subject matter experts are concerned that the Network Updated projects are likely to not be eligible for federal funding. LUMA also understands that proceeding with the Network Upgrade projects prior to award of federal funding, as directed by this honorable Energy Bureau, is risky as it may result in the project not receiving the federal funding and the costs then having to be passed to the customer. It also raises the risk of projects not meeting administrative funding requirements which may result in the disallowance of the costs incurred.

40. Generally speaking, costs incurred with the expectation of reimbursement through a federal grant program could be subject to “disallowance” under certain circumstances. For example, the costs must be “reasonable” and “allocable” and must be “incurred during the approved budget period.” 2 C.F.R. § 200.403. For an incurred cost to be considered reasonable, it must not “exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.” *Id.* § 200.404. For a cost to be considered allocable, it must, in general terms, be a cost that supports or benefits the purpose of the grant. *See id.* § 200.405. Generally, if costs are incurred outside of the period for which a grant has been awarded, they are disallowed.¹⁹ Incurring the cost before the award could also raise the risk of being disallowed for not being reasonable or allocable.

¹⁹ *See, e.g., Teaching and Mentoring Communities, Inc.*, HHS Departmental Appeals Board (“DAB”), No. 2790, at 9–10 (2017) (“Grant funds earmarked for one funding period may not be used to pay costs incurred outside that period. Applicable legal principles require that grant funds awarded for one funding period [must] be used to pay for expenses from that year only, and not for any other program year. This limitation reflects the general requirement [reflected in longstanding federal cost principles] that allowable costs charged to a federal award must be allocable to the award.” (Internal quotation marks omitted; alterations in original.)

41. In light of the above risks, typically, grant funding is sought and awarded prior to the commencement of work under the grant. Seeking the funding concurrently with or subsequent to performance is highly unusual as it increases the risk of disallowance. Therefore, in the instant case, the directive to seek federal funding concurrently or subsequent to the execution of the Network Upgrades increases the likelihood of disallowance.

42. As mentioned, under the T&D OMA, LUMA is also responsible for ensuring that all contracting related to Capital Improvements the cost of which may be submitted for Federal Funding “is done in **compliance with the Federal Funding Requirements to maximize the potential realization of the Federal Funding anticipated or received and ensure such funding is administered in accordance with all such requirements**”. *See* T&D OMA, Section 5.9. In view of these responsibilities, LUMA has the obligation of proceeding with the federal funding aspect of this Energy Bureau’s directive in a manner that provides for maximized realization of funding and appropriate administration in accordance with applicable requirements, which should entail awaiting the award of the federal funding before proceeding with the Network Upgrades. LUMA shares the same objectives as the Energy Bureau of achieving integration of renewable energy resources in a timely manner to meet renewable portfolio standards under Act 17-2019 and Act 82-2010, as amended (“RPS”) and IRP goals, and LUMA is obliged to identify and communicate to this honorable Energy Bureau the significant funding disallowance risks involved with the Energy Bureau’s proposed undertaking.

44. It is well established that the exercise of delegated powers by administrative agencies is limited by notions of reasonableness and must be carried out in accordance with applicable laws. *See, Ramírez v. Policía de Puerto Rico*, 158 DPR 320,339 (2002). (stating that

the exercise of discretion by an administrative agency must be rooted in reasonableness and in accordance with applicable law). *See also, Quintero Betancourt v. El Túnel Auto*, 194 DPR 445, 459 (2015). Insofar as the June 13th and July 20th Orders expose LUMA to the risk of disallowance of federal funds and the consequences that would arise thereof, the same would be arbitrary and unreasonable especially considering that the it would have been entered despite LUMA's well-founded objection.²⁰

F. Impact on LUMA's ability to perform its responsibilities under the T&D OMA

45. The June 13th and July 20th Orders and the directive to reallocate funding also adversely affects LUMA's ability to perform its responsibilities under the T&D OMA. As discussed in more detail earlier, among these responsibilities are operating within Contract Standards to improve reliability and cost of electricity to end users; establishing and conducting a continuous improvement program designed to enhance LUMA's performance, operational efficiency and the cost-effective delivery of services to customers; prioritization of expansion and replacement projects that improve the safe, reliable and economic dispatch of the T&D System's connected generating units; and remediating, repairing, replacing and stabilizing the T&D System equipment, systems, practices and services in accordance with the approved SRP. LUMA is also subject to Performance Metrics, which as mentioned, are currently in the form of Proposed Performance Metrics under review by this honorable Energy Bureau.

