

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

NEPR
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IN RE:
IMPLEMENTATION OF THE PUERTO
RICO ELECTRIC POWER AUTHORITY
INTEGRATED RESOURCE PLAN AND
MODIFIED ACTION PLAN

CASE NO. NEPR-MI-2020-0012

**SUBJECT: Informative Motion on Execution of
Tranche 1 Interconnection Agreements, Request
for Determination Regarding Interconnection
Costs and Request for Confidential Treatment**

**INFORMATIVE MOTION ON EXECUTION OF TRANCHE 1 INTERCONNECTION
AGREEMENTS, REQUEST FOR DETERMINATION REGARDING
INTERCONNECTION COSTS AND REQUEST FOR CONFIDENTIAL TREATMENT**

COME NOW LUMA Energy ServCo, LLC and LUMA Energy, LLC (collectively “LUMA”), through the undersigned legal counsel, and respectfully inform and request the following:

I. Introduction

LUMA is pleased to inform this honorable Puerto Rico Energy Bureau (“Energy Bureau”) that, as of November 30, 2023, LUMA has executed thirteen (13) Interconnection Agreements with Tranche 1 proponents and one (1) non-Tranche 1 proponent, all identified in *Exhibit 1* hereto.¹ In order to move forward expeditiously with the necessary work for the interconnection of the these utility-scale renewable energy projects LUMA respectfully requests this Energy Bureau to approve 1) using the Purchase Power Charge Adjustment (“PPCA”) to cover the Interconnection Costs Discrepancies, as defined below, and 2) moving forward to conclude the EPC agreement with the EPC provider on the basis of the Bid Evaluation and Award Approval document for the EPC RFP discussed below (“BEAA”) so that LUMA can proceed with the negotiations with the

¹ Copies of these agreements which will be submitted to the Energy Bureau in the coming days.

EPC provider selected in LUMA’s procurement for the Tranche 1 interconnection works (“EPC RFP”). Delays in this approval may impact interconnection schedules.

II. Relevant Procedural History and Background

1. On April 4, 2023, the Energy Bureau issued a Resolution and Order (“April 4th Order”) in which it determined that Tranche 1 proponents would not assume the total costs of interconnection including any difference between the interconnection cost estimates provided by LUMA for the Tranche 1 projects (“Original Cost Estimates²”) and the interconnection costs established based on the EPC RFP (the “Final Interconnection Costs”) (these discrepancies, the “Interconnection Costs Discrepancies”).

2. On September 15, 2023, the Energy Bureau issued a Resolution and Order (“September 15th Order”) ordering LUMA to, within five (5) calendar days: (i) confirm that the interconnection costs for each Tranche 1 project only include the costs of the works necessary for the interconnection and reasonable oversight costs; (ii) include a detailed explanation for any Interconnection Costs Discrepancies; (iii) inform the estimated date in which LUMA would need funding for the Interconnection Costs Discrepancies to ensure the timely development and construction of the points of interconnection and the timely availability of the funds; (iv) present a proposal to obtain the funds required to offset the Interconnection Costs Discrepancies “(e.g., include in the PPCA reconciliation factor to be recuperated during the 24 months after achieving subsequent closing date)”; and (v) modify the terms of any Tranche 1 interconnection agreements to be aligned with the April 4th Order”. *See* September 15th Resolution and Order on page 3.

² These are the estimated costs set forth in the Interconnection Studies for these projects.

3. On September 20, 2023, the Energy Bureau issued a Resolution and Order (“September 20th Order”) extending the time to submit the above required information and ordering LUMA to submit the proposed modified interconnection agreements.

4. On September 22, 2023, LUMA filed the information required in the September 15th Order and September 20th Order. *See Motion to Comply with Resolution and Order of September 15, 2023, as Modified by Resolution and Order of September 20, 2023* of that date (“September 22nd Motion”). Exhibit 1 of that motion (“September 22 Exhibit 1”) included a proposal to obtain funds to offset the Interconnection Costs Discrepancies via the PPCA factor³ and included a table⁴ containing: (a) the Original Estimated Costs, comprised of the costs for the point of interconnection works plus the cost of LUMA’s project management (referred to as the “LUMA Interconnection Works”); the Final Interconnection Costs, comprised of the lump sum of EPC RFP’s selected proponent’s proposal⁵ plus the costs of the associated LUMA Interconnection Works; and the Interconnection Costs Discrepancies⁶ (Final Interconnection Costs minus Estimated Costs).

