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

IN RE: LUMA'S ACCELERATED STORAGE ADDITION PROGRAM	**CASE NO. NEPR-MI-2024-0002** **SUBJECT:** Compliance with Order to Show Cause of July 9, 2025

MOTION IN COMPLIANCE WITH ORDER TO SHOW CAUSE OF JULY 9, 2024

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

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

I. Introduction

The Puerto Rico Energy Bureau of the Public Service Regulatory Board's ("Energy Bureau") Order to Show Cause entered on July 9, 2025 ("July 9th Order"), which threatens the imposition of fines against LUMA for alleged willful non-compliance and misrepresentation, is wholly unwarranted, as the record demonstrates that LUMA has acted in good faith, with transparency, and in full compliance with regulatory directives and industry standards throughout the development and implementation of the Accelerated Storage Addition Program ("ASAP" or "Program"). [1]

[1] ASAP is a program developed by LUMA proposing the accelerated integration of Battery Energy Storage Systems ("BESS") to the Puerto Rico electrical system to be dispatched to provide time shift services, voltage and frequency support and other ancillary services resulting in improved system reliability, reduction of load shedding events and

LUMA approaches this matter with the deepest respect for the Energy Bureau and the people of Puerto Rico, and with a sincere commitment to transparency and public service. At no point did LUMA act with malice, intent to deceive, or reckless disregard for the truth. Any lack of clarity or precision in prior communications was the result of the complex, evolving nature of the Program and the challenges inherent in communicating technical details in real time, never of any willful or intentional misconduct. LUMA is distinguished by the principles of openness, accountability, and a genuine desire to serve the public interest, and it remains steadfast in its dedication to these values as a trusted partner in Puerto Rico's energy transformation.

The July 9th Order is in connection with a motion filed by LUMA on July 2, 2025, in which LUMA provided information on the status of the interconnection studies for the ASAP projects and submitted a Task Order reflecting the estimated costs for these studies. Specifically, the Energy Bureau argued that the costs associated with SO1 projects set forth in the Task Order were not "disclosed or justified", "directly contradicted" LUMA's prior representations that no upgrades on interconnection costs were required for ASAP SO1 and strayed from the approved ASAP. Moreover, it then ordered LUMA to show cause as to why the Energy Bureau should not: 1) impose an administrative fine of one hundred thousand dollars ($100,000) for "willful non-compliance and/or misrepresentation of material facts and deviation from the Energy Bureau's directives"; and 2) disallow the mentioned costs of the interconnection studies based on "inaccurate or misleading information" submitted to the Energy Bureau.

lower costs to customers. This program involves providing a standard offer ("SO") for adding BESS capacity at qualified independent power producer ("IPPs") facilities using two types of SO Agreements: the SO1 Agreement, offered to existing IPPs already operating and injecting energy into the grid, and the SO2 Agreement, offered to other IPPs with power purchase and operating agreements with the Puerto Rico Electric Power Authority ("PREPA") that are not yet operating and are in various stages of development.

LUMA contends that the July 9th Order violates its due process rights because it states the Energy Bureau's manifested inclination to impose a significant fine upon LUMA, without following applicable law and regulations, and also contains factual and legal conclusions that indicate that the Energy Bureau prejudged LUMA's alleged noncompliance and that a fine is justified.

The Energy Bureau's statements of "willful non-compliance" and "misrepresentation of material facts" fundamentally misconstrue the nature of LUMA's conduct, the transparency of its regulatory filings, and the industry context, in which the ASAP was developed and implemented. As demonstrated by the procedural history, the Program's design, and disclosures made to the Energy Bureau, LUMA has acted in good faith, in accordance with established utility practices, and in full compliance with all regulatory directives. The legal definitions of "willful," "misrepresent," and "misrepresentation"[2] require a level of intent, recklessness, or materiality that is wholly **absent** from the record. Accordingly, any punitive action against LUMA would not only lack a sound legal basis but would also undermine the public interest by jeopardizing the timely and cost-effective deployment of critical energy storage infrastructure in Puerto Rico.

