

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

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IN RE: REVIEW OF LUMA’S INITIAL  
BUDGETS

**CASE NO. NEPR-MI-2021-0004**

**SUBJECT: Motion for Reconsideration and/or  
Request for Clarifications of Resolution and Order of  
February 27, 2023, on LUMA’s Fiscal Year 2023  
Budget**

**MOTION FOR RECONSIDERATION AND/OR REQUEST FOR CLARIFICATIONS  
OF RESOLUTION AND ORDER OF FEBRUARY 27, 2023 ON LUMA’S FISCAL YEAR  
2023 CERTIFIED BUDGET AND REQUEST FOR STAY PENDING ADJUDICATION  
OF THE MOTION FOR RECONSIDERATION**

**TO THE HONORABLE PUERTO RICO ENERGY BUREAU:**

**COME NOW LUMA Energy, LLC** (“ManagementCo”), and **LUMA Energy ServCo, LLC** (“ServCo”), (jointly referred to as “LUMA”), and respectfully state and request the following:

**I. Introduction**

On February 27, 2023, this Honorable Puerto Rico Energy Bureau (“Energy Bureau”) issued a Resolution and Order with the subject “Determination on LUMA’s FY23 Annual Budgets and LUMA’s FY24 Annual Budgets pre-filing requirements” (“February 27<sup>th</sup> Order”). In the February 27<sup>th</sup> Order, this Energy Bureau approved the Certified Budget for FY 2023, subject to conditions and reporting requirements stated therein. As outlined in this Motion, LUMA respectfully requests reconsideration of several of the Energy Bureau’s orders and reporting determinations and offers clarifications. Given that the requests for reconsideration involve requirements that apply to LUMA’s reporting on the FY 2023 Certified Budget and LUMA’s

submission by April 15<sup>th</sup> of the proposed FY 2024 Budget, LUMA requests a stay of those requirements pending consideration by this Energy Bureau of this Motion.

The main purpose of this Motion is to request relief from several of the requirements set by the Energy Bureau that apply distinctively to LUMA and impose regulatory compliance duties. As will be discussed, the February 27<sup>th</sup> Order includes several orders, directives and requirements that impact LUMA individually and its duties and obligations under the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (“T&D OMA”), particularly the orders to accelerate the Vegetation Management Program remediation activities, reallocate funds to finance System Network Upgrades, budget for Federal Cost Sharing Matching Funds, and allocate additional funding for implementation of the Emergency Response Plan (“ERP”) in connection with Estimated Times of Restoration (“ETRs”).

Finally, this motion includes clarifications by LUMA regarding its role as agent for PREPA in connection with PREPA’s financial information and the orders for LUMA to submit PREPA’s financial information in connection with the Energy Bureau’s orders to streamline reporting between the Financial Oversight Management Board for Puerto Rico (“FOMB”) (“Certified Budget”) and this Energy Bureau, as stated in Attachment A of the February 27<sup>th</sup> Order.

## **II. Procedural Background**

1. On April 2, 2022, LUMA submitted to this Energy Bureau its Annual Budgets for Fiscal Years 2023 through 2025 (“Annual Budgets”). LUMA also submitted supporting workpapers on April 8, 2022.

2. On May 19, 2022, this Energy Bureau issued a Resolution and Order with the subject “Fiscal Year 2023 Annual Budget Review: Requirement of Information and Establishing a Procedural Calendar” (“May 19<sup>th</sup> Order”). This Energy Bureau issued one hundred and sixteen

(116) requests for information, stated in Attachments A through F of the May 19<sup>th</sup> Order. Additionally, in the May 19<sup>th</sup> Order, this Energy Bureau scheduled a Technical Conference for June 10, 2022, which conference convened and was canceled minutes after the record opened and witnesses were administered the oath or affirmation.

3. In compliance with the May 19<sup>th</sup> Order, through separate filings dated May 26, June 3 and June 7, 2022, LUMA and the Puerto Rico Electric Power Authority (“PREPA”) submitted their responses to the Energy Bureau’s Requirements for Information (“RFIs”).<sup>1</sup>

4. On July 13, 2022, LUMA filed a *Motion Submitting Fiscal Year 2023 Annual Budget as Approved by the Financial Oversight and Management Board for Puerto Rico* (the “Informative Motion”) whereby it submitted to this Energy Bureau the Fiscal Year 2023 Budget as certified by the FOMB.

5. On July 16, 2022, the Energy Bureau entered a Resolution and Order (the “July 16<sup>th</sup> Order”) whereby it took notice of the Certified Budget. In what is pertinent here, the Energy Bureau further determined to open a review of the Certified Budget. As part of such process, the Energy Bureau ordered LUMA to submit further responses to 9 RFIs included in the July 16<sup>th</sup> Order. In compliance with the July 16<sup>th</sup> Order, on July 29, 2022, LUMA submitted the information requested.

