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

IN RE: REGULATION FOR THE EVALUATION AND APPROVAL OF AGREEMENTS BETWEEN ELECTRIC SERVICE COMPANIES	**CASE NO. NEPR-MI-2020-0014** **SUBJECT: Motion to Submit Comments to Proposed Regulation for the Evaluation and Approval of Agreements between Electric Service Companies in Accordance with Resolution of November 22, 2024**

MOTION TO SUBMIT COMMENTS TO PROPOSED REGULATION FOR THE EVALUATION AND APPROVAL OF AGREEMENTS BETWEEN ELECTRIC SERVICE COMPANIES IN ACCORDANCE WITH RESOLUTION OF NOVEMBER 22, 2024

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC ("ManagementCo")**, and LUMA Energy Servco, LLC** ("ServCo") (jointly referred to as the "Operator" or "LUMA"), through the undersigned counsel, and respectfully state and request the following:

1. On October 19, 2020, the Puerto Rico Energy Bureau of the Public Service Regulatory Board ("Energy Bureau") issued a Resolution ("October 19th Resolution") notifying of a proposed *Regulation for the Evaluation and Approval of Agreements between Electric Service Companies* ("Proposed Regulation") issued in light of its responsibility "to establish the guides, standards, practices and processes to be followed to purchase power, modernize power plants or electric power generation facilities" in accordance Section 6.3 of Act No. 57-2014, known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014"). *See* October 19th Resolution, p. 1. The Energy Bureau also indicated that the purpose of the Proposed Regulation was "to establish guidelines and standards to ensure that power purchase agreements between electric service companies are in the public interest and consistent with the policy

objectives as set forth in the energy public policy of Puerto Rico". *Id.* The Energy Bureau then informed that it would publish a notice of the proposed rulemaking process as per Act 38-2017, known as the Administrative Procedure Act of the Government of Puerto Rico, as amended ("Act 38-2017") and granted the general public until November 18, 2020 to file their comments on the Proposed Regulation. *See id*., p. 2.

2. On November 17, 2020, the Energy Bureau issued a Resolution ("November 17th Resolution") indicating that, "[g]iven the complexity and importance of the Proposed Regulation" it had determined to extend the term for submission of comments by the general public until December 3, 2020. *See* November 17th Resolution, p. 1.

3. On March 18, 2021, the Energy Bureau issued a Resolution and Order ("March 18th Resolution") indicating it was issuing a revised Proposed Regulation, included as Attachment I to the March 18th Resolution, based on the "importance of establishing a clear scope of the Proposed Regulation and following the comments received during the public comment period", and that pursuant to Act 38-2017 it would be publishing a notice on the rulemaking process and grant the general public thirty (30) days following the publication of the notice to present its comments on this version of the Proposed Regulation. *See* March 18th Resolution, p. 2. The mentioned public notice was published on March 30, 2021. *See* Energy Bureau's Resolution issued on March 31, 2021.

4. On November 22, 2024, the Energy Bureau issued a Resolution ("November 22nd Resolution") whereby it indicated that it had received formal comments on the Revised Proposed Regulation from various entities; it was "appropriate to review regulatory frameworks to keep them up to date with emerging technologies and initiatives" as the energy sector evolves; and it had determined that it was in the public interest to continue an informal commenting process with

respect to the Proposed Regulation. *See* November 22nd Resolution, pp. 1-2. The Energy Bureau then invited stakeholders and the general public to submit comments regarding potential revisions to the Proposed Regulation, included as Attachment 1 to the November 22nd Resolution, within thirty (30) days of the November 22nd Resolution. *See id*., p. 2.

5. In accordance with the November 22nd Resolution, LUMA hereby submits its comments to the Proposed Regulation in Attachment 1 of the November 22nd Resolution. *See Exhibit 1*.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned and **accept** the comments to the Proposed Regulation in Attachment 1 of the November 22nd Resolution included in *Exhibit 1* herein.

RESPECTFULLY SUBMITTED.

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

We hereby certify that we filed this motion using the electronic filing system of this Energy Bureau and that we will send an electronic courtesy copy of this motion to PREPA's Counsel, arivera@gmlex.net and mvalle@gmlex.net, and to cfl@mcvpr.com; agraitfe@agraitlawpr.com; cmunoz@pmalaw.com; mdelvalle@pmalaw.com; renewableenergy@me.com; arnaldo.serrano@aes.com; pjcleanenergy@gmail.com.