For these reasons, as further expanded upon hereinbelow, LUMA respectfully contends that the Energy Bureau should vacate the July 9th Order. In the alternative, LUMA respectfully submits that the Energy Bureau must convene a hearing, to allow for a more robust discussion on the aspects raised by the Energy Bureau regarding LUMA's actions with respect to ASAP.

II. Relevant procedural history

1. On November 30, 2023, the Energy Bureau issued a Resolution and Order ("November 30th Order") in Case No. NEPR-MI-2021-0002, in which it referred to an informal

[2] *See Doral Fin. Corp. v. Estado Libre Asociado de Puerto Rico*, 2014 PR App. Lexis, 3578, 27-28 and Black's Law Dictionary (12th ed. 2024).

presentation conducted by LUMA to the Commissioners of the Energy Bureau on the ASAP, which "would allow the integration of much needed [BESS] to the Puerto Rico Electrical System in a significantly reduced amount of time than the time expected through the ongoing renewable energy and storage procurement process". *See* November 30th Order, p. 2. The Energy Bureau then ordered LUMA to present, among other information, a detailed description and discussion of the ASAP; the status of the efforts towards formalizing the ASAP; and a discussion on any barriers identified that may affect the implementation of the ASAP. *See id*.[3]

3. On December 21, 2023, LUMA submitted to the Energy Bureau the information requested in the November 30th Order in Case No. NEPR-MI-2021-0002, described above. *See Motion to Submit Information on Accelerated Storage Addition Program in compliance with Resolution and Order of November 30, 2023, and of December 11, 2023, and Request for Energy Bureau to Open a Separate Docket for the Evaluation of this Program* ("December 21st Motion"). Among others, LUMA explained that: "ASAP is a program that would propose to have existing [IPPs] with current Power Purchase and Operating Agreements ("PPOAs") with the [PREPA] to add BESS at their locations on an accelerated basis" that it "contemplated that a standard offer (applicable to all equally) would be made to these IPPs to amend their PPOAs to add BESS capacity at their facilities" and that "the additional BESS capacity would be dispatched by LUMA to provide voltage and frequency support and ancillary services, thereby providing improved system reliability and reduction of load shedding events." *See id*. p.6. LUMA also explained, among other things, that:

- ASAP is a cost-effective implementation of storage by maximizing the use of existing infrastructure while providing system reliability benefits.

[3] The Energy Bureau also requested information relating to a BESS proposal of Genera PR, LLC, which is not pertinent to this motion.

- The timeline to bring BESS online can be shortened – IPPs have existing Points of Interconnection (POI) so there is no need for interconnection construction and minimal studies required. The existing generators do not currently utilize the full interconnection limit for many hours during a 24-hour period, so ASAP is intended to utilize more of this capacity that is otherwise unused.

- There is an existing PPOA in place for these locations so commercial arrangements can be defined relatively quickly and incorporated into the existing PPOA via an amendment. The same draft Standard Offer Agreement has been made available on an informal basis to all existing generators. While most generators have reacted positively to the opportunity, several have not yet shown an enthusiastic response. This is an indication that the opportunity is competitive and is in the ratepayers' interest.

- Development risk and regulatory uncertainty can be reduced compared to greenfield projects because **IPPs already have existing land and point of interconnection. Consequently, ASAP projects have significantly reduced capital costs compared to other BESS projects**.

- ASAP **can also lower costs significantly since there are reduced needs related to: engineering studies, legal and permitting processes**. This reduces the costs and uncertainty for the generators. This reduced risk translates into lower costs for ratepayers.

- BESS can improve system reliability and reduce load sheds by dispatching energy during peak times and providing grid ancillary services to increase system hourly reserves. Most of the under-frequency load shed events (UFLS) in CY 2023 have been less than 200 MW. This means that if the System had had more than 200 MW, most load shed events could have been avoided. The UFLS events that might still have occurred would be smaller in magnitude and duration.