6. After other procedural developments, on August 12, 2022, this Energy Bureau entered a Resolution and Order through which, in its pertinent part, it issued a third revision to the procedural calendar as per which the virtual technical conference was postponed for September 9, 2022 (“August 12<sup>th</sup> Order”). In the August 12<sup>th</sup> Order, this Energy Bureau also issued seven (7) additional requests for information due on August 29, 2022.

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<sup>1</sup> LUMA responded to all of the Energy Bureau’s requirements, except for Requirements nos. A7, A8, A9, F1, F2, F3(A)-(C), F4, F5(A)-(E), F6(A)-(E), F7, F8, F9(A), F10(A)-(D) which were responded by PREPA.

7. On August 18, 2022, PREPA filed a *Request for Continuance of Technical Conference* which was granted through Resolution and Order entered on August 19, 2022. Therefore, the virtual technical conference was postponed to September 13, 2022.

8. On August 29, 2022, LUMA submitted its Responses in Compliance with the August 12<sup>th</sup> Order.

9. The first day of the Technical Conference on the Certified Budget was held on September 13, 2022 from 10:00 a.m. until past 5:00 p.m. (“September 13<sup>th</sup> Technical Conference”). Throughout the Technical Conference, this Energy Bureau and its consultants issued several additional RFIs. In total, the Energy Bureau issued eighteen (18) RFIs, some of which include several requests.

10. Close to 5:00 pm during the September 13<sup>th</sup> Technical Conference, this Energy Bureau determined that it was necessary to extend the Technical Conference for a second day and set the same for September 27, 2022.

11. Regarding the RFIs, at the close of the September 13<sup>th</sup> Technical Conference, this Energy Bureau indicated that it would issue a written order with the RFIs and granted LUMA until 5:00 pm on September 23, 2022 to submit its responses.

12. On September 20, 2022, this Energy Bureau issued a Resolution and Order whereby it issued an amended procedural calendar in this proceeding (“September 20<sup>th</sup> Order”). This Energy Bureau set the date for LUMA to file its responses to the RFIs for October 7, 2022. Further, this Energy Bureau scheduled the continuation of the Technical Conference for October 18, 2022.

13. On October 5, 2022, LUMA submitted a Motion styled *Urgent Request for Extension of Time to Submit Responses to Requests for Information and Request for an Agenda for the October 18th Technical Conference* (“October 5<sup>th</sup> Request for Extension”). In the October

5<sup>th</sup> Request for Extension, LUMA proposed to submit a first set of RFI responses by October 7<sup>th</sup> and requested that additional time beyond October 7<sup>th</sup>, until October 12, 2022, be granted to submit a second set of responses.

14. In compliance with the bench orders issued on September 13<sup>th</sup> and the September 20<sup>th</sup> Order, on October 7, 2022, LUMA submitted a first set of four (4) responses to the RFIs. In further compliance with the bench orders issued on September 13<sup>th</sup> and the September 20<sup>th</sup> Order, on October 12, 2022, LUMA submitted a second set of fourteen (14) responses to the RFIs as *Exhibit 1* to this motion. As part of its submission, LUMA requested that the redacted portions of responses to RFI number 13 of *Exhibit 1* be kept confidential by this honorable Energy Bureau pursuant to the Energy Bureau's Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 2016, and partially amended on September 16, 2016. In accordance with this policy, on October 24, 2022, LUMA submitted a Memorandum of Law in support of its request for confidentiality.

15. A second Technical Conference was held on October 18, 2022. LUMA's representatives appeared and answered questions posed by the Commissioners and consultants of this Energy Bureau. During the second Technical Conference, the Bureau issued bench orders with two (2) additional RFIs. In compliance therewith, on November 1, 2022 LUMA submitted its responses to those two (2) requests through a motion titled *Submission of Responses to Requests for Information in Compliance with Bench Orders Issued During Technical Conference of October 18, 2022*.

16. On November 14, 2022, LUMA filed a *Memorandum of Law in Support of Request for Confidentiality of Documents Submitted Under Seal with its November 1 Motion* in which it espoused the legal reasons for protecting the confidentiality of certain information.

17. On November 28, 2022, this Energy Bureau entered a Resolution and Order whereby it scheduled a confidential or closed Technical Conference for December 13, 2022 at 2:00 pm (AST) to facilitate its review of certain confidential information submitted by LUMA in response to the Energy Bureau's multiple RFIs in this proceeding. At LUMA's request, the conference was re-scheduled and celebrated on December 20<sup>th</sup>.