DLA Piper (Puerto Rico) LLC
500 Calle de la Tanca, Suite 401
San Juan, PR 00901-1969
Tel. 787-945-9107
Fax 939-697-6147

/s/ Laura T. Rozas
Laura T. Rozas
RUA Núm. 10,398
laura.rozas@us.dlapiper.com

/s/ Julián R. Anglada Pagán
Julián R. Anglada Pagán
RUA NUM. 22,142
julian.angladapagan@us.dlapiper.com

Exhibit 1

LUMA's Comments to Regulation for the Evaluation and Approval of Agreements between Electric Service Companies

Informal Comment Process on Regulation for Evaluating and Approving Agreements Between Electric Service Companies

NEPR-MI-2020-0014

Contents

1.0 Foreword

LUMA appreciates the opportunity to provide the Energy Bureau these comments on the draft of the Regulation for the Evaluation and Approval of Agreements between Electric Service Companies as part of the informal commenting process opened by the Energy Bureau by Resolution and Order issued on November 22, 2024.

The draft Regulation provides further demonstration that the Energy Bureau – in collaboration with other stakeholders involved in the Puerto Rico electricity regulatory process – is making progress on its efforts to further clarify and strengthen the frameworks under which major agreements will be reached for the Puerto Rico electricity grid. Over time, these advancements in Puerto Rico regulation will result in better decision-making on a wide range of critical topics, resulting in substantial improvements in both the economics and reliability of electricity supply to Puerto Rico consumers. Correspondingly, LUMA commends the Energy Bureau for the positive progress that is being made.

LUMA's comments below are organized into the following four sections:

- First, LUMA recommends a set of alterations that would clarify the interpretation of many of the provisions of the Regulation.
- Second, LUMA offers comments about the proper scope of the draft Regulation.
- Third, LUMA offers a set of substantive comments on the apparent intent of selected passages of the draft Regulation.
- Finally, LUMA identifies other ambiguities and apparent inconsistencies or errors in the draft Regulation that merit further attention.

Wherever Article and Section numbers are discussed below, the numbering scheme of the current draft Regulation is utilized.

2.0 Alterations to Clarify Scope of Certain Provisions

Scope of Article 4

As currently written, Article 4 is confusing because it appears to address both Agreements involving PREPA that result from a PREPA Transaction and Agreements involving PREPA that result outside of a PREPA transaction. Article 4 is titled "PPAs Between PREPA and a Third Party and Energy Compliance Certificates". Section 4.01 under Article 4 provides that the procedures to be followed preceding the filing of a PPA are those in Regulation 8815 which is the "Joint Regulation 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 and Other Resources" ("Regulation 8815"). Regulation 8815 does not apply to a PREPA Transaction, which, as defined in Section 1.09(40) of the draft Regulation is "any and every transaction through which PREPA or the Government of Puerto Rico establishes one or more Partnerships regarding any function, service

or installation of PREPA or a Sale Contract or PREPA's generation assets that is caried out under Act 29-2009 and Act 120-2019". The Regulation that applies to PREPA Transactions is the Public-Private Partnership Authority's Regulation 9078, Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Partnership Contracts for the Transformation of the Electric System Under Act No. 120-2018, As Amended ("Regulation 9078"). However, the remaining sections of Article 5 clearly apply to PREPA Transactions (i.e., Section 4.02 applies to the Energy Compliance Certification, which as this term is defined in Section 1.09(20) is required for PREPA Transactions; Section 4.03 refers to applications for Energy Compliance Certifications; Section 4.04 refers to the Partnership Committee Report which arises in connection with PREPA Transactions; Section 4.05 discusses the review of the Preliminary Contract and Partnership Committee Report, which apply in connection with PREPA Transactions; Section 4.06 refers to the oversight of the Partnership Agreement entered into as part of a PREPA Transaction; and Section 4.07 refers to the modification of rates and charges in the Partnership Agreement entered into after consummating a PREPA Transaction).

LUMA suggests the Energy Bureau clarify the applicability of Article 4, preferably by focusing it only on PREPA Transactions – and title this Article 4 more clearly to specifically reference PREPA Transactions – so that the draft Regulation is easier to understand and implement. The Energy Bureau would also have to revise Section 4.01 to make reference to Regulation 9078 instead of Regulation 8815 or make such other suitable clarification.