- ASAP has been configured to add as much capacity as the POI can transmit into the system, without requiring network upgrades or major interconnection work at the 12 existing IPP facilities through a "Standard Offer" amendment to their existing PPOA, resulting in improved reliability for the system at an accelerated pace and reduced cost.

Id., Exhibit 1, pp. 1-2 (emphasis added).

4. On April 19, 2024, the Energy Bureau issued a Resolution and Order ("April 19th Order") opening the instant docket for the evaluation of the ASAP and ordering LUMA to submit a final version of the ASAP concept within five (5) business days from the notification of the April 19th Order.

5. On April 26, 2024, LUMA submitted to the Energy Bureau the final version of the ASAP concept and requested the Energy Bureau to make a determination that ASAP is consistent with relevant energy public policy, the Integrated Resource Plan and Modified Action Plan[4] and to authorize LUMA to proceed with the development of the Standard Offer and SO Agreements for ASAP. *See Motion to Submit ASAP Structure and Concept in Compliance with Resolution and Order issued on April 19, 2024, and Request for Determination of Consistency with Energy Public Policy and IRP* ("April 26th Motion"), Exhibit 1. In the April 26th Motion, LUMA explained the following regarding ASAP, among others:

- Lower costs result primarily from use of existing sites and interconnection points, **reducing or minimizing the need for additional infrastructure studies or investments**, as well as avoiding the significant time and costs associated with traditional procurements. *Id*. p.2.

- ASAP "will allow deployment of BESS on an accelerated basis and at a lower cost compared to alternatives". *See id*., Exhibit 1, p.2.

- ASAP represents a winning proposition for both customers and participating generators. Customers benefits because **traditional costs of BESS integration are avoided or reduced**, improvements in service reliability are accelerated, renewable energy integration is facilitated; and energy storage costs are reduced. April 26th Motion, p. 5.

- ASAP would be implemented in two phases: Phase 1 for projects that **do not require any network or interconnection upgrades**, which can begin immediately, and Phase 2 for projects requiring minor interconnection work (to be implemented after Phase 1). *Id*.; *See also id*. Exhibit 1, p. 6. [5]

- By utilizing the IPP's established POIs, ASAP does not need new interconnection constructions, expediting the process to bring BESS online and reducing capital costs related to mitigating risk and uncertainty (e.g., permitting, legal, engineering studies). April 26th Motion, p. 6.

[4] This document is the Integrated Resource Plan approved in part and rejected in part by the Energy Bureau in their Final Resolution and Order dated August 24, 2020 in Case CEPR-AP-2018-0001, in which PREB also ordered the adoption and implementation of a Modified Action Plan.

[5] LUMA acknowledges that this description of the program was repeated in other submittals and will not repeat it in the discussion but rather will focus on other statements relating to the program that provide additional context.

- Preliminary studies conducted by LUMA have been performed at the facilities of some of the interested IPPs and indicate no operational restrictions or adverse effects from the ASAP Phase 1 on the existing transmission system - batteries can be installed with **negligible interconnection costs**. Phase 2 of ASAP has minor technical considerations pending to be determined. *Id*., pp. 6-7.

6. On May 8, 2024, the Energy Bureau issued a Resolution and Order ("May 8th Order") determining that the ASAP concept is aligned with Puerto Rico's energy public policy and is consistent with the Integrated Resource Plan, approving the ASAP concept, and authorizing LUMA and the IPPs to proceed with the development of the SO Agreements. *See* May 8th Order, p. 4.

7. On August 8, 2024, the Energy Bureau issued a Resolution and Order ("August 8th Order") ordering LUMA to, within five (5) business days, file with the Energy Bureau the proposed SO Agreements with IPPs or provide a detailed status update.

8. On August 20, 2024, LUMA submitted, as a confidential Exhibit 1, a detailed status update report in connection with the development of the SO Agreements and requested the Energy Bureau a Confidential Conference to discuss this status update. *See Motion Submitting Status Report in Compliance with Resolution and Order Issued on August 8, 2024,* pp. 3-4. This document included a discussion of evolving issues in the process and their potential resolution, key learnings to date, the regulatory policies to be considered and next steps. *See id*., p. 3 and Exhibit 1. LUMA proposed that ASAP be implemented through standalone agreements rather than amendments to existing PPOAs. *See id*., Exhibit 1, p. 4.