18. During the closed Technical Conference, the Energy Bureau issued another round of RFIs directed to LUMA. The Energy Bureau instructed that the responses to those RFI's should be provided by January 4, 2023.

19. LUMA moved for reconsideration of the deadline to comply with the additional RFI's and requested that the same be set on or around January 10<sup>th</sup> to allow some components of its internal team more working days to identify and produce the requested information. The honorable Energy Bureau denied such request.

20. On December 28, 2022, LUMA submitted a First Set of Responses to the Requests for Information issued during the closed Technical Conference. *See Motion Submitting First Set of Responses to Requests for Information Issued During December 20, 2022, Closed Technical Conference and Request for Confidential Treatment*. LUMA requested an extension of four (4) business days, or until today, January 12<sup>th</sup>, to submit the remaining responses to the RFIs issued by the Energy Bureau during the closed Technical Conference.

21. On January 11, 2023, LUMA filed a *Motion Submitting Responses to Pending Requests for Information Issued during December 20, 2022 Closed Technical Conference and Request for Confidential Treatment* ("January 11<sup>th</sup> Motion"). In addition, in the January 11<sup>th</sup> Motion LUMA informed that it would complete RFI-LUMA-MI-2021-0004-20221220-PREB-

001, sub-part (d) as soon as possible, because the persons who may confirm the information were out of the office.

22. On January 12, 2023, LUMA submitted its response to RFI-LUMA-MI-2021-0004-20221220-PREB-001, sub-part (d). *See Motion Submitting Response to RFI-LUMA-MI-2021-0004-20221220-PREB-001(d) Issued during the December 20, 2022 Closed Conference and Request for Confidential Treatment.* On January 26, 2023, LUMA submitted an Amended Response to RFI-LUMA-MI-2021-0004-20221220-PREB-001(d). *See Motion Submitting Response to RFI-LUMA-MI-2021-0004-20221220-PREB-001(d) Issued during the December 20, 2022 Closed Conference and Request for Confidential Treatment.*

23. On February 10, 2023, this honorable Energy Bureau issued a Resolution and Order whereby it ordered the Puerto Rico Electric Power Authority (“PREPA”) to present to LUMA for LUMA to file with the Energy Bureau (i) all the documentation PREPA submitted to the FOMB in connection with a certain letter dated January 11, 2023, from PREPA to the FOMB; and (ii) copy of the contracts that PREPA has subscribed in the past six (6) months regardless of their amount. In compliance with the February 10<sup>th</sup> Order, on February 17, 2023, LUMA submitted, on behalf of PREPA, the documents produced by PREPA in response to the February 10<sup>th</sup> Order. LUMA also submitted on behalf of PREPA, a list of the contracts executed by PREPA between August 1, 2022 and February 1, 2023. Finally, LUMA submitted on behalf of PREPA the PREPA contracts.

24. Finally, as stated above, on February 27, 2023, this Energy Bureau issued a Resolution and Order approving the Certified Budget, subject to conditions and reporting requirements.

### III. Requests for Reconsideration<sup>2</sup> and Clarifications and for Stay

LUMA hereby requests reconsideration and/or clarification of several of the orders and requirements set forth in the February 27<sup>th</sup> Order. This request is submitted in good faith to allow LUMA to implement the Certified Budget for FY 2023 and to provide clarity on specified requirements regarding proposed budgets for fiscal years 2024 and 2025. Given that the orders as to which LUMA requests reconsideration require action by LUMA for Q4 of FY 2023 and the proposed budget for FY 2024 to be filed by LUMA on April 15<sup>th</sup>, LUMA respectfully submits that it is in the public interest for this Energy Bureau to stay several of the requirements of the February 27<sup>th</sup> Order while it considers the Motion for Reconsideration.<sup>3</sup> This will afford the Energy Bureau time to consider LUMA's Motion for Reconsideration and avoid placing LUMA at risk of a finding by this Energy Bureau of non-compliance with the orders of this Energy Bureau or the imposition of sanctions or fines. LUMA respectfully submits that is putting forth important and weighty arguments in this Motion for Reconsideration that merit consideration prior to enforcement of the February 27<sup>th</sup> Order.