In this regard, LUMA suggests that the term "Partnership Agreement" be changed to "Partnership Contract" to conform with the term used in the official translation of Act 29-2009 which is "Partnership Contract".

3.0 Separate / New Article to Address Agreements with PREPA

LUMA suggests that a new article be created to solely address Agreements between PREPA and other parties that arise independent of a PREPA Transaction. This new article would cover all future PPAs involving PREPA, including those emerging from competitive RFP solicitations and Agreements related to the pending ASAP battery energy storage initiative, as well as other Agreements in which PREPA is a counterparty. Devoting an Article to Agreements with PREPA is important given that there may be government contracting requirements that are not a consideration in the case of Agreements between private entities. For example, in this Article, it could be clarified that PPAs and Energy Storage Services Agreements with PREPA can have terms exceeding one year and need not include a provision of termination by convenience, which is generally required for many government contracts, but is not the standard in the industry for PPAs and ESSAs and should not be required for those types of agreements, given the public policies and objectives in Act 17-2019 and Act 57-2019 which should prevail over other laws or regulations that are inconsistent with their provisions. For a more complete discussion of these legal considerations, please see *LUMA's Motion in Compliance with Resolution and Order of October 11, 2024, and Request for Confidential Treatment* submitted on October 18, 2024, in Case No. NEPR-MI-2024-0002.

4.0 Scope of Regulation

These Regulations have been drafted in an attempt to cover many possible types of Agreements, which creates some challenges.

First and foremost is the question of which types of Agreements are (or should be) covered by the Regulation. This concern begins with the definition of "Agreement" (as well as the language of Section 2.01(A)(1)), which refers to contracts "for the provision of generation, transmission, distribution, or storage services." The use of the word "services" here is quite vague. We understand that the term should be clarified to refer to these services as provided by Electric Power Service Companies. Meanwhile, the terms "Electric Service" or "Energy Service" are formally defined in the Regulation in a manner that appears to be somewhat broader than the concept of services used in the definition of "Agreement" or "Contract". It would be desirable to clarify the distinctions (if any) between these alternative definitions involving the word "service". (If there is no distinction, then LUMA recommends standardizing on one definition.)

LUMA recommends that the definition of "Agreement" or "Contract" be clarified so to include entities performing aggregation services, such as those that are aggregating energy storage assets and providing the associated energy as a virtual power plant. The definition of "Agreement" or "Contract" only refers to the provision of generation, transmission, distribution and/or storage services.

It must also be noted that the definition of Electric Services is overly broad, referring to the "use, maintenance or construction of an electric grid", the "provision of Energy Generation Services" and "all activities related to the generation, transmission, distribution, electric energy resale, ancillary services, commercialization, billing, storage, wheeling of electric energy". The term "Electric Service" or "Energy Service" could be interpreted to includes all kinds of agreement for maintenance and construction provided to an EPSC. For further clarity, LUMA recommends that the definition of Electric Service and EPSC be the same as that set forth in Regulation 8701 where the types of regulated EPSC's are clearly defined. Similarly, the definition of EPSC should also be tied to the definition of that term under Regulation 8701 which includes thresholds on the volume of sales or energy capacity, or other relevant criteria, for an entity to be considered an EPSC.

Given the ambiguity of the language in the Regulation, a maintenance contract to keep a generation facility operational could potentially be considered a "generation service" being provided to the owner of the generation facility, which in turn is an EPSC subject to Energy Bureau contractual oversight under these proposed regulations, thus making the contract an Agreement to be subject to these Regulations. However, that is likely not the type of agreement contemplated under the Regulation. Another clarification that should be included in the Regulation to remove this confusion is to indicate that the types of Agreements subject to the Regulation are those for the specified Electric Services (identified in the definition of "Agreement") that are provided by an EPSC to a Consumer or Customer (a term which includes anyone "receiv[ing] or consum[ing] Electric Services". This language would provide further clarity and automatically exclude maintenance or other types of agreements that clearly do not involve providing Electric Services.

One question that arises is whether an Interconnection Agreement is deemed to be covered by the Regulation. If so, the Regulation leaves unclear how an Interconnection Agreement would be evaluated, since some of the provisions regarding the information to be submitted or the criteria to be considered by

the Energy Bureau to evaluate Agreements do not apply to Interconnection Agreements. In addition, some of the requirements relating to the contents of the Agreements governed by this proposed Regulation do not apply to Interconnection Agreements. LUMA recommends that the Regulation exclude Interconnection Agreements or, if Interconnection Agreements are to be included, then that these be addressed in a separate Article tailored to the particularities of these types of agreements.