9. On August 22, 2024, the Energy Bureau issued a Resolution and Order scheduling, for August 29, 2024, a Confidential Conference to discuss the ASAP status update provided by LUMA.

10. On August 29, 2024, the Energy Bureau held the Confidential Conference with LUMA. During the Confidential Conference, LUMA provided a presentation on the status of ASAP.

11. On September 16, 2024, LUMA filed a still under-development draft of the SO Agreement constituting a working document under discussion with the generators; a document providing a background and description of the SO Agreement; and a document providing LUMA's responses to comments from stakeholders regarding ASAP. *Motion Submitting Draft of Standard Offer Agreement for Participation in Accelerated Storage Addition Program and Associated Information, Response to Comments Regarding Eligibility to Participate in the Program, and Request for Confidential Treatment* ("September 16th Motion") and its Exhibits, 1, 2 and 3. LUMA explained, among others, that **"**[l]ower costs result primarily from use of existing sites and interconnection points, reducing or minimizing the need for additional infrastructure studies or investments, as well as avoiding the significant time and costs associated with traditional procurements". *See id*., p. 2. In Exhibit 3, LUMA also explained the following:

> After initial discussions with IPPs and reviewing site-specific factors, ASAP was divided into Phase I projects, that would not require any interconnection upgrades, and Phase II projects, that would require some amount of interconnection upgrades in order to be safely and reliably integrated with the grid. This segmentation was done to prioritize those Phase I projects that were already interconnected to the grid, and that could most rapidly deploy new battery facilities. It is LUMA's proposition to the Energy Bureau, that after the first Phase I SO agreements are approved by the Energy Bureau, these exact same agreements would be made available to the other IPPs that were in operation at the time, but that did not participate directly in the development of the SO. These other IPPs, could propose to install these energy storage facilities at their locations under the SO after they validated interconnection requirements, site- specific constraints, and other internal factors that each generator prioritized.
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> Since the efforts to assess the site-specific opportunities began, several other projects participating in the Tranche 1 process signed PPOAs and become effective and are now in various stages of development and preconstruction. In addition, three other projects were approved with contracts before the Tranche 1 process.

> One of those is now in operation and the other two are under construction. LUMA respectfully proposes to the Energy Bureau, that these new development projects, which have already gone through an open, competitive procurement process and have been approved by the Energy Bureau and all appropriate agencies, should next be given the opportunity to participate in the SO process. LUMA stresses that this opportunity **should only be extended to these other projects after the Energy Bureau has approved the first SO agreements and these agreements complete all other regulatory reviews and become effective**. These other development projects could initiate discussions almost immediately after the ASAP approach is proven, and the SO Agreements are approved by the Energy Bureau and are effective.
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> The reasoning for this staged approach **to expand the SO process is that these new development projects have not yet performed several mandatory steps that the initial ASAP Phase I projects performed in conjunction with LUMA**. These steps include reviewing the existing PPOA for any constraints or limits on how the SO would be applied, **developing the steady state analysis of the interconnection system impact study, and visiting each project site to assess the physical layout, interconnection, and planned expansion (if any) and any other site-specific issues**.
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> These steps are absolutely mandatory in order to agree on how much energy storage capacity can be deployed at each site. **None of these reviews have even begun yet for these other development sites but could be initiated after the first SO agreements become effective**. An additional round of SO agreements should also be evaluated in the context of the overall expansion plan and system need.

Id., Exhibit 3, pp. 2-3.

12. On September 30, 2024, LUMA provided an update to the Energy Bureau on the development of the SO Phase 1 Agreement and informed that it anticipated to be able to submit the final SO Phase 1 Agreement to the Energy Bureau on or before October 31, 2024. *See Informative Motion Regarding the Status of the Final Standard Offer Agreement for Participation in Accelerated Storage Addition Program,* pp. 6-7.

