

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

NEPR
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IN RE:

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

CASE NO. NEPR-MI-2021-0002

**SUBJECT: Motion In Compliance with Resolution
and Order of January 18, 2023 to Show Cause For
Incompliance**

**MOTION IN COMPLIANCE WITH
RESOLUTION AND ORDER OF JANUARY 18, 2023
TO SHOW CAUSE FOR INCOMPLIANCE**

TO THE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC¹, and LUMA Energy ServCo, LLC², (jointly referred to as "LUMA"), through the undersigned legal counsel, respectfully submits the following:

1. On March 26, 2021, this Honorable Puerto Rico Energy Bureau ("Energy Bureau") issued a Resolution and Order in the instant proceeding, ordering, in pertinent part, that the Puerto Rico Electric Power Authority ("PREPA") submit to the Energy Bureau the specific transmission and distribution projects ("T&D Projects" or "Projects") to be funded with Federal Emergency Management Agency ("FEMA") funds or any other federal funds at least thirty (30) calendar days prior to submitting these Projects to the Puerto Rico Central Office for Recovery, Reconstruction and Resiliency ("COR3"), FEMA or any other federal agency ("March 26th Order"). It also directed PREPA to continue reporting to the Energy Bureau and FEMA, within the next five years, the progress of all ongoing efforts related to the approval of the submitted Projects not yet approved

¹ Register No. 439372.

² Register No. 439373.

by the Energy Bureau. This Energy Bureau thereafter determined that this directive applied to PREPA and LUMA. *See* Resolution and Order of August 20, 2021.

2. As the filings in this proceeding show, LUMA has steadily increased and accelerated the implementation of federally funded capital projects to increase resilience and improve reliability for customers. By working closely with this Energy Bureau, COR3, FEMA, the Department of Energy (“DOE”) and other stakeholders, LUMA has 117 federally funded projects in construction or completed throughout Puerto Rico. As of the end of the first quarter of fiscal year 2024 (“Q1 FY2024”), there are 400 transmission and distribution projects in the FEMA approval process totalling an investment of approximately \$11.1 billion.

3. On October 4, 2021, LUMA filed a *Motion Submitting Update List of Transmission and Distribution Projects and Thirty-Eight Scopes of Work*. Therein, LUMA submitted four (4) scopes of work (“SOWs”) for T&D Projects for its review and approval before submitting them to COR3 and FEMA (“October 4th Motion”). Among the SOWs submitted to this Energy Bureau was the “Monacillo TC” T&D Project.

4. On October 18, 2021, the Energy Bureau entered a Resolution and Order in which it determined that SOWs for T&D projects submitted by LUMA were necessary to improve the system’s reliability (“October 18th Order”). Therefore, it approved all the projects presented in the October 4th Motion, including the “Monacillo TC” T&D Project SOW.

5. Then, on December 21, 2023, LUMA filed a *Motion Submitting Amended Scope of Work and a Request for Confidentiality and Supporting Memorandum of Law*. LUMA explained that it recently determined that it was in the best interest of the efficiency of the Puerto Rico transmission and distribution system (“T&D System”) to develop new scopes of work and/or cost

estimates on some of the T&D Projects SOWs that the Energy Bureau has already approved. As such, LUMA had revised the “Monacillo TC” T&D Project SOW work and/or cost estimate and concluded that new work and/or cost estimates were needed.

6. On January 18, 2023, the Energy Bureau issued a Resolution and Order stating that LUMA acted in total disregard to the October 18th Order by determining under its own accord that an amendment of a T&D Project does not require the previous approval of the Energy Bureau (“January 18th Order”). As such, it ordered LUMA to show cause within five (5) days of why the Energy Bureau should not impose a fine of \$2,500 for non-compliance with the October 18th Order.

7. In compliance with the January 18th Order, LUMA very respectfully submits its explanation of the non-compliance with the October 18th Order in *Exhibit 1* to this Motion. Therein, LUMA explains the extensive process through which any initial scope of work for a federally funded project goes through at LUMA, consequently when it is filed for review and approval before this Energy Bureau, and finally, when submitted before FEMA for cost obligation. LUMA also notes that an unfortunate internal miscommunication caused its non-observance of the October 18th Order. It emphasizes its commitment to transparency and visibility of federally funded projects before the Energy Bureau.

8. In view of the above, LUMA very respectfully requests the Energy Bureau to consider the reasons stated therein and not impose the fine of \$2,500 for non-compliance with the October 18th Order.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned; and **deem** LUMA to have complied with the January 18th Order.

RESPECTFULLY SUBMITTED.