²⁰ Moreover, LUMA respectfully expresses its concern with the Energy Bureau's exercise of its jurisdiction and delegated powers insofar as the June 13th and July 20th Orders have the practical impact of compromising specific portions of LUMA's Operating Budget and, more specifically, its Non-Federally Funded Capital Budget almost in its entirety, at a juncture where the FY 2023 has already been certified by the FOMB. To that end, LUMA is mindful of this Energy Bureau's jurisdiction to oversee that the annual budgets are in accordance with public policy and the priorities dictated by it but respectfully sets forth that such jurisdiction should not extend so far as to dictate the specific provenance of the funds used to perform specific projects.

46. In this case, due to lack of or reduced investments on T&D operation, restoration, and maintenance work it is foreseeable that performance in areas measured by metrics such as SAIFI, SAIDI, Customer Average Interruption Duration Index (CAIDI), Customer Experiencing Multiple Interruptions Index (CEMI), and Momentary Average Interruption Frequency Index (MAIFI) would be negatively impacted. Additionally, the base lines established for SAIFI, CAIDI, SAIDI, and MAIFI were based on PREPA historical data prior to LUMA commencing O&M. If used to measure LUMA's performance, those baselines would not fairly depict the reality of LUMA's performance when PREPA's historical data would have included data that took into consideration all funds (including federal) available to PREPA to perform work that would lead to lower negative effects on service interruptions. Furthermore, it is foreseeable that the shift of existing budget for federal funds to perform Network Upgrades in lieu of allocating funds into distribution reliability improvements would impact metrics related to Financial Performance (Operating Budget, Capital Budget—Federally Funded, Capital Budget—Non-Federally Funded, Days Sales Outstanding, Reduction in Network Line Losses, and Overtime). Particularly, LUMA's ability to stay within budget and to reduce electric losses will be affected. In sum, the shift of funds, as proposed, would deeply impact overall performance and customers directly.

47. As detailed above, use of the Non-Federally Funded Capital Budget to fund the Network Upgrades will impact Improvement Programs under the Customer Experience, Substations, Enabling, and Support Services portfolios, among others. In addition, this approach will have potential non-reliability impacts estimated at a minimum to affect areas such as outage events, safety risks, speed of interconnections, and asset management, among others. These Improvement Programs thereunder are associated with some of the mentioned areas

responsibilities under the T&D OMA and may affect implementation of the SRP, other operational plans and achievement of the Performance Metrics. This situation places unreasonable and unanticipated constraints on LUMA's budgets which were designed, pursuant to Section 7.4 of the T&D OMA, to "be adequate in both scope and amounts to reasonably assure that [LUMA] is able to carry out the related O&M Services in accordance with the Contract Standards and have a reasonable opportunity to earn the Incentive Fee for achieving the Performance Metrics."

48. The T&D OMA provides that the Energy Bureau and LUMA "shall have the right to propose amendments to the Performance Metrics from time to time" and they "shall consider any proposed amendments in good faith [...]. *See id.*, Section 7.1(d).²¹ The T&D OMA further provides that the "from time to time, it may be necessary or appropriate to amend or otherwise adjust the Performance Metrics or the Budgets as a result of [...] additional requirements imposed by Owner, Administrator or any other Governmental Body after approval of the Budgets [...] which (A) have resulted (or are reasonably likely to result) in schedule delays or increased work scope or costs and (B) are not be attributable to [LUMA's] gross negligence or willful misconduct." *See id.* In light of these provisions, depending on the ultimate funding reallocation with the Annual Budgets and/or the federal funding eligibility for the Network Upgrades and associated impacts to the metrics, LUMA will seek an amendment to the Proposed Performance Metrics and the Budgets.

²¹ The T&D OMA also provides that the if "any additional requirement imposed by [...] [any] Governmental Body prevents [LUMA] from achieving any Performance Metric, such Performance Metric shall be deemed to have been met for purposes of calculating the Incentive Fee for the applicable period." *See id.*, Section 7.1(c).

F. Impact on Ongoing and Future Tranche Procurements

49. LUMA reiterates its position stated in the June 20th Motion that it is standard industry practice to have private independent power producers, not the utility, pay for the costs of interconnecting to the transmission system. As an example, the FERC Standard Large Generator Interconnection Agreement (“LGIA”) 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 11.3.²² The latter is typically agreed upon in negotiations with the interconnection customer, but is the exception, not the norm. In accordance with the standard practice, the RFP for the Tranche 1 procurement provides that each proponent is responsible for all interconnection costs.

50. Relieving the generation developer from responsibility for this cost results in subsidization of some large-scale generators over other large-scale generators and in the uneven application of RFP requirements among various proponents within Tranche 1 or other Tranches. In addition, this approach may result in disincentivizing prudent and competitive siting and pre-engineering work by a developer.

