

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

IN RE: REQUEST FOR CERTIFICATION  
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-CT-2020-0007

SUBJECT: Determination on the June 27  
Motion

RESOLUTION AND ORDER

**I. Introduction**

Certain provisions of Regulation 8701,<sup>1</sup> as amended by Regulation 9182<sup>2</sup> that apply to LUMA Energy ServCo, LLC and LUMA Energy, LLC (collectively, "LUMA," and individually, "LUMA ServCo" and "ManagementCo") are at issue before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau"). Specifically, the Energy Bureau must determine if the aforementioned Electric Service Companies generate Gross Income from the rendering of Electric Services. Therefore, it is also at issue whether the Energy Bureau shall collect from LUMA the Regulatory Fee established by Section 6.16 of Act 57-2014<sup>3</sup> and Section 4.03 of Regulation 8701 during the period that LUMA provided operation and maintenance services ("O&M Services") to the Puerto Rico Electric Power Authority's ("PREPA") Transmission and Distribution System ("T&D System") under the T&D OMA.<sup>4</sup> Such matters will be addressed through this Resolution and Order.

**II. Relevant Factual Background**

**A. Case No. NEPR-CT-2020-0007 (LUMA ServCo)<sup>5</sup>**

On September 21, 2020, LUMA ServCo filed before the Energy Bureau a *Request for Certification* as an Electric Service Company, pursuant to the provisions of Regulation 8701 ("LUMA ServCo's Request"). The following documents were included as part of LUMA ServCo's Request:

1. Personal Information Form and Complementary Sheet ("Personal Information");
2. Operational Report Form and Complementary Sheet ("Operational Report");
3. Request for Certification of Electric Service Companies Form and Complementary Sheet ("Request for Certification");
4. Checks No. 103139600022003 and 103139600022001 addressed to *Negociado de Energía de PR* for the amounts of one hundred dollars (\$100.00) and eight hundred dollars (\$800.00), respectively.

<sup>1</sup> Amendment to Regulation No. 8618 on Certification, Annual Fees, and Operational Plans for Electric Service Companies in Puerto Rico, February 5, 2016 (as amended by Regulation 9182, "Regulation 8701").

<sup>2</sup> Enmienda al Reglamento Núm. 8701, Sobre Certificaciones, Cargos, Anuales y Planes Operacionales de Compañías de Servicio Eléctrico en Puerto Rico, June 24, 2020 (individually referred to as "Regulation 9182").

<sup>3</sup> Puerto Rico Energy Transformation and RELIEF Act, as amended ("Act 57-2014").

<sup>4</sup> LUMA is the Operator of the T&D System pursuant to the *Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement* ("T&D OMA") as of June 22, 2020, by and among the Puerto Rico Public-Private Partnerships Authority ("P3 Authority"), PREPA, ManagementCo as ManagementCo and LUMA ServCo as ServCo.

<sup>5</sup> Documents referenced in this Part II.A pertain to *In re: Request for Certification LUMA Energy ServCo, LLC*, Case No. NEPR-CT-2020-0007.



On November 4, 2020, the Energy Bureau issued a Resolution ("Resolution on LUMA ServCo's Conditional Certification") through which it certified LUMA ServCo as an Electric Service Company, pursuant to Regulation 8701, subject to compliance with certain conditions required by the Energy Bureau. The Energy Bureau also granted confidential designation to the documents filed by LUMA ServCo under Section 6.15 of Act 57-2014.

On November 16, 2020, LUMA ServCo filed a document titled *Motion in Compliance with Resolution* ("November 16 Motion") through which it submitted multiple documents and requested the Energy Bureau to determine that LUMA ServCo had met the conditions established in the Resolution on LUMA ServCo Conditional Certification. On November 20, 2020, the Energy Bureau issued a Resolution through which it determined that LUMA ServCo complied with the conditions established in the Resolution on LUMA ServCo Conditional Certification and certified LUMA ServCo as an Electric Service Company ("November 30 Resolution").

On April 5, 2021, the Energy Bureau issued an Order requiring LUMA ServCo to (1) file its report on the gross revenue<sup>6</sup> of the sales generated during Natural Year 2020 pursuant to Section 4.02 of Regulation 8701, and (2) show cause why the Energy Bureau should not impose an administrative fine of five thousand dollars (\$5,000) for its failure to follow Act 57-2014 and Regulation 8701 ("April 5 Order to LUMA ServCo").

In response to the April 5 Order to LUMA ServCo, on April 12, 2021, LUMA ServCo filed a document titled *LUMA ServCo's Response to Order to Show Cause* ("LUMA ServCo's April 12 Motion") through which it requested the Energy Bureau to determine that LUMA ServCo did not have to file a report on gross revenues for Natural Year 2020 under Section 4.02(A) of Regulation 8701, hold that no penalties would be imposed to LUMA ServCo in connection with filing the annual report on gross revenues, and find that the April 5 Order to LUMA ServCo was timely followed. LUMA ServCo argued that it was not legally required to file an annual report on gross revenues for Natural Year 2020 since such duty only applied to those Electric Service Companies that, unlike LUMA ServCo for Natural Year 2020 provided Electric Services and generated revenues from those services. LUMA ServCo also stated in LUMA ServCo's April 12 Motion that, on its Request for Certification, it informed the Energy Bureau it would commence providing Electric Services, under the category of billing services, on the Service Commencement Date<sup>7</sup> which would occur at a date not earlier than June 1, 2021.<sup>8</sup> It added that, although both ManagementCo and LUMA ServCo are the Operator under the T&D OMA, after the Commencement Date,<sup>9</sup> LUMA ServCo would provide the vast majority of the O&M Services under the T&D OMA while ManagementCo would be mainly providing oversight and management of LUMA ServCo.<sup>10</sup>

Certain documents identified as Exhibits A through E were attached to LUMA ServCo's April 12 Motion. Specifically, as Exhibits A and B, LUMA ServCo attached a copy of its Request for Certification; Exhibits C and D are LUMA ServCo's Operational Report; and, as Exhibit E, LUMA ServCo attached a Gross Revenue and Financial Statements Report Form along with a Complementary Sheet.

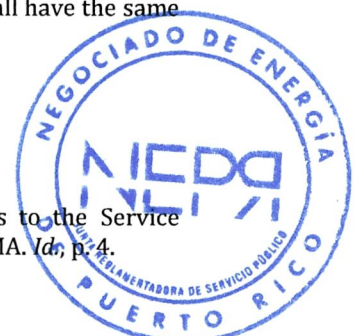
<sup>6</sup> The Energy Bureau is aware that Section 6.16 of Act 57-2014 refers to the Electric Service Companies' "gross income" in connection with the determination of the applicable Regulatory Fee. Section 4.01 of Regulation 8701 defines the term "gross income." However, the term "gross revenue" has been used in certain forms issued by the Energy Bureau in connection with Electric Service Companies. The Energy Bureau clarifies that in determining the Regulatory Fee applicable to Electric Service Companies, "gross revenue" shall have the same meaning as "gross income" (as defined by Regulation 8701).

<sup>7</sup> As defined in the T&D OMA.

<sup>8</sup> LUMA ServCo's April 12 Motion, p. 2.

<sup>9</sup> In LUMA ServCo's April 12 Motion, the term "Commencement Date" collectively refers to the Service Commencement Date and the Interim Period Service Commencement Date under the T&D OMA. *Id.*, p. 4.

<sup>10</sup> *Id.*, p. 5, note 5.





Upon evaluation of LUMA ServCo's April 12 Motion, the Energy Bureau considered that LUMA ServCo did not provide Electric Services on Natural Year 2020 and the Energy Bureau issued no determination on the matter, nor did it impose an administrative fine.