13. On October 11, 2024, the Energy Bureau issued a Resolution and Order ("October 11th Resolution and Order") in which it ordered LUMA to finalize the SO Agreement and present a final draft to the Energy Bureau for review and approval on or before October 18, 2024 and submit a "comprehensive list of current ASAP Phase 1 participants". *See* October 11th Resolution,

p. 3. The Energy Bureau also ordered LUMA to "offer, immediately after the Energy Bureau's approval, the SO Agreement to all interconnected IPPs and all IPPs with executed PPOA contracts, regardless of their interconnection status, the opportunity to participate in the ASAP program and simultaneously start assessing the viability of each of the possible sites." *See id*.

14. On October 18, 2024, LUMA submitted to the Energy Bureau a final draft of the SO Agreement for Phase 1 of ASAP ("SO1 Agreement"), in the form of four (4) SO1 Agreements prepared with respect to the four interested IPPs, and an updated description of the ASAP program with a list of participants. *See Motion in Compliance with Resolution and Order of October 11, 2024, and Request for Confidential Treatment* ("October 18th Motion"), p. 13 and Exhibits 1 and 2. In addition, LUMA proposed that the form of the SO1 Agreement be used, only after approved by the Energy Bureau, to develop a SO Agreement for Phase 2 of ASAP ("SO2 Agreement") and for LUMA to submit a proposed plan for Phase 2 projects for the organized and appropriate evaluation of the Phase 2 projects and deployment of Phase 2 BESS. *See id*., pp. 15-16. LUMA emphasized that there would be significant risks in beginning the Phase 2 without a structured program and plan because Phase 2 development projects are subject to additional considerations that must be addressed, including the need for interconnection studies, differing scheduling and pricing considerations, and considerations on the ultimate capacity of system battery storage needs, among others. *See id*., pp. 3-4, 15-16 and Exhibit 1, pp. 11-12.

15. On November 1, 2024, the Energy Bureau issued a Resolution and Order ("November 1st Order") approving the four (4) draft SO1 Agreements submitted with the October 18th Motion and ordered LUMA to, within five (5) business days from the notification of the November 1st Order: finalize these contracts with each Phase 1 Participant and take certain steps

relating to the approval thereof by PREPA's Board of Directors and subsequent execution. *See* November 1st Order, pp. 1-2.

16. On November 12, 2024, LUMA informed the Energy Bureau that it had diligently worked with the corresponding ASAP Phase 1 participants towards the finalization of the four (4) SO Phase 1 Agreements approved by the Energy Bureau; had completed this process (including submittal to PREPA's Governing Board) with respect to three (3) of the SO Phase 1 Agreements (representing an addition of 90 MW of 4-hour BESS capacity to the electric system) but was unable complete a final version with one of the Phase 1 participants (for purposes of this discussion, "Fourth Participant") due to the generator's need to address certain site-specific technical aspects; and requested thirty (30) days to resubmit to the Energy Bureau the agreement with the Fourth Participant for approval. *See Motion to Submit Information on Three Finalized Standard Offer Agreements in Compliance with Resolution and Order of November 1, 2024, and Request for Extension to Submit Finalized Fourth Agreement, Clarification on Next Steps, and Confidential Treatment* (November 12th Motion"), pp. 3, 7-8.

17. In the November 12th Motion, LUMA also explained that, since the SO1 Agreement had been approved by the Energy Bureau, LUMA could then offer the SO1 Agreement to all other potential Phase 1 participants and that this effort could result in between 150-300 MW of additional BESS capacity depending on actual participation. *See id*., pp. 9-10. LUMA then requested the Energy Bureau to authorize LUMA to commence this process. *See id*., p. 10.