6. On September 26, 2023, the Energy Bureau issued a Resolution and Order determining that LUMA complied with the September 15th Order and approving the proposed amendments to the interconnection agreements.

7. On October 10, 2023, LUMA met with the Energy Bureau Commissioners regarding the Tranche 1 interconnection costs. As a result, LUMA submitted a document with additional information on the Original Estimated Costs and including copy of LUMA’s BEAA

³ See September 22 Exhibit 1, “Response: RFI-LUMA-MI-2020-0012-20230915-PREB-003 and Response: RFI-LUMA-MI-2020-0012-20230915-PREB-004.

⁴ This table was submitted as part of “Response: RFI-LUMA-MI-2020-0012-20230915-PREB-02”.

⁵ These Final Interconnection Costs should be updated to reflect the most recent point of interconnection costs submitted in Exhibit 2 herein, as explained below.

⁶ This amount should also vary based on the most recent interconnection costs submitted in Exhibit 1.

with the selected EPC provider's costs. Copy of this document is submitted herein as *Exhibit 2* in confidential and redacted form. LUMA respectfully requests that portions of *Exhibit 2* be kept under seal of confidentiality per the supporting Memorandum of Law included in *Exhibit 2*.

III. Request

8. LUMA respectfully submits that it is now imperative that LUMA have certainty regarding the source and mechanism for recovery of funding to cover the Interconnection Costs Discrepancies, so that LUMA can proceed with the final negotiations with the selected EPC provider. It is important that these negotiations occur in a timely manner to ensure prices are kept as low as possible, as well as that the PPCA proposal be implemented early to reduce the overall impact on customer rates and ensure sufficient cash flow to meet EPC contract obligations. Therefore, LUMA respectfully requests the Energy Bureau to approve LUMA's proposal to recover the Interconnection Costs Discrepancies, through the PPCA factor- these discrepancies being the difference between the Original Interconnection Costs and the Final Interconnection Costs (the latter comprised of the EPC provider's lump sum in the BEAA⁷, plus the costs of the LUMA Interconnection Works included in September 22nd Exhibit 1 (this latter amount being recovered as the actual costs incurred by LUMA)).

WHEREFORE, LUMA respectfully requests the Energy Bureau to **take notice** of the aforementioned; **approve** the recovery of the Interconnection Costs Discrepancies through the PPCA factor submitted in the September 22nd Motion, as these Interconnection Costs Discrepancies are defined in this motion; **approve** moving forward to conclude the EPC agreement with the EPC provider BEAA; and **grant** the request for confidential treatment of *Exhibit 2* herein.

⁷ Minus the Network Upgrades costs.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 6th day of December 2023.

We hereby certify that we filed this motion using the electronic filing system of this Puerto Rico Energy Bureau and that a copy of this motion was notified by email to lionel.santa@prepa.com, alopez@sbglaw.com; jfr@sbglaw.com; jlago@sbglaw.com.



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Exhibit 1

INTERCONNECTION AGREEMENTS EXECUTED AS OF DECEMBER 1, 2023

Interconnection Customer	Location/ Type	Dated
Convergent Coamo Energy Storage 1 LLC	Coamo/ PV	September 28, 2023
YFN Yabucoa Solar, LLC	Yabucoa/ PV	September 28, 2023
Solaner Puerto Rico One, LLC	San German/PV	September 28, 2023
Ciro Two Salinas LLC	Salinas/ PV	November 21, 2023
Ciro One Salinas LLC	Salinas/ PV	November 21, 2023
Guayama Solar Energy, LLC	Guayama/ PV	November 22, 2023
CS-UR Juncos PV LLC	Juncos/ PV	November 28, 2023
Pattern Barceloneta Solar LLC	Barceloneta/ PV	November 29, 2023
Go Green USA America Corp	Yabucoa/ PV	October 19, 2023
Tetris Power, LLC	Arecibo/PV	November 29, 2023
Clean Flexible Energy, LLC	Jobos/ PV	November 30, 2023
Clean Flexible Energy, LLC	Salinas/ PV	November 30, 2023
Clean Flexible Energy, LLC	Salinas/ BESS	November 30, 2023
Clean Flexible Energy, LLC	Jobos/BESS	November 30, 2023

Exhibit 2

Additional Information and BEAA

[Submitted under seal of confidentiality- redacted and unredacted versions provided]

LUMA's methodology for calculating LUMA interconnection works.