We hereby certify that we filed this motion using the electronic filing system of this Energy Bureau. We will send an electronic copy of this motion to PREPA's General Counsel, Lionel Santa, lionel.santa@prepa.pr.gov, and to Genera PR LLC, through its counsel of record, Jorge Fernández-Reboredo, jfr@sbgblaw.com and Alejandro López Rodríguez, alopez@sbgblaw.com.

In San Juan, Puerto Rico, on this 23rd day of January 2024.



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Exhibit 1

Information Regarding Monacillo TC Project

Since starting operation of the electric grid in June 2021, LUMA has steadily increased and accelerated the implementation of federally funded capital projects to increase resilience and improve reliability for customers. By working closely with the Puerto Rico Energy Bureau (“PREB”), the Central Office for Recovery, Reconstruction and Resilience (“COR3”), the Federal Emergency Management Agency (“FEMA”), the Department of Energy (“DOE”) and others, LUMA has 117 federally funded projects in construction or completed throughout Puerto Rico. As of the end of the first quarter of fiscal year 2024 (“Q1 FY2024”), there are 400 transmission and distribution projects in the FEMA approval process totalling an investment of approximately \$11.1 billion.

FEMA’s compliance process includes twenty sequential steps and many stages which LUMA endeavors to fully complete while meeting established timelines. The process includes communications with various stakeholders, requesting and receiving approvals, where required, and constant review of the project parameters and goals. At a high level, the initial step involves preparing an initial Scope of Work (“ISOW”) with functional specifications and cost estimates. That ISOW then goes through an extensive review and approval process. Once the ISOW gets approved internally, it is filed with the PREB for review and approval, in compliance with the Resolution and Order of March 26, 2021 (the “March 26 Order”) part of the NEPR-MI-2021-0002 docket and in alignment with the Puerto Rico Electric Power Authority (“PREPA”) Integrated Resource Plan (“IRP”) and Modified Action Plan. If LUMA receives PREB approval for the project, then LUMA proceeds to initiate the project with COR3 and FEMA to initiate the approval process. FEMA evaluates the ISOW and, if approved, assigns a FEMA Accelerated Awards Strategy (“FAASt”) number.

Subsequently, LUMA prepares a task order to create an engineering package for the project and initiates the process to develop a Detailed Scope of Work (“DSOW”). Once the DSOW is completed, and the required internal approvals are received, LUMA submits the DSOW to COR3 and FEMA for evaluation. In some cases, if FEMA requires additional information and/ or clarifications, a request for information (“RFI”) is sent to LUMA by FEMA. LUMA then develops the RFI responses and submits them to COR3 and FEMA for their evaluation. It is important to note that this stage of the project process may occur multiple times until COR3, and FEMA are satisfied with the responses.

Following the above-described iterative COR3 and FEMA review (including RFI reviews), when there are no further questions, and if COR3 and FEMA agree with the DSOW presented, the project moves to FEMA’s approval process toward obligation. Finally, if FEMA approves a project, FEMA will provide a cost obligation report. At this stage, LUMA notifies the PREB of such obligation within 10 days of the FEMA notification.

The Monacillo Transmission Center (“TC”) project (“Monacillo TC ISOW”) followed the process outlined above. The ISOW was developed and approved internally. On October 4, 2021, LUMA filed a *Motion Submitting Update List of Transmission and Distribution Projects and Thirty-Eight Scopes of Work*, which included the Monacillo TC ISOW for the PREB’s review and approval. On October 18, 2021, the PREB issued a Resolution that determined that the thirty-eight SOWs for T&D Projects submitted by LUMA were necessary to improve the system’s reliability (the “October 18 Order”) and, based on that finding, the PREB approved all the projects presented, including the Monacillo TC ISOW.

Subsequently, the ISOW was initiated with COR3 and FEMA and received a FAASt number. LUMA then began the architecture and engineering (“A&E”) work. As this work progressed, and after extensive

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consultation, it became increasingly apparent that in order to maximize federal funding and achieve economies of scale, an expanded scope was required for this critical substation. The revised scope included deployment of a new substation in order to meet utility standards. Additionally, an Engineering, Procurement and Construction (“EPC”) contracting model was applied to the project. This change reduced the time to completion for this (and other substation modernization projects) by 50% and optimized federal funding.

Given the multiple iterations, the project was not resubmitted to the PREB in a timely fashion for approval as required by the October 18 Order. This was an oversight that LUMA is working hard to address in order to prevent such an occurrence in the future. LUMA reiterates its commitment to transparency as well as full compliance with regulation and PREB’s orders with regards to Federally Funded Capital projects and other activities.