On November 12, 2021, LUMA ServCo updated its Personal Information, and submitted Check No. 103124500032969, addressed to *Negociado de Energía de Puerto Rico* for fifty dollars (\$50.00) ("LUMA ServCo Updated Personal Information").

On June 13, 2022, the Energy Bureau issued an Order requiring LUMA ServCo to (1) file its report on the gross revenue generated during Natural Year 2021 pursuant to Section 4.02 of Regulation 8701, and (2) show cause why the Energy Bureau should not impose an administrative fine of five hundred dollars (\$500) for its failure to comply with Act 57-2014 and Regulation 8701 ("June 13 Order to LUMA ServCo").

On June 20, 2022, LUMA ServCo submitted a Gross Revenue and Financial Statements Report Form along with a Complementary Sheet ("June 20 Filing"), and a document titled *Administrative Determination No. 20-06* ("AD 20-06"), issued on March 17, 2020, by Francisco Parés Alicea, Secretary of the Puerto Rico Department of Treasury ("PRDOT").

On June 27, 2022, LUMA ServCo filed a document titled *Informative Motion* ("June 27 Motion") through which it requested the Energy Bureau to vacate the June 13 Order to LUMA ServCo and update LUMA ServCo's email addresses in the Energy Bureau's files to reflect the email addresses informed in the LUMA ServCo Updated Personal Information. The LUMA ServCo Updated Personal Information was attached as Exhibit 1 to the June 27 Motion.

**B. Case No. NEPR-CT-2020-0008, In re: Request for Certification LUMA Energy, LLC<sup>11</sup>**

On September 21, 2020, ManagementCo filed before the Energy Bureau a *Request for Certification* as an Electric Service Company pursuant to Regulation 8701 ("ManagementCo's Request"). These documents were included as part of ManagementCo's Request:

1. Personal Information Form and Complementary Sheet ("Personal Information");
2. Operational Report Form and Complementary Sheet ("Operational Report");
3. Request for Certification of Electric Service Companies Form and Complementary Sheet ("Request for Certification");
4. Check No. 103139600022004 addressed to *Negociado de Energía de PR* for one hundred dollars (\$100.00).

On November 4, 2020, the Energy Bureau issued a Resolution ("Resolution on ManagementCo's Certification") through which it determined that ManagementCo's Request was complete and certified it as an Electric Service Company. The Energy Bureau also granted confidential designation to the documents filed by ManagementCo under Section 6.15 of Act 57-2014.

On April 5, 2021, the Energy Bureau issued an Order requiring ManagementCo to (1) file its report on the gross income of the sales generated during Natural Year 2020 pursuant to Section 4.02 of Regulation 8701, and (2) show cause why the Energy Bureau should not impose an administrative fine of five thousand dollars (\$5,000) for its failure to comply with Act 57-2014 and Regulation 8701 ("April 5 Order to ManagementCo").

In response to the April 5 Order to ManagementCo, on April 12, 2021, ManagementCo filed a document titled *ManagementCo's Response to Order to Show Cause* ("ManagementCo's April 12 Motion") through which it requested the Energy Bureau to determine that ManagementCo was not required to file a report on gross revenues for Natural Year 2020 under Section 4.02(A) of Regulation 8701, hold that no penalties would be imposed to

<sup>11</sup> Documents referenced in this Part II.B pertain to *In re: Request for Certification LUMA Energy, LLC*, Case No. NEPR-CT-2020-0008.





ManagementCo in connection with filing the annual report on gross revenues, and find that the April 5 Order to ManagementCo was timely complied with. ManagementCo argued that it did not provide services as an Electric Service Company in Puerto Rico and did not generate revenue from the provision of Electric Services. ManagementCo also stated in the ManagementCo's April 12 Motion that, as informed through its Request for Certification, it had been performing Front-End Transition Services,<sup>12</sup> which do not include O&M Services.<sup>13</sup> It added that, although both ManagementCo and LUMA ServCo constitute the Operator under the T&D OMA, after the Commencement Date,<sup>14</sup> LUMA ServCo would provide the vast majority of the O&M Services under the T&D OMA while ManagementCo would be mainly providing oversight and management of LUMA ServCo.<sup>15</sup>

Certain documents identified as Exhibits A through E were attached to ManagementCo's April 12 Motion. Specifically, as Exhibit A and B, ManagementCo attached a copy of its Request for Certification; Exhibit C and D constitute ManagementCo's Operational Report; and as Exhibit E, ManagementCo attached a Gross Revenue and Financial Statements Report Form along with a Complementary Sheet.

Upon evaluation of ManagementCo's April 12 Motion, the Energy Bureau considered that ManagementCo did not provide Electric Services on Natural Year 2020 and the Energy Bureau issued no determination on the matter, nor did it impose an administrative fine.

On November 12, 2021, ManagementCo updated its Personal Information, and submitted Check No. 103124500032968, addressed to *Negociado de Energía de Puerto Rico* for fifty dollars (\$50.00) ("ManagementCo Updated Personal Information").

On June 13, 2022, the Energy Bureau issued an Order requiring ManagementCo to (1) file its report on the gross income of the sales generated during Natural Year 2021 pursuant to Section 4.02 of Regulation 8701, and (2) show cause why the Energy Bureau should not impose an administrative fine of five hundred dollars (\$500) for its failure to comply with Act 57-2014 and Regulation 8701 ("June 13 Order to ManagementCo").

On June 22, 2022, ManagementCo filed a document titled *LUMA Energy, LLC's Response in Compliance of Order to Show Cause* ("June 22 Motion") through which it requested the Energy Bureau to determine that ManagementCo is not required to file a report on gross revenues for Natural Year 2021 under Section 4.02(A) of Regulation 8701, hold that no penalties would be imposed to ManagementCo in connection with filing the annual report on gross revenues, and find the June 13 Order to ManagementCo was timely complied with. Certain documents identified as Exhibits A through E were attached to the June 22 Motion. Specifically, as Exhibit A and B, ManagementCo attached a copy of its Request for Certification; Exhibit C and D constitute ManagementCo's Operational Report; and as Exhibit E, ManagementCo attached a Gross Revenue and Financial Statements Report Form along with a Complementary Sheet.

### III. Discussion

#### A. Applicable Legal Provisions

To discuss the issues raised in this case, it is necessary to examine what services constitute "Electric Services" for purposes of Act 57-2014. Section 1.3(pp) of Act 57-2014 state that Electric Services are any services provided to a customer by an Electric Service Company certified in Puerto Rico.<sup>16</sup> Pursuant to Section 1.3(l), an Electric Service Company is a natural

<sup>12</sup> As defined in the T&D OMA.

<sup>13</sup> *Id.*

<sup>14</sup> In ManagementCo's April 12 Motion, the term "Commencement Date" collectively refers to the Service Commencement Date and the Interim Period Service Commencement Date under the T&D OMA. *Id.*, p. 4.

<sup>15</sup> *Id.*, p. 5, note 5.