Because it will be difficult to ensure that all clauses in the various provisions will be relevant to all Agreements in all circumstances, LUMA recommends that a new provision (presumably in Section 2.01) be added indicating that Applicants can legitimately indicate to the Energy Bureau "Not Applicable" when aiming to comply with a provision of the Regulation, based on the Applicant's good-faith assessment that the provision is irrelevant to the Agreement.

Summarizing, LUMA recommends that the scope of the proposed Regulation be more clearly delineated. Since much of the language of the proposed Regulation pertains to PPAs, it might be advisable to restrict the proposed Regulations solely to PPAs and instead develop separate sets of regulations for other kinds of agreements using language and concepts more well-suited for the specific type of agreement being addressed.

5.0 Other Substantive Comments

The following comments address proposed requirements that the Regulation would impose upon Applicants as stated in Article 3:

- Section 3.02(D) requires the Applicants for approval of Microgrids, Energy Cooperatives, Municipal Ventures and Community Solar Projects to provide their plan to provide a free internet portal in order to gain approval for an Agreement. LUMA suggests that this be required in cases where the entity is required by Act 17-2019 or Act 57-2014 to have such a portal.

- Section 3.01(I) requires that, if any fossil fuel units are relied on as part of a PPA, the applicant affirm that it has a plan to make sure the generating units are Highly Efficient Generation (that is, that the electrical energy generated form fossil fuels be generated at least sixty (60%) in a highly efficient manner, under Article 6.29 of Act 57-2014) within a period of not greater than five year from the effective date of the Regulation and that the facility is capable of operating with at least two fuels. In the case of PREPA, LUMA understands that this provision is unnecessary because the upcoming IRP will largely dictate whether or not a PREPA plant will or will not qualify as Highly Efficient Generation, while Section 3.01(C) of the proposed Regulation requires the Applicant to affirm that the proposed Agreement will be consistent with the IRP. Therefore, we recommend Section 3.01(I) not apply to PREPA.

- In Section 3.01(K), the provision should be expanded such that the Transmission and Distribution Provider will also be notified of any scheduled service interruption.

- Section 3.02(F)(1) proposes the requirement that each Applicant to present operation and maintenance plans. Because operations and maintenance of a facility can evolve dramatically over a facility's life, and because many of these practices likely represent proprietary competitive advantage for the Applicant, LUMA recommends deleting the requirement for submitting operation and maintenance plans and focusing this provision solely on the "plans to share cost savings with Customers".

- Section 3.02(F)(2) proposes the requirement that each Applicant present documentation of insurance. While this may demonstrate that adequate insurance is in effect at the time of regulatory review, it does not guarantee that adequate insurance will be in effect for the duration of the Agreement for which approval is being sought. LUMA recommends that this provision should be modified to also state that at least the same degree of insurance shall be maintained over the life of the Agreement as the insurance documentation submitted initially by the Applicant.

While it does not apply to an Applicant, Section 3.03(A)(3) proposes the requirement that the Transmission and Distribution Contractor (i.e., LUMA) be involved in the billing of Customers that engage in an Agreement with another EPSC. This would include the possibility of a retail wheeling arrangement between a Customer and a third-party electricity supplier. To minimize costs for its customers, LUMA should not be required to incur staff time and expenses to become involved in the billing procedures for such a retail wheeling arrangement – or more broadly, for any Agreement between a Customer and an EPSC that does not materially involve LUMA. Accordingly, LUMA recommends deleting the requirement of Section 3.03(A)(3).

Since the vast majority of Agreements covered by these draft Regulations will be PPAs, LUMA recommends the following additional requirements relating to PPAs with PREPA in Article 10 (and/or the Article that may be added to address solely PPAs with PREPA as discussed above):

- Section 10.01 should be expanded to include a new subclause requiring that each Contract must include a detailed description of Minimum Technical Requirements that ensure reliable and safe operations of the electricity grid.

- Section 10.02 should be expanded to include a new subclause requiring that each PPA must include provisions pertaining to the curtailment of electricity deliveries, including at minimum the conditions under which curtailment can be invoked by the Transmission and Distribution Contractor, the calculation of curtailed volumes, and the terms of compensation for curtailed volumes. In this regard, the contract should include language to the effect that the System Operation Principles established by the Transmission and Distribution Contractor shall govern.