18. On November 14, 2022, the Energy Bureau issued a Resolution and Order ("November 14th Order") in which it directed to finalize the Fourth Participant's SO1Agreement in fifteen (15) days "due to the urgency of the matter" and "redirected LUMA to the [October 11th Order], whereby LUMA was ordered to offer, immediately after the Energy Bureau's approval, the

SO Agreement to all interconnected IPPs and all IPPs with executed PPOA contracts, regardless of their interconnection status". *See* November 14th Order, p, 2.

19. On November 22, 2024, the Energy Bureau ordered LUMA to show cause as to why a fine of five thousand dollars ($5,000) should not be imposed, under Art. 6.36 of Act 57-2014 for noncompliance with the October 11th Order and the November 14th Order, with respect to offering the SO1 Agreement to all IPPs regardless of interconnection status, and required LUMA to submit a written response within five (5) business days**.**

20. On December 3, 2024, LUMA requested the Energy Bureau vacate its order in the November 14th Resolution with respect to offering the SO1 Agreement to all IPPs regardless of interconnection status. Instead, LUMA requested the Energy Bureau to allow for the implementation of the orderly process proposed for the SO2, providing for the distribution of the SO2 Agreements after development of a suitable draft thereof by LUMA that is approved by the Energy Bureau. *See Motion to Respond to Order to Show Cause of November 22, 2024, Request for Extension to Submit Standard Offer Agreement for Fourth Participant, and Request for Confidential Treatment* ("December 3rd Motion"). LUMA also informed that the SO1 Agreements had been distributed to the remaining nine SO1 participants on November 19, 2024, and requested that the Energy Bureau provide LUMA until the end of December 2024 to finalize the SO1 Agreement with the Fourth Participant. *See id*., pp. 6, 18, 25-26. In this motion LUMA described the ASAP, in pertinent part, as follows:

> When LUMA voluntarily initially proposed the ASAP program, LUMA described it as a program to be implemented in two Phases. Specifically, in the Phase I, a Standard Offer Agreement ("SO Phase 1 Agreement") would be used to connect BESS at the sites of existing IPPs already in operation and injecting energy into the grid and which projects do not require modification to the existing point of interconnection to connect the proposed BESS. In Phase 2, proposed to be implemented subsequently, a Standard Offer Agreement ("SO Phase 2 Agreement") would be used to connect BESS at the sites of existing IPPs **which**

could require modification to their existing point of interconnection to connect the proposed BESS. The program was later expanded, as per LUMA's recommendation and the Energy Bureau's directive, to include the sites of energy resource developers with PPOAs with PREPA that were not yet operating or are in various stages of development, which LUMA also proposed to be part of Phase 2. **All of these Phase 2 projects are projects that require interconnection studies and could require some amount of interconnection upgrades to safely and reliably integrate the BESS to be added under the SO Agreement to the grid**. In addition, all of these Phase 2 projects have PPOAs that still need to be reviewed for potential issues that could result from a new Standard Offer Agreement sharing the same Point of Interconnection.

When, on October 18, 2024, LUMA submitted to the Energy Bureau the proposed SO Agreement for Phase 1 of the ASAP Program ("SO Phase 1 Agreement") in the form of four draft SO Agreements proposed to be executed with four (4) interested Phase 1 participants, LUMA acknowledged the language in the October 11th Order regarding the expansion of ASAP to renewable energy resource developers with PPOAs that are not operating and are in various stages of development, but LUMA strongly and clearly stated that the SO Phase 1 Agreement being submitted at the time was written and only intended to be applicable for Phase 1 of ASAP and that, promptly after the Energy Bureau's approval of this SO Phase 1 Agreement, LUMA would develop a revised Standard Offer Agreement for Phase 2. **LUMA explained that this phasing was reasonable, prudent and necessary because the Standard Offer Agreement for Phase 2 would need to include provisions addressing the different circumstances of Phase 2 projects, given the need for interconnection studies, potential upgrades and associated cost considerations and that the existing Phase 2 project's PPOAs had not yet been reviewed for potential issues with the Standard Offer Agreement**. LUMA also proposed that a program be developed, for review and approval of the Energy Bureau, for the organized and appropriate evaluation of the Phase 2 projects and deployment of Phase 2 BESS, to ensure adequate consideration of potential issues relating to the projects' timing, location and impact on electric system planning, as well as overall capacity addition constraints and requirements of the Integrated Resource Plan and Modified Action Plan ("IRP") ("Phase 2 Program"). During the Confidential Conference of August 28th, LUMA emphatically stressed at the time that **successful execution of BESS (and other) projects, especially with a Standard Offer Agreement structure, required necessary study and understanding of the existing or planned physical and electrical characteristics of the projects**; that using the same text of SO Phase 1 Standard Offer and simply distributing to SO Phase 2 agreements while ignoring the different execution and schedule risks would be reckless and further elevate the risk of execution; and that rushing the signing of Standard Offer Agreements that were not designed for projects still under development while ignoring the technical and physical considerations that must be taken into account, and without verifying planning and overall system conditions justifying these additional projects, was contrary to utility best practices and prudent utility management.