<sup>16</sup> 22 L.P.R.A § 1051a(pp).





or juridical person or entity, energy cooperative, engaged in the provision of generation services, transmission<sup>17</sup> and distribution<sup>18</sup> services, billing, wheeling, grid services, energy storage, resale of electric power as well as any other Electric Service as defined by the Energy Bureau.<sup>19</sup> Therefore, such services constitute "Electric Services." Section 1.3(l) of Act 57-2014 further provides that PREPA, its successor and any Contractor under a Partnership<sup>20</sup> or Sales<sup>21</sup> Contract executed in relation to PREPA Transactions conducted by Act 120-2018 shall be considered an Electric Service Company for purposes of Act 57-2014.<sup>22</sup>

Similar to Act 57-2014, Section 1.2(c) of Act 17-2019<sup>23</sup> provides that an Electric Service Company is any natural or juridical person or entity, including energy cooperatives, engaged in the rendering of energy generation, transmission, and distribution services, billing, wheeling, grid services, energy storage, the resale of electric power, as well as any other Electric Service as defined by the Energy Bureau.<sup>24</sup> Section 1.2(c) further provides that for Act 17-2019, PREPA or its successor, as well as any electric power transmission and distribution network operator, shall be deemed to be an Electric Service Company.<sup>25</sup>

Regulation 8701 refers to Electric Service Companies as (1) PREPA, (2) a natural or legal person that generates electric power through fossil fuels or renewable energy sources for sale to PREPA or any other Electric Service Company in accordance with a power purchase agreement; (3) a natural or legal person that offers electric power generation for sale, electric power storage, electric power billing or electric power resale; and (4) a natural or legal person that that carries out or offer wheeling services.<sup>26</sup>

<sup>17</sup> As defined by Section 1.3(tt) "Energy Transmission" refers to "moving electric power from one power plant or facility, microgrid, energy or electric cooperative, or any other system to a power substation through networks, lines, transformers, and any other infrastructure necessary to transport the same at voltage levels higher than 13.2 kV throughout Puerto Rico." 22 L.P.R.A § 1051a(tt).

<sup>18</sup> As defined by Section 1.3(s) "Electric Power Distribution" refers to "the delivery of electric power from one energy substation to any customer or consumer through networks, lines, transformers, and any other infrastructure needed to transport the same throughout the Island." 22 L.P.R.A § 1051a(s).

<sup>19</sup> 22 L.P.R.A § 1051a(l).

<sup>20</sup> Section 2(f) of the *Puerto Rico Electric Power System Transformation Act*, as amended ("Act 120-2018") establishes that "Partnership Contract" shall have the meaning provided in the *Public-Private Partnership Authority Act*, as amended ("Act 29-2009"). 22 L.P.R.A. § 1112(f). Such term is defined by Section 2(i) of Act 29-2009, as follows:

*The Contract executed by the selected Proponent and the Partnering Government Entity to establish a Partnership, which may include, but shall not be limited to, a contract to delegate a Function, administer or render one or more Services, or conduct the design, building, financing, maintenance, or operation of one or more Facilities that are in themselves or are closely related to Priority Projects as established in Section 3 of [Act 29-2009]. [...] 27 L.P.R.A. § 2601(i).*

<sup>21</sup> Section 2(g) of act 120-2018 defines "Sales Contract" as "[a]ny contract, power purchase agreement, document, deed, agreement, and instrument related to a PREPA Transaction that includes an agreement to sell, transfer, or otherwise dispose of PREPA Assets related to electric power generation to one or more private sector proponents." 22 L.P.R.A. § 1112(g).

<sup>22</sup> 22 L.P.R.A § 1051a(pp).

<sup>23</sup> *Puerto Rico Energy Public Policy Act* ("Act 17-2019").

<sup>24</sup> 22 L.P.R.A. § 1141a(c).

<sup>25</sup> *Id.*

<sup>26</sup> Specifically, as defined by Section 1.08(A)(5) Regulation 8701, the term "Electric Service Company" refers to:

a) PREPA;

b) Any natural or legal person that generates electric power through the use of fossil fuels or renewable energy sources for sale to PREPA or any other electric service company in accordance with a power purchase agreement. This shall not include persons that generate electric power for their own consumption by means of distributed generation that have net metering agreements with PREPA;





Since the approval of Regulation 8701, Act 57-2014 has been amended on multiple occasions, one of which was through the enactment of Act 17-2019. Act 17-2019 broadened the definition provided by Act 57-2014 to the term "Electric Service Company."<sup>27</sup> Specifically, Act 17-2019 included other types of Electric Service Companies, some which were not contemplated at the time of the approval of Regulation 8701.<sup>28</sup> Act 17-2019 also entrusted the Energy Bureau with the power to define other Electric Services and to identify additional types of Electric Service Companies.<sup>29</sup>

Under the power vested to the Energy Bureau through Act 17-2019, notwithstanding the types of Electric Services mentioned in Section 1.08(A)(5) of Regulation 8701, the Energy Bureau identifies other Electric Services explicitly included in Section 1.3 (l) and (pp) of Act 57-2014, as amended by Act 17-2019, such as transmission and distribution services, and grid services. The Energy Bureau also recognizes PREPA's successor and any Contractor under a Partnership or Sales Contract executed with PREPA Transactions under Act 120-2018 as Electric Service Companies, pursuant to Act 57-2014. The Energy Bureau considers that the list of Electric Services in Section 1.08(A)(5) of Regulation 8701 is not exhaustive and does not prevent the Energy Bureau from identifying additional types of Electric Services that Electric Service Companies can provide in Puerto Rico.

Consistent with the above, any Electric Service Company which type of service is identified in Act 57-2014 or that is otherwise defined as such by the Energy Bureau, including a Contractor under a Partnership Contract (e.g., LUMA), shall be subject to the duties applicable to Electric Service Companies. As for such duties, Section 1.10(f) of Act 17-2019<sup>30</sup> provides that an Electric Service Company must comply with the rules, regulations, orders, mandates, requests, and penalties issued by the Energy Bureau when performing its duties to regulate and oversee Puerto Rico's electrical system, and shall refrain from any action that may deny, stay, interfere, delay, or hinder the orders issued by the Energy Bureau.<sup>31</sup>

Section 6.16(a) of Act 57-2014 states that the Energy Bureau shall impose and collect fees to generate sufficient income to defray its operating and administrative expenses.<sup>32</sup> Accordingly, Section 6.16(b) establishes that such Regulatory Fee shall be fixed by the Energy Bureau proportionally based on the gross income generated by any person under its

c) Any natural or legal person that offers any of the following services:

- i. Electric power generation for sale in Puerto Rico through distributed generators that are interconnected to the PREPA power grid with an aggregate capacity of one megawatt (1 MW) or more, regardless of whether or not said distributed generators or the clients to whom the electric power is sold are participants of PREPA's Net Metering Program;
- ii. Electric power storage, where at least one storage unit has a nominal capacity of one megawatt (1 MW) or more;
- iii. Electric power billing; or
- iv. Electric power resale.

d) Any natural or legal person that carries out or offers electric power transmission (wheeling) service.

<sup>27</sup> 22 L.P.R.A. § 1141a(c).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Puerto Rico Energy Public Policy Act ("Act 17-2019").

<sup>31</sup> 22 L.P.R.A. § 1141i.

<sup>32</sup> 22 L.P.R.A. § 1054o(a).





jurisdiction from the provision of Electric Services, as determined by the Energy Bureau.<sup>33</sup> The Energy Bureau shall review annually the fee to be imposed on persons under its jurisdiction, in accordance with Section 6.16.<sup>34</sup> Section 6.16 also provides the following regarding the fees applicable to Electric Service Companies other than PREPA:

[...]