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<sup>2</sup> Reference is made to Section 11.01 of Bureau Regulation 8543, Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings, pursuant to which a party has twenty days to request reconsideration (providing that "Any party dissatisfied with the Commission's final decision may file a motion for reconsideration before the Commission, which shall state in detail the grounds supporting the petition and the remedy that, according to petitioner, the Commission should have granted," and adding that this request shall be filed and served in accordance with the terms and provisions of the Puerto Rico Uniform Administrative Procedure Act, Act 170 of August 12, 1988, which was repealed and substituted by Act 38-2017. Act 38-2017, on Section 3.15, 3 P.R. Laws Ann. § 9655, and allows a party adversely affected by a partial or final resolution or order to request reconsideration within 20 days of the notification of the resolution or order.) In this docket, this Energy Bureau has acknowledged and considered LUMA's requests for reconsideration. *See e.g.*, Resolution and Order of July 16, 2021, Case NEPR-MI-2021-0004 (ruling on LUMA's Motion for Clarification and/or Reconsideration of May 31 Resolution and Order Approving LUMA's Initial Budgets filed by LUMA on June 21, 2021).

<sup>3</sup> Reference is made to Section 11.01 of Regulation 8543, which provides that "upon request or on its own, vacate its final decision, relieve a party from complying with said resolution and order a new administrative hearing for any of the following, reasons: (i) newly discovered evidence that, despite reasonable diligence, could not have been discovered in time or presented at the hearing; (ii) fraud or misrepresentation by an opposing party; **or (iii) any other reason that justifies relief.**" (emphasis added).



LUMA's Motion for Reconsideration and this request to stay are meant to allow the Energy Bureau to have the opportunity to reconsider important aspects of its determinations included in the February 27<sup>th</sup> Order, before it requires that LUMA complies with the same. Absent a stay, LUMA's requests in the Motion for Reconsideration on Vegetation Management, Network Upgrades, Federal Cost Share Matching Funds, and funding for the ERP to issue ETRs, will become moot. This, because the February 27<sup>th</sup> Order requires that LUMA immediately apply the directives to implementation of Certified Budget for FY 2023 and LUMA's filing of a proposed Budget for FY 2024.

**A. Timeline for Vegetation Management**

On page 13 of the February 27<sup>th</sup> Order, this Energy Bureau directed LUMA to “iv) submit in the FY 2024 Budget a funding plan to complete the Vegetation Management Remediation Phase by H1 2026 with a detailed Timeline and Milestones and its plans for obtaining and maximizing Federal Funding.” *See* February 27<sup>th</sup> Order, page 13.

LUMA respectfully submits that the accelerated timeline required by this Energy Bureau to complete the tasks laid out in the approved Vegetation Management System Remediation Program is not feasible without maximizing federal funding. In the Vegetation Management Improvement Program approved by this Energy Bureau on May 31, 2021, LUMA included a timeline to reach remediated state in H2 FY 2026. *See* Vegetation Management Improvement Program, LUMA's Initial Budgets, page 271. Furthermore, in LUMA's Certified Budget for FY 2023, LUMA proposed a timeline for remediation by H2 FY 2027 that considers LUMA's experience in FY 2022 in implementing its Vegetation Management Plan, available capabilities, and the challenges associated with vegetation management as communicated in LUMA's quarterly reports. *See* Vegetation Management Improvement Program, page 234.

Per LUMA's analyses, federal funds would be needed to meet remediated state in the timeline set forth in the Vegetation Management Improvement Program at an accelerated pace by the first half of FY 2026. As this Energy Bureau knows, LUMA is able to submit proposed Scopes of Work to the Federal Emergency Management Agency, but the final determination whether a particular proposal is accepted is up to FEMA. While LUMA has received confirmation from the Federal Emergency Management Agency and COR 3 that vegetation clearing activities are eligible for federal funding under 406 Hazard Mitigation, LUMA is currently awaiting a final determination regarding the magnitude of 406 Hazard Mitigation funds that will be dedicated to vegetation clearing. The accelerated timeline to reach remediation by the first half of FY 2026 imposes an unduly abbreviated timeline that LUMA had not considered during the first two years of operations. LUMA continues to pursue funding under FEMA's 406 Hazard Mitigation. However, given that LUMA does not dictate whether and when federal funds will be available for vegetation clearing activities, it is not in a position at this time to commit to a plan to reach remediate stated by H1 2026.

LUMA continues to prioritize vegetation management activities and will file in due course, updated timelines to reach remediated state and maximize federal funding.

### **B. Orders to Fund Network Upgrades**

On page 17 of the February 27<sup>th</sup> Order, this Energy Bureau stated that:

While the federal funding process is pursued, the Energy Bureau ORDERS LUMA, for FY 2023 (4th Quarter) and FY 2024, to include in its Budget proposal, a specific allocation for Tranche 1 network upgrade funding and identify the priorities it utilized in determining the impact of reallocating those Non-Federal Funds. LUMA is directed to evaluate and determine the prioritization in a manner with the lowest potential impact on system reliability.