Id., pp. 3-5. (internal citations omitted).

21. On December 4, 2024, the Energy Bureau issued a Resolution and Order ("December 4th Order") determining to vacate the order to distribute the SO1 Agreement to all IPPs regardless of interconnection status and granting LUMA until the end of December 2024 to finalize the SO1 Agreement with the Fourth Participant. *See* December 4th Order, p. 3. The Energy Bureau also ordered LUMA to submit, within the next fifteen (15) days, the SO2 Agreement. *See id*.

22. In compliance with the December 4th Order, on December 19, 2024, LUMA submitted a draft of the proposed SO2 Agreement. *See Motion to Submit Proposed Standard Offer Phase 2 Agreement in Compliance with Resolution and Order of December 4, 2024, And Request for Confidential Treatment* ("December 19th Motion"). In the December 19th Motion, LUMA again described ASAP as follows:

> ASAP will be implemented in two Phases. Specifically, in Phase I, a Standard Offer Agreement ("SO1 Agreement") will be used to connect BESS at the sites of existing independent power producers already in operation and injecting energy into the grid ("IPPs") and **which projects do not require modification to the existing point of interconnection to connect the proposed BESS**. In Phase 2, to be implemented subsequently, a **Standard Offer Agreement ("SO2 Agreement") will be used to connect BESS at the sites of existing IPPs which could require modification to their existing point of interconnection to connect the proposed BESS** and the sites of renewable energy resource developers with power purchase and operating agreements ("PPOAs") with PREPA that are not yet operating and are in various stages of development. These **Phase 2 projects have not yet been reviewed and will require interconnection studies and could require some amount of interconnection upgrades to safely and reliably integrate their BESS** to the grid.

See id., p. 2 (emphasis added).

23. LUMA also provided a description of costs incurred and anticipated to implemented ASAP and proposed a mechanism to recover these costs. *See id*. pp. 10-11. In addressing this issue, LUMA indicated the following:

> The implementation of ASAP by LUMA has involved the expenditure of significant resources by LUMA, both internal and external, including legal support to prepare and negotiate the SO1 Agreement as well as significant financial modeling and analysis to evaluate the economics of key clauses in the SO1 and SO2 Agreements. The need for these additional resources will continue to be needed going forward for the further implementation of ASAP SO1 and SO2, the management of executed SO Agreements and the negotiation, execution and management of other Phase 1 and Phase 2 projects. **These future efforts will include technical support to evaluate the sites that require interconnection upgrades as well as to evaluate other technical aspects of the SO Agreements**. These are costs that are not part of the base rate, given that ASAP is a new program that was not previously contemplated. Therefore, LUMA respectfully submits that it is imperative that a funding mechanism be established to cover the additional costs to LUMA of implementing ASAP. Given that these expenses are related to the establishment of new generation related facilities and services, LUMA proposes that these costs be recovered through the Power Purchase Cost Adjustment ("PPCA"). **For similar reasons, LUMA is proposing that the costs of the interconnection studies required to support SO1 and SO2 also be submitted later in the PPCA for cost recovery**. Doing this will reduce the timing required for these studies **since they can all be performed together as a cluster study which could occur in the next several weeks**, in time to support current schedule expectations. LUMA can provide the Energy Bureau with information on costs specific to the ASAP, and provide support for any charges, similar to how LUMA provides with other generation costs currently included in the PPCA.