*(d) Any other person or electric power service company that earns profit from the rendering of electric power services as defined in this Act or as defined by the Energy Bureau shall pay a fee to the Bureau that shall not exceed point twenty five percent (.25%) of its annual gross income earned from the provision of such services in Puerto Rico. No electric power service company that has entered into a power purchase agreement, an interconnection agreement, a wheeling agreement, or any other agreement for rendering electric power services with the Authority or its successor may claim a refund for or include the expenses incurred in connection with the annual fee paid to the Energy Bureau in the computation of rates, the capacity fee, energy fee or any other fee or sum of money that such electric power service company collects from the Authority or its successor under such power purchase agreement, interconnection agreement, or wheeling agreement or an agreement for rendering electric power services. This provision shall apply to any electric power company under the jurisdiction of the Energy Bureau; provided that the contractual obligations with existing cogenerators arising from any agreements that are in effect as of the approval of this Act are not impaired.<sup>35</sup>*

*(e) Beginning Fiscal Year 2019-2020, the annual budget of the Energy Bureau shall be twenty million dollars (\$20,000,000) which shall be computed on the basis of a regulatory fee to be determined by the [Energy] Bureau, from the annual gross income of [PREPA] created by virtue of Act No. 83 of May 2, 1941, and electric power service Companies in Puerto Rico. [PREPA] or any electric power service company that operates the transmission and distribution network shall be required to collect from other electric power companies, pay and transfer the regulatory fee to the Energy Bureau as follows: a first payment of ten million dollars (\$10,000,000) on or before July 1st of each year and a second payment of ten million dollars (\$10,000,000) on or before January 1st of each year. Any delay in the payment of the regulatory fee shall entail a penalty equal to the interest rate applicable to private obligations as established by the Office of the Commissioner of Financial Institutions. **The provisions of this Section shall apply to every electric power service Company under the jurisdiction of the Energy Bureau;** provided that the contractual obligations to existing cogenerators under agreements in effect as of the effective date of this Act are not impaired. **No agreement entered into under [Act 120-2018], shall exempt contracting companies from the payment of the regulatory fee described in this Section.***

[...]<sup>36</sup>

Article 4 of Regulation 8701 provides for the Regulatory Fees applicable to Electric Service Companies. Section 4.01 establishes that Article 4 apply to every Electric Service Company that generates revenue from the rendering of Electric Services in Puerto Rico, including PREPA. Section 4.01 further provides that, for purposes of Article 4, "gross revenue" (i.e., gross income) refers to the business volume that an Electric Service Company generated as a result of rendering electric services in Puerto Rico, before any deduction by concept of operational, administrative or any other expenses. Section 4.02(A) and (B) establish the following regarding the Electric Service Companies' gross income:

<sup>33</sup> 22 L.P.R.A. § 1054o(b).

<sup>34</sup> *Id.*

<sup>35</sup> 22 L.P.R.A. § 1054o(d).

<sup>36</sup> (Emphasis added).





A) All electric service companies operating in Puerto Rico before this Regulation entered into force must inform, along with their Personal Information filing under Section 2.01 of this Regulation, the Annual Gross Income generated during each Natural Year, as well as the latest compiled or audited financial statements, if any, as is applicable in accordance with Subsections (E) and (F) of this Section. For the following periods, electric service companies must inform their Annual Gross Income within a period of sixty (60) days following the conclusion each Natural Year.

B) Any Electric Service Company that has not been operating in Puerto Rico prior to the entry into force of this Regulation and to whom the Energy Bureau has issued a Certification, must report its Annual Gross Income to the Energy Bureau within sixty (60) days after the end of the Natural Year, starting in the Year, starting in the year in which it has started its operations in Puerto Rico.

Section 4.03 of Regulation 8701 establishes that the Energy Bureau will calculate a Regulatory Fee, based on the gross income that an Electric Service Company generates on a Natural Year. Moreover: (1) a pro rata factor will be calculated for each Electric Service Company, including PREPA, dividing the income for each Natural Year of each Electric Service Company, including PREPA between the sum of the annual gross income of all the Electric Service Companies, including PREPA; (2) the Regulatory Fee for each Electric Service Company will be the product of the amount budgeted annually for the Energy Bureau—twenty million dollars (\$20,000,000)—and the pro rata factor established by the Energy Bureau in paragraph (1) of Section 4.03.

In connection with the above, on June 8, 2020, the Energy Bureau issued a Resolution in *In re: Enmienda al Reglamento Sobre Certificaciones, Cargos Anuales y Planes Operacionales de Compañías de Servicio Eléctrico en Puerto Rico*, Case No. CEPR-MI-2015-0006 (“June 8 Resolution”), through which it approved Regulation 9182. In the June 8 Resolution, the Energy Bureau explained that Act 17-2019 amended, among others, Section 6.16 of Act 57-2014 to include Subsection (e) which establishes that, beginning Fiscal Year 2019-2020, the annual budget of the Energy Bureau shall be twenty million dollars (\$20,000,000), and that PREPA and the Electric Service Companies in Puerto Rico would cover such budget.<sup>37</sup> Therefore, the Energy Bureau concluded that an integrated reading of the pertinent provisions of Section 6.16 show that Subsections (c)<sup>38</sup> and (d) applied from the enactment of Act 57-2014 to the end of Fiscal Year 2018-2019, while Subsection (e) would apply starting Fiscal Year 2019-2020.<sup>39</sup> The Regulatory Fee cap of point twenty-five percent (0.25%) of Electric Service Companies’ annual gross income is not applicable for calculating the Electric Service Companies’ Regulatory Fee beginning Fiscal Year 2019-2020.<sup>40</sup> Rather, the Regulatory Fee shall be calculated as provided in Article 4 of Regulation 8701.

## B. The T&D OMA

To determine ManagementCo’s and/or LUMA ServCo’s duties under Article 4 of Regulation 8701, it is necessary to examine the services that each company provides in accordance with the T&D OMA. The Recitals of the T&D OMA establish that PREPA wants to engage LUMA (*i.e.*, ManagementCo and LUMA ServCo) to provide the O&M Services, and that LUMA desires to provide the O&M Services for the T&D System in accordance with the T&D OMA. The Recitals also specifies that ManagementCo formed LUMA ServCo, a subsidiary service company, “**to provide substantially all of the services required under [the T&D OMA].**”<sup>41</sup>

<sup>37</sup> See, June 8 Resolution, p. 5.

<sup>38</sup> Subsection (c) is not relevant to this Resolution and Order since it pertains to PREPA’s Regulatory Fee.

<sup>39</sup> *Id.*, pp. 6-7.

<sup>40</sup> *Id.*, p. 7.

<sup>41</sup> (Emphasis added).





Section 5.1 of the T&D OMA establishes that LUMA shall provide the O&M Services “in exchange for [PREPA’s] payment to [LUMA] of all amounts owing to [LUMA] under [the T&D OMA].”<sup>42</sup> Article 7 of the T&D OMA explains LUMA’s compensation for the execution of the O&M Services. Pursuant to Section 7.2 of the T&D OMA, PREPA will pay for certain costs incurred by LUMA ServCo while providing O&M Services without markup for profit (i.e., the Pass-Through Expenditures). Still, in addition to the Pass-Through Expenditures, LUMA will be paid a Service Fee for rendering the O&M Services. As for LUMA’s Service Fee, Section 7.1 of the T&D OMA provides, among other things, the following:

**Section 7.1 Service Fee.**

*(a) Generally. In addition to [PREPA’s] funding or payment of T&D Pass-Through Expenditures, Generation Pass-Through Expenditures, Capital Improvements, Outage Event Costs and any other amounts that become due and owing to [LUMA] hereunder, from and after the Service Commencement Date, as compensation for the performance of the O&M Services, [PREPA] shall, in accordance with [the T&D OMA], pay [ManagementCo] a management service fee consisting of the Fixed Fee<sup>43</sup> and the Incentive Fee<sup>44</sup> (collectively, the “Service Fee”). [...]<sup>45</sup>*