The Energy Bureau ORDERS LUMA to: (ii) while the federal funding process is being pursued to include a specific allocation for Tranche 1

network upgrade funding in its Q4 FY 2023 (4th Quarter) and FY 2024 Budget proposal and identify the priorities it utilized in determining the impact of reallocating Non-Federal Funds; and (ii) evaluate and determine the prioritization of such allocation in a manner that has the lowest potential impact on system reliability.

*See id.*, page 17.

LUMA respectfully requests reconsideration of the order to amend the Certified Budget for FY 2023 to include in the Fourth Quarter of FY 2024, a specific allocation for Tranche 1 network upgrade funding. LUMA also requests reconsideration of the order to allocate funds in the proposed Budget for FY 2024, for Tranche 1 network upgrades funding. LUMA proposes that the more prudent course of action is to allow LUMA to work with the developer of the approved projects and incorporate costs into the PPOA price to lessen the impact of these costs on customers.<sup>4</sup> *See Urgent Motion Requesting Reconsideration of Energy Bureau’s Resolution and Order of June 13, 2022, and Stay of All Directives Therein*, filed on June 22, 2022, and *Response to Resolution and Order of July 20, 2022, and Request for Technical Conference* filed on August 15, 2023, *Case In Re: Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan* and Exhibit 1 *Impact Analysis: Use of Federal Funding for System Upgrades Required for Interconnection of Tranche 1 Projects* (“August 15<sup>th</sup> Motion”), Case No. NEPR-MI-2020-0012.

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<sup>4</sup> LUMA respectfully submits 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. 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.

The actions needed to comply with those portions of the February 27<sup>th</sup> Order that require allocations of funds for network upgrades 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. Respectfully, these honorable Energy Bureau’s directives will have significant and serious impacts on customers and the T&D System.

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

The amount of \$78.3 million that LUMA currently has estimated in its submittal to this Energy Bureau of the initial Scope of Work for on Network Upgrades, filed on January 30, 2023 in Case No. NEPR-MI-2021-0002,<sup>5</sup> and that was approved by this Energy Bureau on February 22, 2023,<sup>6</sup> exceeds the total amount of the Non-Federally Funded Capital Budget in the Certified FY 2023 Budget of \$77.2 million that was approved by this Energy Bureau. *See* February 27<sup>th</sup> Order page 33. As a result, the implementation of the directives in the February 27<sup>th</sup> Order will require a fundamental change in LUMA’s capital expenditures for Q4 of FY 2023 and FY 2024, including the reprioritization (resulting in cancellation or delay) of Improvement Programs approved in the Initial Budgets and already included in LUMA’s Certified and approved FY 2023 Budget, which are programs necessary to reasonably assure that LUMA is able to carry out its responsibilities

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<sup>5</sup> Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2023/02/20230130-Motion-Submitting-Initial-Scope-of-Work-and-Request-for-Confidentiality-and-Supporting-Memorandum-of-Law.pdf>.

<sup>6</sup> Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2023/02/20230222-MI20210002-Resolution-and-Order.pdf>

under the T&D OMA. The Energy Bureau's directive constitutes 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 and Case No. 2022-0001).

As explained in the August 15<sup>th</sup> Motion, Case No. NEPR-MI-2020-0012, LUMA conducted an analysis of the implications of allocating funds from the Non-Federally Funded Capital Budget 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* August 15<sup>th</sup> Motion, Exhibit.

In what is relevant to this motion, LUMA 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. If the Network Upgrade costs are entirely allocated as non-federally funded capital, 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. This would result in delays to impactful reliability activities that are not currently eligible for federal funding, including but not limited to specific substation reliability programs and undergrounding repairs, which would not move forward in FY2024 and FY2025. The continued improvements that LUMA has been

making in respect to reliability would be negatively impacted and this will have major impacts to customers across the island. *See id.* Other impacts beyond reliability include continued public and employee safety risk, increased major customer outage event risk, slower renewable distributed generation interconnection pace, and continued OMS limitations. *See id.*

LUMA has also considered the possibility of 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, reduced distribution system maintenance, reduced customer service, and reduced IT-OT applications support and maintenance. *See id.*

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

The directives to allocate Non-Federally Funded Capital Budget in Q4 FY 2023 and FY 2024 for Network Upgrades also adversely affects LUMA’s ability to perform its responsibilities under the T&D OMA.

Under the T&D OMA, LUMA is charged with providing “management, operation, maintenance, repair, restoration and replacement” and other related services with respect to the [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 Standards<sup>7</sup> requiring compliance with Applicable Law<sup>8</sup>, Prudent Utility Practice<sup>9</sup>, and other standards, terms, conditions and requirements specified in the T&D OMA.

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 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

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<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> “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.

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)).

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 Improvements<sup>10</sup> 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-Federally Funded Capital Improvements, [...]”<sup>11</sup> (*see id.*).