Response: RFI-LUMA-MI-2020-0012-20231010-PREB-#0001

SUBJECT

TOPIC #1 **LUMA Interconnection Works Cost Estimates Methodology**

REQUEST

How are the LUMA interconnection costs estimated, and how does the methodology for those costs change after the RFP for the EPC work is conducted?

RESPONSE

The LUMA Interconnection Works (also referred to in the Interconnection Agreements as the "T&D System Operator's Interconnection Works") comprise the functions and activities described in Appendix D of the Interconnection Studies provided to developers prior to their submittal of Best and Final Offers, as well as the functions described in the Interconnection Customers' PPOA/ESSAs performed by the Technical Expert.

The worksheet attached here as Annex A provides the tasks and costs of the LUMA Interconnection Works estimated for each project. The cost estimation team works with the capital projects team to refine the rates assigned to each task on the basis of criteria that can impact the project, such as duration, topography, or known physical constraints to construction. The main cost driver used for the cost estimating process during the 30% design phase is the EPC cost. Tasks or costs that are considered fixed per project are identified as such and do not vary from one project to another unless otherwise determined by the estimating and capital projects teams.

The cost estimating methodology does not change between the initial 30% design phase and after the RFP for the EPC contractor is conducted. This is the case because the basis for the 30% cost design does not vary and is the standard industry practice. As the EPC contractor develops its 60% and 90% designs and the specific project plan, the LUMA Interconnection Works scope will be further refined.

During the design of the Tranche Procurement process, LUMA has communicated to the RFP coordinators the expected process for managing the cost discrepancies (if any) between the estimated costs and the actual costs at the completion of each project. At the end of each project, the project developer would receive a refund in the event the actual costs were less than the estimates, or in the alternative, LUMA would invoice the developer for costs actually incurred in excess of the estimate. In the case of Tranche 1, as per Energy Bureau orders of April 4, 2023, and September 15, 2023, in case NEPR-MI-2020-0012, costs incurred in excess of the Class 3 estimate will not be charged to the Tranche 1 project developer. The cost variances will occur primarily due to the following project characteristics:

- *Civil works*

- *Environmental and Civil Works Permits*
- *Project duration*
- *Changes in project scope during execution*
- *Contingency costs evaluated by the Capital Programs team in coordination with the Estimating team.*

LUMA's Interconnection Works calculations do not include a profit component- that is, there is no profit to PREPA or LUMA from the activities performed.

SUBJECT

Topic #2 Sectionalizer Facilities Requirement Change between Tranche 1 and Tranche 2

- *LUMA changed the Facility requirement for the construction of a sectionalizer between the Tranche 1 Facility Studies in Spring of 2022 (Tranche 1) and for Tranche 2 projects in September 2023. Specifically changing from a straight Bus configuration to a Breaker and a Half configuration.*

REQUEST

- *The commissioners questioned the reasoning for the change and LUMA responded that the change was due to the breaker and a half's capability differences, offering greater flexibility, lower load shed expectations, and added capacity for new project interconnections.*
- *The Commissioners questioned the necessity versus the convenience of such a change and asked LUMA to provide detail on the attribute difference between the two configurations and how LUMA arrived at the conclusion to change its standard.*
- *Commissioner Mateo raised questions as to whether an exception to the Breaker and Half requirement could be made in some circumstances, such as, for example, in cases in which additional breakers are not anticipated to be needed. She requested that when the breakdown for each project is submitted, the real operational situation be described and why the Breaker and a Half option is better.*

RESPONSE

The Breaker-and-a-Half (BAAH) configuration is the standard configuration selected by LUMA to intercept and sectionalize transmission lines in Tranche 2. This configuration, , delivers operational efficiency and high reliability of the system, compared to a straight bus configuration. This configuration also ensures that the system can handle contingencies and support maintenance activities without needing to take the entire substation out of service. Additionally, this configuration will expedite potential future interconnections or project expansions and facilitate interconnection of additional renewables to the sectionalizer sites. This is a highly likely possibility, considering there are five (5) pending Tranches after Tranche 1. The facility design includes only the equipment (i.e., breakers and associated equipment) necessary to interconnect the proposed project and in-and-out of the intercepted transmission line. This standard substation configuration allows LUMA to deliver its Class 3 design and cost-estimates in a timely manner for the Procurement Process while meeting LUMA's operational requirements. LUMA may consider simpler configurations for certain 38KV interconnections where expansion potential is limited.