The Service Fee mentioned in Section 7.1(a) of the T&D OMA shows that, aside from receiving a payment for certain incurred costs, LUMA will be compensated for LUMA ServCo’s provision of the O&M Services in relation to the T&D System. However, the parties to the T&D OMA also agreed upon certain conditions to the T&D OMA, denominated as the Puerto Rico Transmission and Distribution System Supplemental Terms Agreement (“STA”).<sup>46</sup> The STA specifies the compensation that LUMA received for the period covered between June 1, 2021, and May 30, 2022, from the rendering of O&M Services by LUMA ServCo to be paid in monthly installments. Section 3.3 of the STA provides the following:

**Section 3.3 Operator’s Compensation.** *In addition to [PREPA’s] funding or payment of T&D Pass-Through Expenditures, Generation Pass-Through Expenditures, Capital Improvements, Outage Event Costs and any other amounts that become due and owing to [LUMA] hereunder and under the [T&D OMA] (other than the Service Fee, as defined in the [T&D OMA]), as compensation for [LUMA’s] performance of the Interim Period Services, and solely for the duration of the Interim Period, [PREPA] shall pay [ManagementCo] an annual fixed management service fee equal to One Hundred Fifteen Million Dollars (US\$115,000,000.00) in 2020 Dollars, such amount to be adjusted for inflation in the manner set forth in Annex VIII (Service Fee) to the [T&D OMA] on the Interim Period Service Commencement Date and each twelve (12) month anniversary of the Interim Period Service Commencement Date thereafter (such fee, as adjusted, the “Interim Period Service Fee”). The Interim Period Service Fee shall be invoiced and paid on the same terms as the Fixed Fee as set forth in the [T&D OMA], provided that notwithstanding anything to the contrary in the [T&D OMA], the Interim Period Service Fee shall be paid in monthly installments, each due and payable by [PREPA] monthly in advance on the first Business Day of each month following the month in which [LUMA] has submitted an invoice pursuant to Section 7.1(b)(iii) (Service Fee – Fixed Fee) of the [T&D OMA], which invoice shall specify the monthly portion of the Interim Period Service Fee for the next succeeding month.<sup>47</sup>*

<sup>42</sup> (Emphasis added).

<sup>43</sup> As such term is defined in Subsection (b)(i).

<sup>44</sup> As such term is defined in Subsection (c)(i).

<sup>45</sup> (Emphasis added).

<sup>46</sup> See, Puerto Rico Transmission and Distribution System Supplemental Terms Agreement as of June 22, 2020, by and among the P3 Authority, PREPA, ManagementCo as ManagementCo and LUMA ServCo as ServCo.

<sup>47</sup> (Emphasis added).





LUMA ServCo is generating income from the provision of the O&M Services. According to Section 3.3 of the STA, LUMA ServCo is generating at least \$115,000,000.00 for the rendering of such services, which are detailed in Annex I to the T&D OMA. Annex I establish, among others, the following scope of services:

I. T&D System Operation Services.

A. General. **[LUMA] shall be responsible for all electric transmission, distribution,** load serving and related activities for the safe and reliable operation and maintenance of the T&D System, subject to the terms and conditions of the main body of the [T&D OMA], including [...] (3) **delivery of electricity to customers,** including the implementation of the activities set forth in Sections II.A and II.B of this Annex I (Scope of Services); (4) billing and collections implementation and optimization; (5) maintenance and improvement of public lighting system; [...] (7) compliance with interconnection of renewables in accordance with Applicable Law; (8) management of the System Operation Principles to meet safe and reliable system operations in accordance with Prudent Utility Practices and the System Operation Principles; and (9) recordkeeping and reporting in accordance with Applicable Law or Prudent Utility Practices.

B. Day-to-Day Operation. [LUMA] shall be responsible for the day-to-day operation of the T&D System, including [...] (2) management of all aspects of customer relationships, as required under Contract Standards and Applicable Law; (3) physical operation and maintenance of the T&D System; (4) 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); [...] (6) operating within the Contract Standards while operating to improve: reliability, cost of electricity to end users, cost and impact of planned maintenance and use of load shedding if required; [...]

C. System Operator Activities. [LUMA] shall serve the role of T&D System operator, including (1) managing control center operations, including generation scheduling and economic/reliable T&D System dispatch; (2) balancing the supply and demand of electricity, including reacting to changes in demand in real time, adjusting generation dispatch to be in balance with demand and maintaining the T&D System at safe operating levels in accordance with Prudent Utility Practices and System Operation Principles; (3) conduct T&D System planning activities; (4) develop and implement reliability standards appropriate for the conditions in Puerto Rico; and (5) manage a transparent, equitable and open generator interconnection process.

[...]

As further discussed below, in line with the abovementioned T&D OMA provisions, LUMA ServCo will perform O&M Services that comprise Electric Power Services, as defined by Sections 1.3(pp) and 1.3(l) of Act 57-2014. LUMA ServCo will earn a Service Fee for the provision of such services.

C. **Summary of LUMA ServCo's Assertions Regarding the Services Provided under the T&D OMA**

LUMA ServCo is a Limited Liability Company organized under the laws of Puerto Rico, and a wholly owned subsidiary of ManagementCo. In its Request for Certification and Operational Report, LUMA ServCo indicated that it was contracted along with its parent company to provide operation and maintenance services (i.e., the O&M Services) to PREPA's T&D System, which are defined in Article 5 of the T&D OMA and described in more detail in Annex I





thereto.<sup>48</sup> Such services include, among others (1) administrating and performing the T&D System's contracts, (2) performing billing and collection services for the T&D System, and (3) providing services related to the dispatch, scheduling or coordination of power and electricity from existing and future generation assets, among other services.<sup>49</sup>

Because of the services identified in Section 1.08(A)(5) of Regulation 8701, LUMA ServCo stated in its Request for Certification and Operational Report that the only one it would provide is energy billing.<sup>50</sup> LUMA ServCo stated that it will not be providing wheeling services, since wheeling is conducted by power generators, which it will not be. Rather, it argued that "[t]he revenues collected through rates that [LUMA ServCo] will charge to power generation companies who engage in wheeling will be captured within [LUMA ServCo's] overall T&D revenues."<sup>51</sup>

LUMA ServCo stated in its Request for Certification that the T&D OMA states that "PREPA will pay for the services to be provided by the Operator [(i.e., LUMA)] in the form of a Service Fee as well as certain T&D Pass-Through-Expenditures (which are costs and expenses incurred by [LUMA ServCo] in the course of providing O&M Services) through funding of certain service accounts."<sup>52</sup>

**D. Summary of ManagementCo's Assertions Regarding the Services provided under the T&D OMA**

ManagementCo is a Limited Liability Company organized under the laws of Puerto Rico. ManagementCo is the parent company of LUMA ServCo. In its Request for Certification and its Operational Report, ManagementCo indicated that it was contracted along with its subsidiary to provide O&M Services to PREPA's T&D System, which are defined in Article 5 of the T&D OMA and described in more detail in Annex I thereto.<sup>53</sup>

ManagementCo also stated that, by the period covered between June 22, 2020, and the Service Commencement Date under the T&D OMA -which would be a date not earlier than June 1, 2021- it was providing Front-End Transition Services, as defined in the T&D OMA, which did not involve any O&M Services, and it had no responsibility over the T&D System.<sup>54</sup> ManagementCo further asserted that such Front-End Transition Services commenced on the T&D OMA's effective date and would continue until the Service Commencement Date, as defined in the T&D OMA.<sup>55</sup> As part of its Request for Certification, ManagementCo argued that it would perform none of the categories of services considered to qualify as an Electric Service Company pursuant to Regulation 8701, but rather, it would be mainly providing oversight and management of LUMA ServCo, including the establishment and maintenance of a Board of Directors and the administration of ManagementCo.<sup>56</sup> In accordance with the foregoing, ManagementCo asserted that "[LUMA ServCo] will provide the majority of the

<sup>48</sup> See, LUMA ServCo's Request for Certification, *Section A(2)- Type of Electric Service*; LUMA ServCo's Operational Report, *Section A(2)- Type of Electric Service*.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* As further discussed above, the services that an Electric Service Company may provide are not limited by Section 1.08(A)(5) of Regulation 8701. Notably, the scope of the Electric Services is defined in Section 1.3 (pp) and (l) of Act 57-2014.