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<sup>10</sup> “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.

<sup>11</sup> “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.



Furthermore, as this honorable Energy Bureau is aware, under the T&D OMA, LUMA<sup>12</sup> was required to prepare and submit to the P3 Authority and subsequently to this 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 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.

In addition, the T&D OMA required LUMA<sup>13</sup> 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)). 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,

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<sup>12</sup> Particularly, LUMA Energy, LLC.

<sup>13</sup> Particularly, LUMA Energy, LLC.

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 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”), 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, and in a filing of October 28, 2022, as required by this Energy Bureau, *see Submission of Revised Annex IX to the T&D OMA*, Case No. NEPR-AP-2020-0025. The Proposed Performance Metrics are under review by this honorable Energy Bureau. 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, 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.

The requirement to reallocate funds in the budget to fund Network Upgrades affects the aforementioned contractual responsibilities, including those that require LUMA to operate within Contract Standards to improve reliability and cost of electricity to end users; establish and conduct 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.

Due to potentially reduced investments on T&D operation, restoration, and maintenance work, it is foreseeable that performance in areas measured by metrics such as SAIFI and SAIDI, would be negatively impacted. Reallocation of funds in Q4 FY 2023 and FY 2024 to the Non-Federally Funded Capital Budget to fund the Network Upgrades will impact Improvement Programs under the transmission line, substation, distribution line improvement programs. In addition, there are potential non-reliability impacts that at a minimum would affect areas such as outage events, safety risks, speed of interconnections, and asset management, among others.

### **C. Federal Cost Share- FEMA PA Grant DR-4339-PR**

In the February 27<sup>th</sup> Order, this Energy Bureau referenced that LUMA's Certified Budget includes Improvement Programs that require federal funding but "without allocating requisite Cost Share." See February 27<sup>th</sup> Order, page 17. This Energy Bureau took notice of a letter by the Deputy Chief of Staff for Energy Affairs for the Governor of Puerto Rico, dated November 21, 2022 ("November 21<sup>st</sup> letter"). See *Supplemental Information Questions Posed in Technical Conference of October 18<sup>th</sup>, 2022*, Exhibit 1. In relevant part, in the November 21<sup>st</sup> letter, the Deputy Chief of Staff includes information on the availability of matching funds and the commitment of the Government of Puerto Rico to obtain matching funds. To wit, the November 21<sup>st</sup> letter states the following:

1) under the Housing and Urban Development (HUD) Community Development Block Grant for Disaster Recovery (CDBG-DR) includes an allocation of \$500MM for the ER1 program. This program will provide the required 10% matching for up to \$5,000MM in works to be

2) With the provided projections, the Government of Puerto Rico's fiscal team will initiate a plan to identify and allocate the required funds for the required matching when the CDBG-DR ER-1 program budget is used. Further details about the plan and funds identification will be shared and discussed with LUMA Energy; and

3) The works to improve and modernize the electric system are a top priority to the administration of Governor Pedro R. Pierluisi. We recognize the works to be performed under.

*Id.*

Furthermore, on page 18 of the February 27<sup>th</sup> Order, the Energy Bureau recognized the expectation of the Government of Puerto Rico that “matching funds [are] to be derived from sources outside of electric rates.” *See* February 27<sup>th</sup> Order, page 18. The Energy Bureau also recognized that the Government of Puerto Rico is responsible for obtaining the Federal Cost Share Matching Funds. Notwithstanding, this Energy Bureau directed that,

[t]o ensure that Federal Funding is not jeopardized due to the unavailability of matching funds . . . , **LUMA [shall] . . . include an allocation for these funds in its budgets, beginning in FY 2025 to account for the possibility that matching funds may not be available from other sources.** This would be reflected and evaluated in the rate case LUMA is required to file on August 1, 2023, for rates beginning in FY 2025.

*Id.* (emphasis added).

Also in connection with Federal Cost Sharing Matching Funds, this Energy Bureau directed in the February 27<sup>th</sup> Order that (1) “LUMA [shall] appropriately address the source and timing of obtaining Federal Cost Share Matching Funds and explain the impact upon its operations if the funds are not available and to report quarterly on its progress in obtaining the Federal Cost Share Matching Funds and include a line item in its budgets to reflect this number;” and (2) LUMA shall:

- (i) include, beginning in its FY 2024 Budgets, a line item to reflect Federal Cost Share Matching Funds; (ii) include, in its FY 2024 Quarterly Budget Reports, the identity, source and status of funding sources that have been identified to cover the necessary Federal Cost Share requirements for FEMA Public Assistance Grant DR-43 39-PR; and (iii) include in its Rate Filing for FY 2025, an allocation for required Federal Cost Share matching funds to ensure that if not received from other sources, those funds would be available in rates.