51. Pursuant to Section 6.31 of Act 57, the Energy Bureau has the responsibility to “ensure that the process leading to the execution of a power purchase agreement or the modernization of PREPA’s power plants or facilities are swift, nondiscriminatory, competitive, under equal conditions, and transparent.” In view of the impacts discussed above, the directive in question in the June 13th and July 20th Orders may be perceived as contrary to these principles. In

²² <https://www.ferc.gov/sites/default/files/2020-04/LGIA-agreement.pdf>.

sum, it is important for this honorable Energy Bureau to take into account the potential implications of the directive in question on the Tranche 1.

IV. Conclusions

52. In conclusion, this honorable Energy Bureau's directives in its June 13th and July 20th Order regarding the funding of the Network Upgrades may result in eliminating or delaying LUMA's execution of important Non-Federally Funded Capital projects as well as Federally Funded Capital Projects; delaying the implementation of projects that are considered critical for the T&D System's reliability and for LUMA to operate in accordance with the T&D OMA and Prudent Utility Practice; adversely affecting LUMA's ability to comply with the SRP and achieve Performance Metrics; placing at risk the allowance of costs for the Network Upgrades if federal funding is sought thereof; requiring the pursuit of additional revenue streams; and having serious and material effects on customer reliability and satisfaction. LUMA reiterates that the most appropriate and customer-beneficial solution is to allow LUMA to continue to advance the Network Upgrade work without the Federal funding administrative burden and attendant delays and having, instead, the developer of the Approved Projects incorporate the costs into their PPOA price so that the impact to the customers rates is lesser and impartial and the prioritization of System Improvement Programs and timeline to achieve reliability and resiliency of the grid are not affected, while following the standard industry practice in private large-scale generation procurement. LUMA seeks to share, during a Technical Conference, concrete proposals for the Energy Bureau's consideration that address our joint objectives of timely and effective procurement processes in order to meet RPS and IRP targets, allocation of costs to the parties that benefit from them, as well as equitable and temporal distribution of the costs to the customers that

will benefit from the renewable resources. LUMA's proposals will allow the Energy Bureau to procure renewable energy more efficiently than in Tranche 1 with PREPA.

53. LUMA is committed to advancing renewables integration in compliance with RPS and the IRP. LUMA respectfully submits that this advancement should not proceed at the detriment of the customers and other public policy goals of resilience, reliability, safety, non-discrimination, impartiality, and rates reasonability which are key to a modern grid resource. LUMA respectfully submits that the Energy Bureau directive in question will impact reliability and resilience of the system, and ultimately will result in increased costs to, and partial treatment of customers. Therefore, LUMA respectfully reiterates its request that this honorable Energy Bureau schedule Technical Conference to discuss solutions. LUMA makes this request not in the spirit of delaying or obstructing these proceedings or the Tranche 1 procurement process, but rather to ensure the course of action taken to address the June 13th and July 20th Orders is appropriate, just, reasonable, responsible, and in the benefit of customers and the public interest, as well as takes into account stakeholder concerns and federal funding risks.

WHEREFORE, LUMA respectfully requests the Energy Bureau to **take notice** of the aforementioned, **accept** Exhibit 1 included in this Motion and schedule Technical Conference to discuss the matters contained in this Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 15th of August 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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Exhibit 1



Impact Analysis: Use of Federal Funding for System Upgrades Required for Interconnection of Tranche 1 Projects

NEPR-MI-2020-0012

August 12, 2022

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1.0 Introduction

The June 13, 2022, Resolution and Order directing LUMA to pursue federal funding for the identified network upgrades, and the order to utilize LUMA's non-federally funded capital budget while federal funding is being pursued has several critical implications that need to be considered. Section 2.0 Analysis describes the implications of three scenarios that LUMA evaluated in terms of impacts to customers and impacts to LUMA's long term investment plan.

1. Federal Funding Analysis
2. Non-Federal Funding Analysis
3. Non-Federally Funded Capital and Operations and Maintenance (O&M) Funding Analysis

The possible funding scenarios that could be constructed to fund the identified network upgrades not directly federally funded are endless. The three scenarios offered are intended to describe the types of impacts associated with likely scenarios categories to inform the Energy Bureau's decision making.

2.0 Analysis

2.1 Federal Funding Analysis

An analysis was conducted on the overall reliability impact of using the existing budget for federal funds on the network upgrades in lieu of allocating them into distribution reliability improvement. In this scenario, key reliability programs would be largely consumed, significantly impacting planned T&D system reliability improvements.