<sup>51</sup> *Id.*

<sup>52</sup> See, LUMA ServCo's Request for Certification, *Statement certified by a Certified Public accountant that attests the provisions of minimum financial resources of the company*.

<sup>53</sup> See, ManagementCo's Request for Certification, *Section A(2)- Type of Electric Service*; ManagementCo's Operational Report, *Section A(2)- Type of Electric Service*.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*





O&M Services which are described in Article 5 and Annex I of the T&D OMA.”<sup>57</sup> ManagementCo added the following:

***while [LUMA ServCo] will be providing electric services and qualify as an electric service company as defined in Regulation 8701, as explained above, [ManagementCo] will not be providing electric services and does not meet the definition of an electric service company under that regulation. Accordingly, [LUMA ServCo] will be generating revenues from the provision of electric services, while [ManagementCo] will not. Instead, [ManagementCo] will be paid by [LUMA ServCo] from the revenues generated by [LUMA ServCo], as per the OMA. [LUMA ServCo], as an electric service company will be filing all reports and paying all the fees applicable to the category of services that applies to it, including paying fees associated with its annual revenues.***<sup>58</sup>

ManagementCo further asserted that it filed its Request for Certification pursuant to the requirements established in Act 120-2018.<sup>59</sup>

**E. Applicability of Article 4 of Regulation 8701 to LUMA ServCo**<sup>60</sup>

In the June 27 Motion LUMA ServCo argues that, although the June 13 Order to LUMA ServCo pertains to the annual gross income reporting requirements under Regulation 8701 it filed its Annual Gross Revenue Report on June 20, 2022.<sup>61</sup> Therefore, LUMA ServCo intends to comply with such Order through the June 20 Filing.

In the Annual Gross Revenue Report included as part of the June 20 Filing, LUMA ServCo argued that, through the Resolution on LUMA ServCo Conditional Certification, the Energy Bureau acknowledged that LUMA ServCo stated in its Request for Certification it would provide energy billing services, and certified LUMA ServCo.<sup>62</sup> Therefore, LUMA ServCo states it is reporting an annual gross income of \$0.00, because it does not generate revenue from the provision of billing services or any other type of service, nor has any other type of revenue.<sup>63</sup> That is, LUMA ServCo argues that it does not generate gross income, as defined by Section 4.01 of Regulation 8701. LUMA ServCo argues that pursuant to the T&D OMA, it receives no income or revenue, but, all the payments it receives are reimbursements for the costs incurred as provided by Section 7.2 of the T&D OMA.<sup>64</sup>

In the Annual Gross Revenue Report included as part of the June 20 Filing, LUMA ServCo refers to an Administrative Determination issued by Francisco Parés Alicea, Secretary of the PRDOT, about “Taxation Rules Applicable to a Contractor that enters into a Public-Private Partnership Contract with a Partnering Government Entity for the Operation and Maintenance of a Function, Service or Facility” (identified as AD 20-06).<sup>65</sup> LUMA ServCo argues that the AD 20-06 establishes that “[i]n some Operation and Maintenance Partnership Contracts, the Partnering Government Entity is required to make payments to the Contractor in order to cover the Pass-Through Expenditures incurred by the Contractor on behalf of the Partnering Government Entity” and that “[s]uch payments constitute reimbursement for the

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* (Emphasis added).

<sup>59</sup> *Puerto Rico Electric Power System Transformation Act*, as amended (“Act 120-2018”).

<sup>60</sup> Documents referenced in this Part III.E pertain to *In re: Request for Certification LUMA Energy ServCo, LLC*, Case No. NEPR-CT-2020-0007.

<sup>61</sup> June 27 Motion, p. 2, ¶ 3.

<sup>62</sup> See, LUMA ServCo’s Annual Gross Income Report, *Information of Gross Revenue of the Electric Power Company*.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> See, Annual Gross Revenue Report, *Information of Gross Revenue of the Electric [Service] Company*.





costs incurred by the Contractor on behalf of the Partnering Government Entity in order to fulfill its obligations under the Operation and Maintenance Partnership Contract and will not be considered gross income or revenues of the Contractor.”<sup>66</sup> However, AD 20-06 is irrelevant to the issues that the Energy Bureau addresses through this Resolution and Order.

AD 20-06 states that pursuant to Section 12 of Act 29-2009, participants of a Public-Private Partnership may receive certain tax benefits in accordance with the agreements in a Partnership Contract, regarding the following: (1) property tax exemptions; (2) municipal license fees, excise taxes and other municipal taxes; and (3) income taxes.<sup>67</sup> AD 20-06 also provides that Article 12(a) of Act 29-2009 establishes certain tax treatment for Contractors of an Operation and Maintenance Partnership Contract regarding their income tax, specifically, a twenty percent (20%) fixed income tax rate on the net income derived from the operations in such contract.<sup>68</sup> Further, AD 20-06 states that, in some cases, a Contractor under an Operation and Maintenance Partnership Contract may be required to collect fees or charges on behalf of the Partnering Government Entity, and that such fees or charges are not to be gross income or revenues of the Contractor, since the Contractor would act as an intermediary between the Partnering Government Entity and a third-party customers or users.<sup>69</sup> AD 20-06 also provides that the payments a Partnering Government Entity makes to the Contractor to cover Pass-Through Expenditures incurred by the Contractor on behalf of the Partnering Government Entity shall be considered as reimbursements and not as gross income or revenues of the Contractor.<sup>70</sup>

As for the Sales and Use Taxes (“SUT”), AD 20-06 establishes that: (1) Contractors under an Operation and Maintenance Partnership Contract will be operating or acting on behalf or in the name of the Partnering Government Entity regarding the taxable items that the Contractor must acquire on behalf of the Partnering Entity or to fulfill its duty under such agreement and will not be subject to the payment of the SUT; and (2) the fees or charges imposed by a Partnering Government Entity pursuant to applicable legislation are subject to the Operation and Maintenance Partnership Contract, under which the Contractor merely acts as an intermediary in the collection of it and such fees or charges shall not be subject to the payment of the SUT.<sup>71</sup> AD 20-06 also provides that the acquisition of products otherwise subject to excise taxes by a Contractor under an Operation and Maintenance Partnership Contract with a Partnering Government Entity will not be subject to excise tax, if the Contractor must acquire such products on behalf or in the name of the Partnering Government Entity and the products must fulfill its obligations under the contract.<sup>72</sup>

Further, AD 20-06 states that a Contractor under an Operation and Maintenance Partnership Contract with a Partnering Government Entity will not be subject to the special tax established by Act 48-2013,<sup>73</sup> since the services rendered under such contract are not professional nor advisory services pursuant to Act 237-2004,<sup>74</sup> but the acts and duties that

<sup>66</sup> *Id.*

<sup>67</sup> AD 20-06, pp. 3-4.

<sup>68</sup> *Id.*, p. 4.