LUMA shares the Energy Bureau's concern regarding matching funds and will continue to provide support, as needed, to the Government to secure matching funds. However, it is the responsibility of the Government of Puerto Rico to identify and fund the cost share portion of the FEMA grants. The Government of Puerto Rico, COR3 and PREPA, as recipient and sub-recipients, are the ones responsible for identifying the necessary funding sources for LUMA to execute the federally funded work.

LUMA requests reconsideration of the afore-cited orders on Federal Cost Share Matching Funds. LUMA respectfully submits that at this time, it has not identified a prudent or available means to allocate funds or even quantify funds that may be needed if the matching funds that the Government of Puerto Rico is tasked with securing, are not available or run out on or prior to FY 2027. Although LUMA may assess the impact on its operations if the matching funds are eventually not available, it is not able to report on the efforts of a third party, the Government of Puerto Rico, to obtain Federal Cost Share Matching Funds. LUMA cannot predict when the federal government will enforce the Federal Cost Share Match and therefore is unable to budget for the cost share until the point at which it is enforced.

Furthermore, as explained above, LUMA's Improvement Programs would be affected if LUMA is required to allocate or use Non-Federally Funded Capital Budget while federal matching funds are pursued. In essence, the use of allocated non-federally funded capital programs for Cost Share Matching Funds in lieu of allocating the funds to budgeted transmission line, substation, distribution line improvement programs, would defer non-federally funded capital budget for transmission line, substation and distribution line improvement programs.

#### **D. Continuing High Priority Areas**

LUMA respectfully requests that this Energy Bureau reconsider that portion of the February 27<sup>th</sup> Order that requires “funding in the FY 2024 Budget to enable it to effectively conform to the [Emergency Response Plan], in particular, with respect to providing timely and granular [Estimated Times of Restoration]” and requires “funding in the FY 2024 Budget to install, test and fully implement the OMS so as to avoid the heavy reliance upon manual processes that is cited in the July 13 Petition.” *See* February 27<sup>th</sup> Order, page 24. LUMA has allocated resources to implement the ERP to enable LUMA, among others, to issue ETRs in accordance with the ERP. The expedited timeframes suggested by the Energy Bureau to issue ETRs, however, fail to consider the processes required by the ERP to issue ETRs.

Per the ERP, following a major outage event, LUMA proceeds with a preliminary damage assessment of the affected area and facilities when it is safe to do so. *See* Emergency Response Plan, filed on May 27, 2022, Case NEPR-MI-2019-0006, Section 7.1.8, Major Outage Restoration Annex A. The preliminary damage assessment can take several days and LUMA is unable to produce an ETR without the information gathered from the preliminary damage assessment. Following the preliminary damage assessment, LUMA utilizes the following tools and inputs to generate ETRs:

1. Reports of available resources to assist with response efforts, including personnel, materials and equipment, and fleet.
2. The number and level of critical customers on damaged infrastructure.
3. The extent of damage to infrastructure upstream of the customer (transmission lines, substations, feeders, and secondaries), including generation.
4. Historical restoration timelines from prior events.

5. External information provided from response partners including weather forecasts, facility access constraints, and debris accumulation reports.

Development and application of the abovementioned inputs and tools takes time. LUMA is continuing to improve the tools and systems used to generate ETRs and the accuracy and granularity will continue to improve as the systems they are developed from improve.

As explained, to issue initial ETRs LUMA must conduct a preliminary damages assessment that may take several days depending on the severity of the damage. LUMA is consistently improving process to improve ETR's. However, it has not identified additional investments that would enable it to comply with the Energy Bureau's orders in the short term. Additionally, LUMA is currently pursuing federal funding for multiple improvement programs to improve overall visibility and communication of grid assets, which include Energy Management System (EMS), Advanced Distribution Management System (ADMS), and Advanced Metering Infrastructure (AMI). These multiyear efforts will vastly improve our grid stability, reliability, response, and reportability.

#### **E. Additional Reporting Requirements: Streamlining of Reporting between FOMB and the Energy Bureau**

As the record of this proceeding shows, LUMA has complied with the quarterly and annual reporting requirements set forth by this Energy Bureau in connection with approval on May 31, 2021, of LUMA's Initial Budgets. LUMA will continue to submit quarterly and annual reports that track its spending and compliance with approved budgets. As will be explained, some of the additional reporting requirements that this Energy Bureau included in the February 27<sup>th</sup> Order, should be reconsidered, as LUMA' cannot provide or does not prepare or manage the financial information that this Energy Bureau has requested.