SUBJECT

Topic #3 Accounting for LUMA Interconnection Works

REQUEST

Where and how are such LUMA Works incorporated in the "Other Revenues" line item of the Budget and how does this impact the ratepayers

RESPONSE

Point of Interconnection ("POI") construction and its associated LUMA Interconnection Works are not part of LUMA's Operating Expenditures or Capital Expenditures Budgets. The LUMA Interconnection Works are performed by existing LUMA resources supplemented with additional resources as needed to ensure the timely completion of the works. In the original RFP design, the Tranche 1 project developer pays for the entire costs of the construction of the POI (including the LUMA Interconnection Works), which the ratepayers then pay as part of the rate invoiced by the project developers under their PPOA. PREPA's payment of PPOA invoices is funded through the Power Purchase Cost Adjustment clause (PPCA).

In order to account for the actual costs associated to the POI construction, LUMA assigns each Tranche project a charge code. The actual costs of the POI construction and LUMA Interconnection Works are accounted for under this charge code. LUMA personnel assigned to the LUMA interconnection Works, charge their time to each specific project's charge code. The Project Manager is responsible for reconciling project time and resources for his/her project. At the end of each project, the generation project developer would receive a refund in the event the actual costs were less than the estimated costs, or, in the alternative, LUMA would invoice the developer for costs actually incurred in excess of the estimate.

Since POI and capital project costs have funding sources that are different from those for the costs of other Operating Expenditures and Capital Expenditures (for purposes of this discussion, "Other O&M Services") (i.e., the costs for the Other O&M Services are included in the budgets to be covered by the base rate (for purposes of this discussion, "Operating Expenditures and Capital Expenditures Budgets")), the POI and capital project costs are included in a budget that is separate from the Operating Expenditures and Capital Expenditures Budgets.

In the case of new Interconnection Customers such as those selected as part of Tranche 1, the Energy Bureau has capped the cost paid by developers, as per the Energy Bureau orders of April 4, 2023, and September 15, 2023, in case NEPR-MI-2020-0012. Therefore, in those cases, if the actual POI costs are higher than the estimated POI costs, the difference will not be charged to the Tranche 1 project developer. LUMA has proposed that this difference be funded with the PPCA (and therefore paid by the ratepayer) as a cost associated with the Tranche 1 PPOAs. This proposal is awaiting Energy Bureau approval.

LUMA employee time is not double counted. Employee time is allotted between projects as illustrated in the example below. The hours a LUMA employee charges to an interconnection project do not get charged under the Operating Expenditures and Capital Budgets. As a further example, if an employee works an 8-hour day and works 2 hours on a capital project and 6 hours on Other O&M Services, only 25% of their cost would be charged to the specific capital project and 75% of their cost would be charged as an Operating Expenditures or Capital Budgets cost.

Scenario 1 - Employees are assigned only to budgeted operating activities					
FTE	Scope	Budgeted Tasks Units	Interconnection Tasks Units	Total Cost Units	
1	Protections	100	0	100	
1	Project Management	100	0	100	
1	System Operations	100	0	100	
1	Quality	100	0	100	
1	Administrative	100	0	100	
1	Other	100	0	100	
		600	0	600	
Scenario 2 - Employees are assigned to both budgeted operating activities and interconnection activities					
FTE	Scope	Budgeted Tasks Units	Interconnection Tasks Units	Total Cost Units	
1	Protections	90	10	100	
1	Project Management	50	50	100	
1	System Operations	80	20	100	
1	Quality	90	10	100	
1	Administrative	75	25	100	
1	Other	80	20	100	
1	New FTE Specific to Interconnection	0	100	100	
		465	235	700	

SUBJECT

TOPIC #4 Bid Evaluation and Award Approval (BEAA) documentation for Energy Bureau approval

REQUEST

Please find the attached Bid Evaluation and Award Approval (BEAA) documentation for the Point of Interconnection Engineering, Procurement, and Construction works for Tranche 1. LUMA respectfully requests the Energy Bureau’s approval to award the applicable projects once each of the project developers’ issues LUMA the NTP pursuant to their respective LGIAs.

