

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

**IN RE:** REVIEW OF THE PUERTO RICO  
ELECTRIC POWER AUTHORITY'S 10-YEAR  
INFRASTRUCTURE PLAN – DECEMBER 2020

**CASE NO.:** NEPR-MI-2021-0002

**SUBJECT:** Determination on LUMA's  
December 21 and December 27, 2023,  
Motions for Scope of Works, and Request for  
Confidentiality and Supporting Memorandum  
of Law.

**RESOLUTION AND ORDER AND SHOW CAUSE FOR INCOMPLIANCE**

**I. Introduction**

On March 26, 2021, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("March 26 Resolution") in the instant case, through which it ordered the Puerto Rico Electric Power Authority ("PREPA") to provide certain information related to the different projects under the categories of Transmission Line Projects, Transmission Substation Projects, and Distribution Substation Projects in the PREPA 10 -Year Infrastructure Plan. The Energy Bureau ordered PREPA to submit each specific capital investment project for approval to avoid potential noncompliance with the Approved Integrated Resource Plan ("IRP") and Modified Action Plan.<sup>1</sup> To streamline the process, the Energy Bureau requested PREPA to submit the specific projects to the Energy Bureau at least thirty (30) calendar days before their submittal to the Puerto Rico Central Office for Recovery, Reconstruction and Resiliency ("COR3") and the Federal Emergency Management Agency ("FEMA").<sup>2</sup>

On August 20, 2021, the Energy Bureau issued a Resolution and Order ("August 20 Resolution"), through which it determined that the March 26 Resolution applies equally to LUMA<sup>3,4</sup>

On October 4, 2021, LUMA filed a document titled *Motion Submitting Update List of Transmission and Distribution Projects and Thirty-Eight Scopes of Work* ("October 4 Motion"). Among the Scope of Works ("SOWs") submitted, LUMA included the "Monacillo -TC" project, with a Class 5 Estimate of \$1.0M.<sup>5</sup>

On October 18, 2021, the Energy Bureau issued a Resolution and Order ("October 18 Resolution") approving all the SOWs for the projects included in the October 4 Motion.

On November 11, 2022, LUMA filed a document titled *Motion Submitting Sixty Scopes of Work and Updated List of Projects and Request for Confidentiality and Supporting Memorandum of Law* ("November 11 Motion"). Among the Scope of Works ("SOWs") submitted, LUMA included the "San Juan SP -TC" and the "Sabana Llana TC" projects.

On December 10, 2022, the Energy Bureau issued a Resolution and Order ("December 10 Resolution") approving all the SOWs for the projects included in the November 11 Motion.

On December 21, 2023, LUMA filed a document titled *Motion Submitting Amended Scope of Work and a Request for Confidentiality and Supporting Memorandum of Law* ("December 21 Motion"). As Exhibit 1 of the December 21 Motion LUMA submitted the SOW for the project "550950 – FAASSt [Monacillo TC] (substations)" with a Class 5 Estimate of \$105.23M.<sup>6</sup>

<sup>1</sup> Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan, *In re: Review of the Integrated Resource Plan of the Puerto Rico Electric Power Authority*, Case No. CEPR-AP-2018-0001, August 24, 2020 ("IRP Order").

<sup>2</sup> March 26 Resolution, pp. 14-15.

<sup>3</sup> LUMA Energy, LLC, and LUMA Energy ServCo, LLC (collectively, "LUMA")

<sup>4</sup> August 20 Resolution, p. 3.

<sup>5</sup> See October 4 Motion, Exhibit 1 "Monacillo TC SOW", p.7.

<sup>6</sup> See December 21 Motion, Exhibit 1 "550950- FAASSt [Monacillo TC] (Substations) SOW", p.8.





On December 27, 2023, LUMA filed a document titled *Motion Submitting Three FEMA Approvals of Projects, Request for Confidential Treatment and Supporting Memorandum of Law* ("December 27 Motion"). As Exhibit 1 of the December 27 Motion, LUMA submitted the FEMA approved SOWs of "FAASt-EPC- [Monacillo TC] (substations)", "FAASt-EPC- [Sabana Llana TC] (substations)" and "FAASt-EPC- [San Juan SP TC] (substations)"

## II. Evaluation of the December 21 and December 27 Motions

### *December 21 Motion*

Through the December 21 Motion LUMA informed that to achieve greater levels of T&D system efficiency they would modify some of the T&D Projects SOWs that the Energy Bureau has already approved, and these changes have resulted in cost estimates that fall outside of the estimate range for Class 5 Level.<sup>7</sup>

LUMA has renamed the "Monacillo-TC" project T&D SOW as "550950- FAASt [Monacillo TC] (Substations)" T&D project SOW, which reflects the amendments for the project.

LUMA indicates that additional to replacing damaged circuit breakers and functionally dependent elements<sup>8</sup> the amended work will include the construction of a new transmission and distribution facility (Monacillo TC) switchyard, and the design and arrange of all equipment and buildings to avoid possible flood damage to comply with the Advisory Based Flood Elevation (ABFE) Zone A requirements.