On page 29 of the February 27<sup>th</sup> Order, the Energy Bureau ordered “PREPA, LUMA and Genera to provide the information required in Exhibit 1, Section III of LUMA's July 13 Petition,” regarding PREPA’s financial reporting to the FOMB. In said page, the Energy Bureau also directed that LUMA shall “provide, as PREPA's agent, each document submitted to the FOMB as specified in the 2022 PREPA Fiscal Plan as Certified by FOMB on June 28, 2022 and shown in the table included as Attachment A of this Resolution and Order, in accordance with the timeframes thereby established. This should be considered a continuing request for future fiscal years.” *See* February 27<sup>th</sup> Order, page 29.

Regarding the order to produce “the information required in Exhibit 1, Section III of LUMA's July 13 Petition,” LUMA respectfully requests clarification that the information requested by this Energy Bureau is that contained in section 3 of III of Exhibit 1 or the entirety of III of Exhibit 1 of the July 13<sup>th</sup> Petition (page 5 of Exhibit 1).<sup>14</sup>

LUMA respectfully clarifies that it will submit to this Energy Bureau, on behalf of PREPA or Genera, as applicable, the information that PREPA or Genera produce to LUMA. However, this Energy Bureau should take notice of the fact that LUMA does not act as PREPA’s agent before the FOMB and thus, LUMA does not submit PREPA’s information to the FOMB. LUMA does not verify independently, the financial information that PREPA files with the FOMB.

*i. Grid Modernization Plan*

Regarding the requirement in Attachment A of the February 27<sup>th</sup> Order to submit a Grid Modernization Plan, it is clarified that LUMA currently submits to this Energy Bureau reports on grid modernization in the quarterly and annual reports that are filed with the Energy Bureau under

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<sup>14</sup> The July 13<sup>th</sup> Petition *is available* at <https://energia.pr.gov/wpcontent/uploads/sites/7/2022/07/20220713-Motion-Submitting-Fiscal-Year-2023-Annual-Budget-as-Approved-and-Certified-by-Financial-Oversight-and-Management-Board-for-Puerto-Rico-1.pdf>



dockets NEPR-MI-2021-0004, and NEPR-MI-2020-0019. LUMA sends that same submission to the FOMB. Thus, currently, LUMA and PREPA do not submit a Grid Modernization Plan to the FOMB.

*ii. Permanent and Emergency Work Related to Federal Funding Report*

Regarding the requirement in Attachment A of the February 27<sup>th</sup> Order to submit a Report on Permanent and Emergency Work Related to Federal Funding, it is clarified that LUMA does not produce this report to the FOMB. LUMA reports quarterly to FOMB through a link to the quarterly Federal Funding filings that are filed with this Energy Bureau under case number NEPR-MI-2021-0002.

*iii. Budget to Actuals*

In Attachment A of the February 27<sup>th</sup> Order, this Energy Bureau also requires reporting on Budgets to Actuals for GenCo and HoldCo based on a template to be provided by the FOMB. It is clarified that LUMA provides information to PREPA and PREPA submits its financial information to the FOMB. PREPA provides this information to the FOMB in line with the timing of the Quarterly Reports and Annual Reports submitted to the Energy Bureau. LUMA only completes the “Monthly Revenues” worksheet, rows 67-72 on the “Monthly Expenses” worksheet, and the “Variances Detail” worksheet(s), in line with GridCo requirements, as applicable. LUMA does not manage nor receive PREPA’s filings to the FOMB.

*iv. Accounts Receivable (AR)/Accounts Payable (AP) cash flow reporting*

Finally, regarding the Accounts Receivable (AR)/Accounts Payable (AP) cash flow reporting requirement of Attachment A of the February 27<sup>th</sup> Order, it is clarified that PREPA compiles, processes and manages these reports to the FOMB.

## **F. Generation Fleet Maintenance**

On page 15 of the February 27<sup>th</sup> Order, the Energy Bureau required LUMA “(i) to submit Quarterly reports detailing actual NME expenditures and associated activities; NME funding levels and associated activities will remain (\$99 million).” LUMA respectfully clarifies that to comply with this order, it will submit information that it receives from PREPA or Genera, as applicable. LUMA does not review PREPA’s spending and only provides administrative support under the direction of PREPA as a shared service.

**WHEREFORE**, LUMA respectfully requests that the honorable Bureau **take notice** of the aforementioned for all purposes; **reconsider and clarify** the February 27<sup>th</sup> Order as requested in this motion.

### **RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 20<sup>th</sup> day of March, 2023.

We hereby certify that this motion was filed using the electronic filing system of this Energy Bureau. We also certify that copy of this motion will be notified to the Puerto Rico Electric Power Authority, through its attorney of record: [jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law).



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