Approval of the BEAA by the Energy Bureau will facilitate further analysis by LUMA’s departments to refine its estimates and resource plans for timely completion of the Points of Interconnection.

Furthermore, LUMA requests an informal technical conference to discuss the funding of the cost discrepancy via the Power Purchase Cost Adjustment.

REQUEST FOR CONFIDENTIAL TREATMENT

LUMA hereby respectfully requests that the Energy Bureau maintain the documents in Annex A and the BEAA submitted herewith under seal of confidentiality 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. LUMA is submitting a Memorandum of Law herewith in support of this request.

ANNEX A-2 LUMA INTERCONNECTION WORKS

ITEM	DESCRIPTION	Reconciliation Method and Backup
Permitting and Assessments	Permiso Consolidado en la OGPe & otros que sean requeridos. Trabajos seran realizados por personal de LUMA. Este costo incluye el costo del Permiso Consolidado.	Evidencia del Permiso y su Aprobacion + Certifica de nomina por LUMA Energy
IA Agency Notification and Consultation	Notificacion y manejo de documentacion a diversas agencias estatales y federales, sobre el proyecto.	Evidencia de las gestiones realizadas, incluyend documentos + Certificacion de nomina por LUMA Energy
IA Municipal Relations & Notifications	Comunicacion con los municipios y sus oficiales - representantes, incluyendo vistas publicas.	Evidencia de las gestiones realizadas, incluyend documentos + Certificacion de nomina por LUMA Energy
IA Control Center & Quality Control	Trabajos relacionados con la calidad de los trabajos, el control de documentos, las auditorías - el seguimiento y cualquier otra gestión que garantice que los trabajos se realizan de acuerdo con las normas y códigos aplicables. Estos trabajos pueden ser in situ, así como en las oficinas centrales y regionales de LUMA Energy.	Certificacion de nomina por LUMA Energy
Revision and Training	Relacionados con los informes que hay que rellenar para cada proyecto. Ejemplo: Manifiesto de transporte, residuos sólidos regulares y peligrosos. Plan de control de la erosión y la sedimentación, etc.	Certificacion de nomina por LUMA Energy
Performance Bond	Fianza proporcionada por un banco o una compañía de seguros para garantizar que el proveedor cumplirá lo establecido en el contrato y sus obligaciones en las condiciones acordadas.	Debe mostrar evidencia de la adquisicion de este la aseguradora.
Transportation Expenses	Se considera el uso de esta partida para los gastos relacionados con el uso de vehículos (propios o alquilados) para las inspecciones del proyecto o cualquier otra gestión necesaria. También se considera el uso de este rubro en caso de emergencias como: paro de camioneros, equipo de transporte dañado, flete, entre otros.	Factura o Certificacion por LUMA Energy
Security (Field 24 hr)	Vigilar directamente el equipo que se utilizará en el proyecto, incluidos los componentes principales. Garantizar que no haya robos internos o externos. Por ello, para impulsar una actividad en cualquier sector de la industria es imprescindible prevenir y limitar los riesgos; se puede decir que cuanto mayor es la producción, mayor es el reto de asegurar los activos de la empresa y del mismo personal que trabaja en ella. Todo sector requiere la aplicación de medidas de seguridad y vigilancia, tanto preventivas como reactivas.	Factura o Certificacion por LUMA Energy
Waste Disposal	La eliminación y el reciclaje, si es necesario, de los equipos relacionados con las obras eléctricas y de construcción, incluidos los Residuos No Peligrosos y los Residuos Peligrosos definidos por la normativa aplicable. Todos los residuos deben ser gestionados, según su tipo, lo que puede incluir la recogida selectiva, el almacenamiento temporal en una zona definida para ello y el transporte hasta el lugar de eliminación final.	Factura o Certificacion por LUMA Energy
Title Administration	Fue creada por la Ley 13 del 16 de mayo de 1962. LUMA Energia es la administradora de los terrenos donde se ubican las instalaciones eléctricas relacionadas con subestaciones, transmisión y distribución. Cualquier adición de terrenos a los proyectos existentes debe hacerse a través de la gestión de las oficinas correspondientes de LUMA Energia. LUMA se encargará de todos los trámites relacionados y cumplirá con todas las leyes estatales y federales aplicables.	Certificacion de nomina por LUMA Energy
Environmental Documentation & Management	Algunas de las leyes estatales que deben cumplirse, según corresponda, son: Ley de Política Pública Ambiental (Ley 416 de 2004); Ley para Fomentar el Reciclaje y Disposición de Equipos Electrónicos de Puerto Rico (Ley 18 de 2012); Ley para el Manejo de Residuos Biomédicos (Ley 180 de 2008); Ley para Establecer la Política Pública del Estado Libre Asociado sobre Desarrollo Sustentable (Ley 267 de 2004); Ley para el Manejo Adecuado del Aceite Usado en Puerto Rico (Ley 172 de 1996); Ley para Promover la Reducción de Residuos Peligrosos en Puerto Rico (Ley 10 de 1995).	Certificacion de nomina por LUMA Energy
Installation and Transmission Civil Support	Apoyo en las areas tecnicas de interconecion electrica.	Certificacion de nomina por LUMA Energy
Contracting, Procurement & Contract Administration	Preparacion de contratos, administracion del mismo y procesos de compras y otros.	Certificacion de nomina por LUMA Energy
Engineering Support & Assessment	Verificacion de los disenos, evaluaciones de los proyectos, incluyendo los documentos, etc.	Certificacion de nomina por LUMA Energy
Project Management (Develop, Design, Construction & Closeure)	Gerencia y manejo del proyecto, desde el proceso de originacion, planificacion, desarrollo, ejecucion y cierre.	Certificacion de nomina por LUMA Energy
Projects Controls (Scheduling, Estimating, Budget, Cost Control, Risk, Document Control & Reporting)	Gerencia y manejo en las areas de control del proyecto. Esto incluye multiples areas de trabajo que interactuan directamente con cada uno de los proyectos.	Certificacion de nomina por LUMA Energy
Construction, Management, Planning & Commissioning	Trabajo de Supervision, Planificacion, Inspeccion, aceptacion de los trabajos de construccion.	Certificacion de nomina por LUMA Energy
Legal, Finance & Accounting	Preparacion y tramitacion de facturas y otros documentos legales y de finanzas.	Certificacion de nomina por LUMA Energy