6.0 Issues Requiring Further Attention

This final section identifies ambiguities and apparent inconsistencies or errors in the draft Regulations that merit further attention.

Article 9, which provides that “PPAs negotiated between an [EPSC] and a commercial an or industrial Customer […] shall not be subject to an initial review by the Energy Bureau”, appears to be in direct contradiction to Section 1.04(C) (which indicates that the Regulation applies to “industrial and commercial consumers” that enter into PPAs directly with an EPSC” and Section 2.01(A)(4) (which indicates that the Contracts or Agreements subject to the Energy Bureau’s approval include “Large scale industrial and commercial Consumers or Electric Cooperatives that enter into PPAs directly with EPSCs”. LUMA does not have a strong preference on how best to eliminate the contradiction but believes that the language of Article 9 is more consistent with the expectations of parties that anticipate the possibility of Customers and EPSCs engaging in retail wheeling transactions.

Further, LUMA believes that the definitions of “Independent Power Producer”, “Energy Generation Company” and “Independent Energy Producer” may overlap or create confusion. The definition of

"Independent Power Producer" refers to EPSC without "a Provider of Last Resort obligation", but the latter term is undefined. Presumably, this term aims to more clearly delineate the differences in applicability in comparison with the terms "Energy Generation Company" or "Independent Energy Producer". In any event, LUMA believes more refinement of these definitions is warranted to ensure that there is no redundancy or contradiction created by the existence of two defined concepts that appear very similar in coverage. Otherwise, one of the two defined concepts should be deleted.

Additionally, LUMA believes that the draft Regulation would be improved with the following targeted edits or deletions:

- The definition of "Electric Grid" or "Electric Power Grid" refers to "the electric power transmission and distribution infrastructure of the Government of Puerto Rico, operated, supported, and administered by PREPA or by an Electric Service Company". The definition should also refer to this infrastructure as "owned" by PREPA. In addition, "Electric Service Company" should be replaced by "the Transmission and Distribution Contractor".

- The definition of "Electric Power Service Company" includes "any operator of the electricity transmission and distribution network". This should be replaced by "the Transmission and Distribution Contractor".

- Section 3.01(C) proposes that Applicants submit a "Statement of Compliance with the Integrated Resource Plan (IRP), explaining how the proposed Agreement complies with the most recent IRP". LUMA believes the use of the word "compliance" is problematic, as some Agreements covered by these Regulations will likely not be directly affected by the IRP. As such, LUMA recommends instead a "Statement of Consistency" documenting that the agreement being reviewed is "consistent with" the most recent IRP.

- The title of Section 3.02 should add reference to EPSCs and PREPA, as these appear to be inadvertently omitted.

- The title of Section 3.03 should add reference to PREPA, as this appears to be inadvertently omitted.

- Section 8.01 employs the term "similarly situated", but that term is undefined. LUMA suggests a definition be included.

- Section 10.01(17) refers to "the clients". The meaning of this phrasing is unclear and should be clarified.

- Section 10.02(A)(9) proposes the requirement that "the Energy Bureau will review the cost per kilowatt-hour" for services in an Agreement. However, many services that could plausibly be covered in an Agreement to be reviewed by the Energy Bureau are not customarily denominated per kilowatt-hour. For instance, capacity contracts are typically denominated in the marketplace on a per kilowatt basis. Accordingly, without any loss of generality, LUMA recommends that the words "per kilowatt-hour" be deleted from this clause.

- Also, in Section 10.02(A)(9), LUMA recommends that the last sentence of this section (pertaining to average costs and marginal costs) be deleted, as its language is generally irrelevant for the Agreements to be subject to this Regulation.

- Lastly, in several passages of the draft Regulations, corrections should be made to standardize textual references to “Electric Power Service Company” when one or more of the words in that term are missing, incorrect, or in the wrong order. By LUMA’s review, such corrections are warranted in:

- The definition of “Agreement” or “Contract”

- The definition of “Electric Grid” or “Electric Power Grid”

- The definition of “Electric Power Service Company” or “EPSC” or “Electric Power Company”

- The definition of “Interconnection” or “Electrical Interconnection”

- Section 1.17(B)

- The title of Article 2

- Section 2.01(A)(1)

- Section 3.01(A)