Also, the project will require engineering services for the design of the new facility that shall include the construction of a new distribution substation and the reconstruction of the two (2) existing substations, and new transmission switchgears with new bus-type configurations<sup>9</sup>.

The scope of work includes among others, new transformers, substations and associated switchgears, electrical lines, breakers, meters, battery banks, telecom and SCADA panels, Protection, Control and Automation systems, and emergency generators. The Cost Estimate for the project is **\$105.23M** including \$7.22M for A/E and \$98.01M for P/C is based on a Class 5 Level Cost Estimate.

### *December 27 Motion*

Through the December 27 Motion LUMA submitted as Exhibit 1, copies of three (3) SOWs FEMA approvals which includes "550950-FAASt-EPC- [Monacillo TC] (Substations)". The FEMA's approved SOW for this project provides a detailed Scope of Work Description that matches exactly the December 21 Motion's SOW for which LUMA is requesting the Energy Bureau "acceptance".<sup>10</sup>

The total cost estimate is **\$92.54M** which includes \$4.44M for A/E and \$88.09 for P/C based on Class 5 Cost Estimates. The project status indicates to be as "Obligated" by FEMA on December 18, 2023.<sup>11</sup>

The project is aligned with the goal of repairing, improving, and sustaining the reliability, capacity, and resiliency of the Puerto Rico electric system. All these reconstruction efforts on the island need to be aligned with local and federal regulations, and actual codes and standards.

Upon review of Exhibit 1 of the December 21 Motion, the Energy Bureau **DETERMINES** that the project is necessary to improve the reliability and resiliency of the electrical system. The Energy Bureau **APPROVES** the projects in **Attachment A** to this Resolution and Order. This approval

<sup>7</sup> AACE International Recommended Practice No. 18R-97, *Cost Estimate Classification System – As Applied in Engineering, Procurement, and Construction for the Process Industries*, February 2, 2005. Typical variation in low (L) and high (H) ranges [a], L: -20% to -50%, H +30% to +100%.

<sup>8</sup> Refer to October 4 Motion Exhibit 1 "Monacillo -TC" p. 6 and December 21 Motion Exhibit 1 "550950-FAASt [Monacillo TC] (Substations) p. 5.

<sup>9</sup> December 21 Motion, p. 5.

<sup>10</sup> The Energy Bureau takes notice that LUMA is "acceptance" and the approval of the Energy Bureau.

<sup>11</sup> See December 27 Motion, p. 3 reference 4 and Exhibit 1 "FAASt\_EPC- [Monacillo TC] p. 1.



represents **\$105,230,000.00** based on the Class 5 Cost Estimates submitted by LUMA through the December 21 Motion.

**III. LUMA’s Request for Confidential Information Designation and Treatment of portions of Exhibit 1 of the December 21 and December 27 Motions**

In the Requests for Confidential Treatment, LUMA alleged that the unredacted version of the SOW in Exhibit 1 contains confidential information associated with Critical Energy Infrastructure Information (“CEII”) as defined in federal regulations<sup>12</sup> and also, personal identifying information of individuals who are LUMA staff or contractors protected under Puerto Rico’s legal framework on privacy emanating from the Puerto Rico Constitution and should be also protected pursuant to the Energy Bureau’s Policy on Management of Confidential Information<sup>13</sup>, that therefore is also protected under Act 57-2014<sup>14</sup>. LUMA requests the Energy Bureau to grant confidential designation and treatment to the referred portion of December 21 Motion Exhibit 1 and December 27 Motion Exhibit 1. Table 1 below details the portions for which LUMA requested confidential designation and treatment.

**Table 1: LUMA’s Request for Confidential Information Designation and Treatment, portions of December 21 Motion Exhibit 1 and December 27 Motion Exhibit 1.**

Document	Name	Pages in which Confidential Information is Found, if applicable	Summary of Legal Basis for Confidentiality Protection, if applicable	Date Filed
December 21 Motion Exhibit 1	550950-FAASt [Monacillo TC] (Substations)	Page 1	Right to privacy (see, e.g., Const. ELA, Art. II, Sections 8 and 10)	December 21, 2023
		Page 4	Critical Energy Infrastructure Information, 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674	December 21, 2023
December 27 Motion Exhibit 1	FAASt-EPC- [Monacillo TC] (Substations)	Pages 1, 2, and 20.	Critical Energy Infrastructure Information, 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674	December 27, 2023
December 27 Motion Exhibit 1	FAASt-EPC- [Sabana Llana TC] (Substations)	Pages 1, 2, and 20.	Critical Energy Infrastructure Information, 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674	December 27, 2023
December 27 Motion Exhibit 1	FAASt-EPC- [San Juan SP TC] (Substations)	Pages 1, 2, and 20.	Critical Energy Infrastructure Information, 18 C.F.R. § 388.113; 6 U.S.C. §§ 671-674	December 27, 2023

<sup>12</sup> See December 21 Motion p. 3.