This Form is LUMA's internal document used to Summarize and Award Contracts.

[Redacted content]

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

CASE NO. NEPR-MI-2020-0012

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

SUBJECT: Memorandum of Law in Support of Request for Confidential Treatment of Attachments to Response Submitted by LUMA on October 25, 2023 to Energy Bureau's Informal Request for Information of October 10, 2023

**MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT OF
ATTACHMENTS TO RESPONSE SUBMITTED BY LUMA ON OCTOBER 25, 2023, TO
ENERGY BUREAU'S INFORMAL REQUEST FOR INFORMATION OF OCTOBER 10,
2023**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly "LUMA"), and respectfully state and request the following:

I. Introduction

On this date, LUMA is submitting its responses to an informal request for information (the "October 25th Responses) made by the Puerto Rico Energy Bureau ("Energy Bureau") during an informal technical meeting held on October 10, 2023 between LUMA and the Energy Bureau regarding the interconnection process and costs related to the Tranche 1 and Tranche 2 projects. LUMA is including with its October 25th Responses, under seal of confidentiality, an Annex A containing a breakdown of the estimated costs of LUMA Interconnection Works for each Tranche 1 project ("Annex A"), and a Bid Evaluation & Award Approval document related to the procurement by LUMA of the interconnection facilities works for the Tranche 1 projects ("EPC

Procurement”) prepared by LUMA Procurement (“BEAA”) (the Annex A and BEAA, collectively the “Confidential Documents”).