<sup>69</sup> *Id.*, pp. 4-5. Notably, AD 20-06 refers to the fees or charges collected by the Contractor on behalf of the Partnering Government Entity, and not to the fees or charges that the Contractor is paid for such collection services.

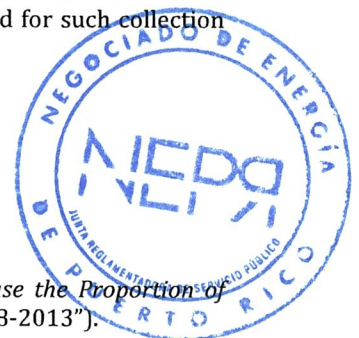
<sup>70</sup> *Id.*, pp. 5-6.

<sup>71</sup> *Id.*, pp. 6-9.

<sup>72</sup> *Id.*, p. 9.

<sup>73</sup> *Act to Establish a Special Contribution for Professional and Advisory Services; Increase the Proportion of Machines in Casinos and Restructure the Distribution of Said Earnings, as amended (“Act 48-2013”).*

<sup>74</sup> *Act to Establish Uniform Parameters in the Contracting Processes of Professional and Advisory Services for Agencies and Entities of the Commonwealth Government, as amended (“Act 237-2004”).*





the Partnering Government Entity is compelled to perform.<sup>75</sup> AD 20-06 also establishes that the contributions made by employees to the corresponding Government Retirement Plan, which are withheld from the employees' wages, will be made pre-tax and will not be considered taxable income to the employee's Withholding Statement in the year the contribution to the plan is withheld to the employee.<sup>76</sup> Likewise, any contributions to a Government Retirement Plan made by a Contractor under an Operation and Maintenance Partnership Contract with a Partnering Government Entity on behalf of such employees is not to be considered when taxable income to the employees.<sup>77</sup>

The Energy Bureau considers that AD 20-06 does not prevent LUMA ServCo from complying with its duties under Act 57-2014 and Regulation 8701. As shown above, AD 20-06 does not pertain to Electric Service Companies' duty to report their Annual Gross Income, nor to the Regulatory Fee that an Electric Service Company must pay pursuant to Act 57-2014 and Regulation 8701. Also, neither Act 57-2014 nor Regulation 8701 suggest that the Electric Service Companies' duty to report their annual gross income to the Energy Bureau is subject to the interpretations of the Secretary of the PRDOT regarding their tax treatment.

The Puerto Rico Secretary of Treasury clarifies in AD 20-06 that its determination "is intended to address certain Puerto Rico tax considerations that might be of general application to a Contractor entering into an Operation and Maintenance Partnership Contract [...]."<sup>78</sup> However, LUMA ServCo's obligations under Section 6.16 of Act 57-2014 and Article 4 of Regulation 8701 are not tax matters, but rather essential regulatory requirements for the Energy Bureau to perform its statutory obligations.

LUMA ServCo uses AD 20-06 to argue that its Pass-Through Expenditures under the T&D OMA are not gross income. Still, as discussed before, Pass-Through Expenditures are not the only payment that LUMA receives from rendering the O&M Services and will not be considered by the Energy Bureau as LUMA ServCo's gross income. **LUMA receives a Service Fee, which is the gross income that the Energy Bureau considers in this Resolution and Order.** Therefore, AD 20-06 is not controlling on the issues that pertain to this Resolution and Order.

As for LUMA ServCo's gross income, pursuant to the T&D OMA, ManagementCo formed LUMA ServCo to provide substantially all of the services required thereunder (*i.e.*, the O&M Services).<sup>79</sup> As discussed in Part III.B of this Resolution and Order, in accordance with Section 5.1 of the T&D OMA, LUMA ServCo provides the O&M Services **in exchange for PREPA's payment** of all amounts owing to LUMA under the T&D OMA. Such amounts, however, are not limited to Pass-Through Expenditures as LUMA ServCo suggests. Rather, pursuant to Section 7.1 of the T&D OMA and Section 3.3 of the STA, aside from Pass-Through Expenditures, Generation Pass-Through Expenditures, Capital Improvements, Outage Event Costs and any other amounts that become due to LUMA under the T&D OMA, **"as compensation for the performance of the O&M Services,"** PREPA will pay ManagementCo a management service fee consisting of the Fixed Fee and the Incentive Fee, as such terms are defined by the T&D OMA.<sup>80</sup>

As for the O&M Services provided by LUMA ServCo, Annex I to the T&D OMA explicitly establishes that LUMA (through LUMA ServCo) will be responsible for **all electric transmission and distribution**. Annex I also state that LUMA will be responsible for billing

<sup>75</sup> AD 20-06, pp. 9-10.

<sup>76</sup> *Id.*, pp. 10-11.

<sup>77</sup> *Id.*, p. 11.

<sup>78</sup> *See*, AD 20-06, p. 11, Section H.

<sup>79</sup> *See*, T&D OMA, Recitals.

<sup>80</sup> (Emphasis added).





services, which LUMA ServCo has acknowledged it would provide.<sup>81</sup> Both billing services as well as transmission and distribution services are considered Electric Services by Sections 1.3(pp) and 1.3(l) of Act 57-2014. Therefore, since LUMA ServCo renders such services, it is an Electric Service Company under Act 57-2014. Sections 1.3(pp) and 1.3(l) establish that any Contractor under a Partnership or Sales Contract executed in relation to PREPA Transactions conducted by Act 120-2018 (e.g., LUMA ServCo) shall be considered an Electric Service Company. LUMA ServCo is also an Electric Service Company because it is a Contractor under the T&D OMA, which is a Partnership Contract executed in relation to a PREPA Transaction conducted by Act 120-2018.

It is clear that LUMA ServCo performs Electric Services in Puerto Rico and generates income from the rendering of such services. LUMA ServCo is paid a Service Fee for the rendering of such Electric Services pursuant to Section 7.1 of the T&D OMA and, in the case of Natural Year 2021, Section 3.3 of the STA.

Although Section 7.1 of the T&D OMA and Section 3.3 of the STA state that the Service Fee will be paid to, ManagementCo acknowledged that LUMA ServCo is the entity that performs the majority of the O&M Services described in Article 5 and Annex I of the T&D OMA. That is, LUMA ServCo provides Electric Services, as defined by Section 1.3(pp) of Act 57-2014, which form a crucial part of the operation of the T&D System to deliver electricity to customers. Also, as recognized by ManagementCo, LUMA ServCo **"will be generating revenues from the provision of electric services"** and ManagementCo **"will be paid by [LUMA ServCo] from the revenues generated by [LUMA ServCo]."**<sup>82</sup> ManagementCo further indicated that "[LUMA ServCo], as an electric service company will be filing all reports and paying all the fees applicable to the category of services that applies to it, including paying fees associated with its annual revenues."<sup>83</sup>

Section 3.02 of the T&D OMA states that the only compensation payable by PREPA to Operator (LUMA ServCo and ManagementCo) for providing the O&M Services shall be the Service Fee. Section 7.1 of the T&D OMA and Section 3.3 of the STA state that PREPA shall pay the Service Fee to ManagementCo. ManagementCo is designated in the T&D OMA as the party directly receiving the compensation earned for providing the O&M Services. However, such designation (or assignment of payment) does not change the nature of the compensation or its payment. The compensation (and its payment) is still for the provision the O&M Services.<sup>84</sup> That is, among others, for the provision of transmission and distribution services as well as billing services, which are Electric Services. LUMA ServCo and ManagementCo (and to certain extent, the Energy Bureau)<sup>85</sup> recognize that the O&M Services are provided by LUMA ServCo.<sup>86</sup>

LUMA ServCo argues that it does not receive income under the T&D OMA and it does not have to pay the Regulatory Fee. The Energy Bureau does not agree. For the T&D OMA, the Energy Bureau acknowledges that the income generated by LUMA ServCo for providing the O&M Services is to some extent assigned to be received by ManagementCo. Nevertheless, the O&M Services are provided by LUMA ServCo. As stated in Part III.A of this Resolution and Order, all Electric Service Companies must pay the applicable Regulatory Fee. The Energy Bureau cannot endorse an interpretation of the T&D OMA whereby the income generated (and earned) by LUMA ServCo is attributed to a different entity (e.g.,

<sup>81</sup> See, LUMA ServCo's Request for Certification and Operational Report.