<sup>13</sup> See, Resolution, *In re: Política sobre Manejo de Información Confidencial en los Procedimientos ante la Comisión*, Case No. CEPR-MI-2016-0009, issued on September 20,2016.

<sup>14</sup> Known as *Puerto Rico Energy Transformation and RELIEF Act*, as amended.





#### IV. Energy Bureau Determination

The Energy Bureau **APPROVES** the projects in **Attachment A** to this Resolution and Order, based on the information provided by LUMA.

The Energy Bureau has been emphatic that should a scope of the projects change LUMA **SHALL** immediately seek the Energy Bureau's approval and **has warned LUMA** that non-compliance with any provision of the Resolutions and Orders, may result in the imposition of fines pursuant to Act 57-2014 and applicable Energy Bureau's regulations and any other administrative sanctions, as deemed appropriate by the Energy Bureau.

The Energy Bureau **DETERMINES** that LUMA acted in total disregard to the October 18 Resolution and LUMA determined, on its own accord, that an amendment from \$1MM to \$100MM does not require the prior **APPROVAL** of the Energy Bureau **BEFORE** presenting such SOW to COR3 and/or FEMA. The Energy Bureau **ADMONISHES** LUMA actions and **ORDERS** LUMA to **SHOW CAUSE within five (5) days of the notification of this Resolution and Order** of why the Energy Bureau should not impose a fine of \$2,500 for incompliance with the October 18 Resolution.

The Energy Bureau **ORDERS** LUMA to (i) submit to the Energy Bureau copy of the approval by COR3 and/or FEMA of the projects in **Attachment A**, which shall contain the costs obligated for each project, **within ten (10) days of receipt of such approval**; (ii) provide the Energy Bureau the actual contracted cost to construct each project in **Attachment A**, **within ten (10) days from the execution of the contract**; and (iii) inform the Energy Bureau once the projects are completed.

The directive established in the March 26 Resolution regarding the submission of projects before the Energy Bureau at least thirty (30) calendar days before submitting such projects to FEMA and/or COR3 remains unaltered.

Act 57-2014<sup>15</sup> establishes that any person having the duty to submit information to the Energy Bureau, can request privilege or confidential treatment to any information that the party submitting understands deserves such protection.<sup>16</sup> Specifically, Act 57-2014 requires the Energy Bureau to treat as confidential the submitted information stated that "the Energy Bureau, after the appropriate evaluation, believes such information should be protected".<sup>17</sup> In such case, the Energy Bureau "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."<sup>18</sup>

Upon review of LUMA's arguments and the applicable law, the Energy Bureau **GRANTS** confidential designation and treatment to the parts of Exhibit 1 as described in Table 1 above, pursuant to Article 6.15 of Act 57-2014. The Energy Bureau **TAKE NOTICE** that LUMA already submitted a redacted (*i.e.*, public) version of both Exhibit 1 as described in Table 1.

The Energy Bureau **WARNS** LUMA that, noncompliance with any provision of this Resolution and Order, may result in the imposition of fines pursuant to Act 57-2014<sup>19</sup> and applicable Energy Bureau's regulations and any other appropriate administrative sanctions, as deemed appropriate by the Energy Bureau.

Be it hereby notified and published.

<sup>15</sup> *Id.*

<sup>16</sup> Section 6.15 of Act 57-2014.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* (Emphasis added).

<sup>19</sup> Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended.



  
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Edison Avilés Deliz  
Chairman

  
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Lillian Mateo Santos  
Associate Commissioner

  
\_\_\_\_\_  
Ferdinand A. Ramos Soegaard  
Associate Commissioner

  
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Sylvia B. Ugarte Araujo  
Associate Commissioner

**CERTIFICATION**

I certify that the majority of the members of the Puerto Rico Energy Bureau have agreed on January 17, 2024. Associate Commissioner Antonio Torres Miranda did not intervene. I also certify that in January 18, 2024 a copy of this Resolution and Order was notified by electronic mail to the following: arivera@gmlex.net; laura.rozas@us.dlapiper.com; margarita.mercado@us.dlapiper.com, Yahaira.delarosa@us.dlapiper.com; julian.angladapagan@us.dlapiper.com; alopez@sbgblaw.com; jfr@sbgblaw.com; jlago@sbgblaw.com, legal@genera-pr.com; regulatory@genera-pr.com; and I have moved forward with filing the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today January 18, 2024.

  
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Sonia Seda Gaztambide  
Clerk



Attachment A  
Projects Approved by the Energy Bureau

Region	Project Name	Proposed Scope of Work	Presented Estimate
San Juan	550950- FAASt [Monacillo TC] (Substations)	Replace damaged circuit breakers and functionally dependent elements, construct a new T&D center facility switchyard and arrangement of equipment and buildings to avoid flood damages.	\$105,230,000.00
Total			\$105,230,000.00