LUMA submits this Memorandum of Law setting forth the legal basis for which LUMA is entitled to tender the Confidential Documents under seal of confidentiality. As explained below, LUMA respectfully submits that since the information in the Confidential Documents is part of a LUMA procurement process (i.e., the EPC Procurement Process), as well as contains information relating to the Tranche 1 and Tranche 2 procurement processes (respectively, the “Tranche 1 Procurement Process” and the “Tranche 2 Procurement Process” and jointly the “Tranche 1 and 2 Procurement Processes”), the Confidential Documents should be maintained confidential to protect the competitive nature and fairness of these procurement processes. In addition, LUMA respectfully submits that the BEAA contains sensitive commercial information and trade secrets that warrants confidential protection. For these reasons, LUMA hereby requests the Energy Bureau to receive and maintain the entire contents of the Confidential Documents under seal of confidentiality 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 (“Policy on Confidential Information”).

II. Applicable Laws and Regulations to Submit Information Confidentially Before the Energy Bureau.

The bedrock provision on the management of confidential information filed before this Energy Bureau is Section 6.15 of Act 57-2014, known as the “Puerto Rico Energy Transformation and Relief Act.” It provides, in pertinent part, that: “[i]f any person who is required to submit information to the Energy [Bureau] believes that the information to be submitted has any confidentiality privilege, such person may request the [Energy Bureau] to treat such information as such [...].” 22 LPRA § 1054n. If after appropriate evaluation the Energy Bureau determines

that the information should be protected, “it shall grant such protection in a manner that least affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted.” *Id.* § 1054n(a).

The confidential information shall be provided “only to the lawyers and external consultants involved in the administrative process after the execution of a confidentiality agreement.” *Id.* § 1054n(b). Finally, Act 57-2014 provides that this Energy Bureau “shall keep the documents submitted for its consideration out of public reach only in exceptional cases. In these cases, the information shall be duly safeguarded and delivered exclusively to the personnel of the [Energy Bureau] who needs to know such information under nondisclosure agreements. However, the [Energy Bureau] shall direct that a non-confidential copy be furnished for public review.” *Id.* § 1054n(c).

Relatedly, in connection with the duties of electric service companies, Section 1.10 (i), (vii) and (viii) of Act 17-2019 further provide that electric power service companies shall “provide documents and information as requested by customers, except for: (i) confidential information in accordance with the Rules of Evidence of Puerto Rico; [...] (vii) trade secrets of third parties; [and] (viii) issues that should be maintained confidential in accordance with any confidentiality agreement, provided, that such agreement is not contrary to public interest;...”. (Emphasis added.)

Moreover, the Energy Bureau’s Policy on Confidential Information details the procedures a party should follow to request that a document or portion thereof be afforded confidential treatment. In essence, the referenced Policy requires identifying confidential information and filing a memorandum of law explaining the legal basis and support for a request to file information confidentially. *See* CEPR-MI-2016-0009, Section A, as amended by the Resolution of September 20, 2016, CEPR-MI-2016-0009. The memorandum should also include a table that identifies the

confidential information, a summary of the legal basis for the confidential designation, and why each claim or designation conforms to the applicable legal basis of confidentiality. *Id.* at ¶ 3. The party who seeks confidential treatment of information filed with the Energy Bureau must also file both “redacted” or “public version” and an “unredacted” or “confidential” version of the document that contains confidential information. *Id.* at ¶ 6.

The Policy on Confidential Information also contains a provision governing information on trade secrets by providing that “[a]ny document designated by the [Energy Bureau] as Validated Confidential Information because it is a trade secret under Act 80-2011 may only be accessed by the Producing Party and the [Bureau], unless otherwise set forth by the [Bureau] or any competent court.” *Id.* Section D (on Access to Validated Confidential Information).

II. Grounds for Confidentiality

It is respectfully submitted that the Confidential Documents contain commercially sensitive information of the type that LUMA keeps and maintains confidential as part of its business dealings and to protect its competitive procurement processes. Specifically, the BEAA describes the process following in the EPC Procurement, including the amounts quoted in each bid received and the selection of a proponent. Although LUMA has completed the request for proposal phase of the EPC Procurement and issued the BEAA, the proponents have not been notified yet of a selection, because the determination to proceed with the interconnection works and the scope of these works is contingent on the execution of the Interconnection Agreements with the Tranche 1 project proponents and their issuance of subsequent notices to proceed with the interconnection works. Therefore, the EPC Procurement has not been concluded and all associated documentation, including the BEAA has been maintained in confidence. In addition, the request for proposal (“RFP”) requires that this information be maintained confidential during the procurement process.