<sup>82</sup> See, ManagementCo's Request for Certification, *Section A(2)- Type of Electric Service*; ManagementCo's Operational Report, *Section A(2)- Type of Electric Service*. (Emphasis added).

<sup>83</sup> *Id.*

<sup>84</sup> For purposes of this Resolution and Order, the Energy Bureau considers irrelevant the motivation of the parties to designate ManagementCo as the direct recipient of the payment of the O&M Service Fee.

<sup>85</sup> See, Resolution on ManagementCo's Certification.

<sup>86</sup> See, ManagementCo's Request for Certification and Operational Report; LUMA ServCo's Request for Certification and Operational Report.





ManagementCo), particularly when this circumvents the obligation of an Electric Service Company (*e.g.*, LUMA ServCo) to pay the applicable Regulatory Fee. Therefore, the Energy Bureau **DETERMINES** that LUMA ServCo is the entity which earned the compensation for providing the O&M Services. **The Energy Bureau will consider the Service Fee as LUMA ServCo's gross income to determine the applicable Regulatory Fee.**

LUMA ServCo is subject to Article 4 of Regulation 8701.<sup>87</sup> Accordingly, LUMA ServCo has the duty to inform its annual gross income to the Energy Bureau based on the Service Fee, as established by Section 4.02 of Regulation 8701, and the Energy Bureau shall collect from LUMA ServCo an Regulatory Fee pursuant to Section 4.03 thereof.

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**F. Applicability of Article 4 of Regulation 8701 to ManagementCo<sup>88</sup>**

In its June 22 Motion, ManagementCo reiterates that it is not an Electric Service Company under Regulation 8701, it will not be providing electric services in Puerto Rico and it did not generate revenues on 2021 from rendering Electric Services.<sup>89</sup> Based on such assertions, ManagementCo argues that it is not subject to the reporting requirements of Section 4.02 of Regulation 8701.<sup>90</sup> ManagementCo also argues that the Energy Bureau's determination that ManagementCo failed to comply with Section 4.02 of Regulation 8701 is contrary to the Energy Bureau's Resolution on ManagementCo's Certification which establishes that ManagementCo must only comply with Section 2.01 of Regulation 8701, and not Article 4.<sup>91</sup>

The arguments in the June 22 Motion by ManagementCo regarding its services are consistent with the T&D OMA. As discussed above, the T&D OMA establishes that ManagementCo created LUMA ServCo to provide substantially all of the O&M Services.<sup>92</sup> Such arguments are also consistent with ManagementCo's and LUMA ServCo's Requests for Certification and Operational Report, through which they indicated that LUMA ServCo will provide the O&M Services.<sup>93</sup>

*M*  
The Energy Bureau **DETERMINES** that ManagementCo will not be providing Electric Services in Puerto Rico, but rather, it will provide oversight and management of LUMA ServCo which will perform the O&M Services. Such management and oversight do not constitute Electric Services under Act 57-2014 and Regulation 8701. ManagementCo will not generate revenue from the rendering of Electric Services and will not be subject to the duties established by Article 4 of Regulation 8701. ManagementCo shall not be required to file a Gross Revenue and Financial Statements Report nor to pay a Regulatory Fee based on its gross income. However, as discussed before -through the T&D OMA- LUMA ServCo assigned the gross income (Service Fee) it received for providing the O&M Services to ManagementCo. Therefore, nothing in this Resolution and Order shall be construed as a release of ManagementCo from the obligation to satisfy the applicable Regulatory Fee arising from the O&M Services should LUMA Servco not do so.

<sup>87</sup> Although LUMA ServCo indicated in its Request for Certification that it would only provide energy billing services, the Energy Bureau deems that such an assertion is irrelevant to the application of Article 4 of Regulation 8701 under the circumstances of this case.

<sup>88</sup> Documents referenced in this Part III.F pertain to *In re: Request for Certification LUMA Energy, LLC*, Case No. NEPR-CT-2020-0008.

<sup>89</sup> June 22 Motion, pp. 11-13.

<sup>90</sup> *Id.*, pp. 14-16.

<sup>91</sup> *Id.*, pp. 14, 17.

<sup>92</sup> *See*, T&D OMA, Recitals.

<sup>93</sup> *See*, ManagementCo's Request for Certification, *Section A(2)- Type of Electric Service*; ManagementCo's Operational Report, *Section A(2)- Type of Electric Service*; *See*, LUMA ServCo's Request for Certification, *Section A(2)- Type of Electric Service*; LUMA ServCo's Operational Report, *Section A(2)- Type of Electric Service*.





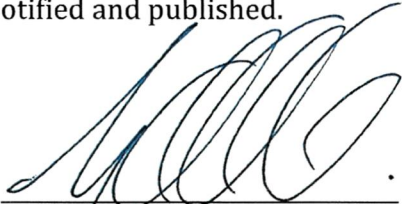
**IV. Conclusion**

For all the foregoing reasons, the Energy Bureau **DENIES** the June 27 Motion as it requests the Energy Bureau to vacate the June 13 Order to LUMA ServCo. The Energy Bureau **ORDERS** LUMA ServCo to file an Amended Gross Revenue and Financial Statements Report that reflects the annual gross income generated by LUMA ServCo in Natural Year 2021 from the rendering of Electric Services, as discussed above. This requirement will maintain its effectiveness throughout the period that LUMA ServCo provides the O&M Services.

The Energy Bureau **TAKES NOTICE** of the LUMA ServCo Updated Personal Information.

Also, regarding the June 22 Motion, the Energy Bureau **DETERMINES** that ManagementCo will not be required to file a Gross Revenue and Financial Statements Report generated in Natural Year 2021, nor any year thereafter, from the rendering of Electric Services.

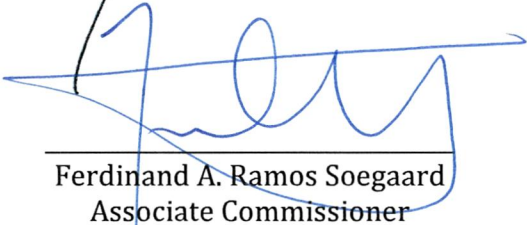
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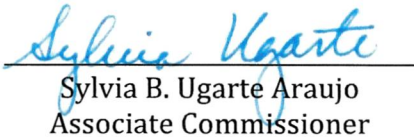
Edison Avilés Deliz  
Chairman



Lillian Mateo Santos  
Associate Commissioner



Ferdinand A. Ramos Soegaard  
Associate Commissioner



Sylvia B. Ugarte Araujo  
Associate Commissioner

**CERTIFICATION**

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on December 21, 2022. I also certify that on December 21, 2022 a copy of this Resolution and Order was notified by electronic mail to the following: ana.rodriguezrivera@us.dlapiper.com, laura.rozas@us.dlapiper.com. I also certify that today, December 21, 2022, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

I also certify that today, December 21, 2022, I have proceeded with the filing of the Resolution issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today December 21, 2022.

  
Sonia Seda Gaztambide  
Clerk