-Reliability improvement would be adversely impacted if the original plan is not funded. In particular, the majority of the budgeted Distribution Line Rebuild (\$51MM) and Distribution Automation (\$26MM) programs for FY23 would be deferred.

The unrealized reliability improvements associated with removing Distribution Automation and Distribution Line Rebuild funding in FY23 have been estimated and summarized below. Other impacts beyond reliability impacts have also been summarized.

Electric T&D Reliability Impacts	Non-Reliability Impacts
<ul style="list-style-type: none"> • Loss of 640 million customer minutes of outage reduction LUMA forecast by the end of FY24 • Loss of 1,620,000 customer interruptions reduction LUMA forecast by the end of FY24 • Additional adverse reliability impacts are expected in the years beyond FY24 	<ul style="list-style-type: none"> • Reduced availability of FEMA 428 funds for restoration projects over the longer term • Significant delays in reliability improvement project development impacting future year investments • Higher cost to rework already completed planning and engineering work

Available federal funding for reconstruction of the T&D system Puerto Rico is finite. The FEMA funding settlement specifies a maximum federally funded amount available for this purpose. Allocating these funds for purposes other than T&D system reconstruction will deplete the available resources before the necessary system restoration is complete.

2.2 Non-Federal Funding Analysis

An analysis was also conducted on the reliability and other impacts of using the non-federally funded budget for transmission line, substation, and distribution line program non-federally funded programs to fund the identified network upgrades. The network upgrade costs would consume most of the budget for planned non-federally funded transmission line, substation, and distribution line programs for FY23 and FY24. The result of the budget reduction is the need to suspend many system improvements required to maintain the transmission and distribution systems.

The unrealized reliability improvements associated with deferring the non-federally funded programs have been estimated and summarized below. Other impacts beyond reliability impacts have also been summarized.

Electric T&D Reliability Impacts	Non-Reliability Impacts
<ul style="list-style-type: none"> • Loss of 87 million customer minutes of outage reduction LUMA forecast by the end of FY24 • Loss of 110,000 customer interruptions reduction LUMA forecast by the end of FY24 • Additional adverse reliability impacts are expected in the years beyond FY24 	<ul style="list-style-type: none"> • Continued public and employee safety risk to deferred grounding system studies and resulting improvements • Continued public and employee safety risk to deferred protection and control system improvements for equipment not included in federally funded reconstruction programs • Increased major outage event and system operating tariff compliance risk due to deferred substation equipment and underground distribution cable and replacements • Slower renewable distributed generation interconnection pace due to reduced system reliability studies • Continued Outage Management System limitations due to deferred system improvements • No improvement in pole asset management due to deferred pole test and treatment program implementation • Continued inefficiencies in asset management and engineering work due to deferred software and tool improvements

2.3 Non-Federally Funded Capital and Operations and Maintenance Funding Analysis

The third funding analysis LUMA developed was to fund the network upgrades from a combination of the transmission line, substation, and distribution non-federally funded capital budget and LUMA's Operations and Maintenance (O&M) budget. This approach represents a LUMA-wide effort reprioritize its O&M activities in combination with deferral of some of non-federally funded capital program budget to mitigate some of the identified public and employee safety and compliance risks and reliability impacts identified in the other two funding scenarios described above.

The analysis included reducing proposed spending in LUMA's transmission line, substation, and distribution non-federally funded capital budget as described in Section 2.2 but to a lesser extent and to reduce spending across LUMA's other operating department budgets.

The LUMA department O&M budgets reduced in this scenario included Operations, Customer Experience, Information and Operating Technology (IT-OT), Utility Transformation, and Engineering. The table below summarizes the potential impacts for reducing the non-federally funded capital budget and O&M budgets resulting from this analysis.

Electric T&D Reliability Impacts	Non-Reliability Impacts
<ul style="list-style-type: none"> • Loss of 100 million customer minutes of outage reduction LUMA forecast by the end of FY24 • Loss of 198,000 customer interruptions reduction LUMA forecast by the end of FY24 • Additional adverse reliability impacts are expected in the years beyond FY24 	<ul style="list-style-type: none"> • Higher than planned major outage event risk due to limited transmission and substation equipment replacements and planned maintenance • Greater than planned distribution system vegetation management risk and inefficiency due to 500 fewer miles of line with vegetation management work completed • Reduced distribution system maintenance and reduced outage response time • Reduced system operation and control center operations support due to lower than planned activities • Reduced customer service • Reduced IT-OT applications support and maintenance due to lower than planned activities • Lower than planned efficiency due to reduced asset management and engineering software and tool improvements • Continued Outage Management System limitations due to reduced system improvements • No improvement in pole asset management due to deferred pole test and treatment program implementation