It is respectfully submitted that the disclosure of the BEAA at this time will adversely impact the integrity of the EPC Procurement process.

The BEAA is also an original business document developed using LUMA's business expertise. If disclosed, it will give future proponents insights into LUMA's commercial processes and analysis for preparing their proposals and may affect LUMA's ability to procure other contractors in a competitive and open manner. It is the type of business document showing processes, methods, and mechanisms, which is protected under Act 80-2011. It is important to note that Act 80-2011 has been interpreted broadly by the Puerto Rico Supreme Court to protect information belonging to a business such as LUMA, that are kept privately to protect the orderly conduct of business and to avoid competitive harms. *See Ponce Adv. Med. v. Santiago González*, 197 DPR 891 (2017).

Annex A contains a breakdown of costs for LUMA Interconnection Works and includes the estimated costs for the interconnection facilities for each Tranche 1 and Tranche 2 project. This information is currently confidential as it is associated to the Tranche 1 and Tranche 2 Procurement Processes. The Tranche 1 and 2 Procurement Processes, which are subject to confidentiality, are still ongoing and the object of negotiations, strategies, and proposals. Accordingly, it is respectfully submitted that the disclosure of Annex A at this time may adversely impact the integrity of the Tranche 1 and Tranche 2 Procurement Processes. Consistent with the foregoing, this honorable Energy Bureau has maintained under seal documents with confidential information related to the Tranche 1 Procurement Process. To that end, through its Resolution and Order of February 2, 2022 ("February 2nd Order") Case No. NEPR-MI-2020-0012, *In RE: Implementation of Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan*, this honorable Energy Bureau established that such confidential treatment is required pursuant to Sections 4(g)

and 10.2 of the Joint Regulations for the Procurement, Evaluation, Selection, Negotiation, and Award of Contracts for the Purchase of Energy and for the Procurement, Evaluation, Selection, Negotiation and Award Process for the Modernization of the Generation Fleet, Regulation 8815 of October 11, 2016 (“Regulation 8815”), and that only once the procurement is completed, shall it be made public. *See* the February 2nd Order, footnote 28. This Energy Bureau’s action is consistent with the interest of maintaining the purity of procurement processes.

In light of the above, the public interests are best served if this Energy Bureau keeps and maintains the BEAA and Annex A confidentially and pursuant to the Energy Bureau’s Policy on Confidential Information. *See* CEPR-MI-2016-0009, as amended by the Resolution of September 16, 2016, CEPR-MI-2016-0009.

In sum, the Confidential Documents contain (1) a LUMA document with commercial and financial value, (2) information related to the EPC Procurement process that **is not common knowledge or readily accessible** by third parties who may seek to profit from or gain commercial advantages *via* premature disclosure of this information and that is subject to a confidentiality requirement under the RFP; and (3) confidential information relating to the Tranche 1 and Tranche 2 Procurement Processes. LUMA has taken reasonable measures to protect the information in the Confidential Documents from public disclosure. For the reasons discussed above, confidentiality of the Confidential Documents is in the public interest and that of ratepayers.

III. Identification of Confidential Information.

In compliance with the Energy Bureau’s Policy on Confidential Information, CEPR-MI-2016-0009 below is a table summarizing the hallmarks of this request for confidential treatment.

Document or file	Pages in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable	Date Submitted
BEAA	Entire document	<p>Sensitive Commercial Information and Trade Secrets under Act 80-2011</p> <p>Information that is subject to confidentiality agreement pursuant to Section 1.10(viii) of Act 17-2019</p> <p>LUMA procurement process document that has not been disclosed to protect the integrity of a competitive process</p>	October 25, 2023
Annex A	Entire document	Sections 4(g) and 10.2 of Regulation 8815	October 25, 2023

WHEREFORE, LUMA respectfully requests that the Energy Bureau **grant** this request to keep Annex A and the BEAA submitted by LUMA on this date confidential.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on this 25th of October 2023.



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