Id. (emphasis added).

24. Regarding interconnection matters, LUMA also explained that it "is proposing that **all costs related to interconnection studies, and associated T&D System Operator's Interconnection Works expended for the specific purpose of supporting the deployment of ASAP BESS under SO1 and SO2 Agreements shall be collected by LUMA, and submitted to the Energy Bureau for cost recovery under the Power Purchase Cost Adjustment process** similar to what the Energy Bureau approved for Tranche 1 cost treatment." *See id*., Exhibit 3, p. 1 (emphasis added).

25. On December 20, 2024, the Energy Bureau issued a Resolution and Order approving the finalized versions of the three (3) SO1 Agreements and ordered PREPA to seek approval of these agreements from the FOMB.

26. On December 23, 2024, LUMA submitted the finalized version of the fourth SO1 1 Agreement for the Energy Bureau's approval.

27. On January 14, 2025, the Energy Bureau issued a Resolution and Order ("January 14th Order") in which it authorized the terms of the SO2 Agreement and ordered LUMA to distribute the SO2 Agreements immediately to potential participants and to initiate negotiations file the final version of the SO2 Agreement on or before February 7, 2025. *See* January 14th Order, p. 3. **The Energy Bureau recognized the need for a funding mechanism to cover interconnection costs and ordered LUMA to provide, on or before January 31, 2025, an estimate of specific costs along with the supporting documentation to approve the proposed interconnection costs mechanism**. *See id*.

28. Also on January 14, 2025, the Energy Bureau issued another Resolution and Order in which it approved the finalized version of the SO1Agreement with the Fourth Participant, and ordered LUMA to seek approval thereof from FOMB, among other things.

29. On January 31, 2025, LUMA informed that LUMA had distributed the SO2 Agreement to potential participants on January 15, 2025. *See Informative Motion and to Submit Estimate of Costs for ASAP in Compliance with Resolution and Order of January 14, 2025, and Request for Confidential Treatment* ("January 31st Motion"), p. 2. LUMA also provided information regarding the estimated costs of the ASAP program, proposed provisions for the collection, reporting, and recovery of these program costs (providing for recovery of costs as part of the quarterly PPCA process recovery), and a preliminary ASAP Implementation Program Plan.

See id., pp. 2, 11-12 and Exhibit 1. LUMA also reminded the Energy Bureau of the need to establish a program for the orderly evaluation of ASAP projects, including establishing a queuing process to ensure orderly evaluation and ensuring overall capacity limitations are not exceeded. *See id*., p. 11.

30. In addition, LUMA explained that it proposed to "coordinate system impact studies to be performed as "cluster studies" to accelerate timing required to analyze SO1 and SO2 candidate projects"; that LUMA would "pay the costs of these studies, and those costs will be submitted for recovery as part of the PPCA process"; that "[m]anaging these studies as a cluster is expected to reduce the total study costs required, as well as reducing any potential risks or schedule impacts to individual projects" and that "[s]ince the BESS facilities will benefit all ratepayers, this cost treatment is appropriate". *See id*., Exhibit 1, p. 2. LUMA provided an estimated cost of $15 million as "the total estimated expenditure to deploy the full number of expected new BESS facilities under ASAP" for 2025 and part of 2026 and explained that:

> The ASAP Implementation Program Plan cost estimate of $15 million represents approximately 2% of the total capital investment of $600 million for 500 MW of BESS facilities and less than two tenths of one percent of the total estimated 20-year economic benefits of the ASAP program. This is considered a very reasonable investment in program management and oversight. It is important to emphasize that if the Standard Offer Agreements are implemented as designed, schedules imposed by the Energy Bureau are realistic, and amendments are kept to an absolute minimum, then these $15 million costs could be considerably less.

See id., Exhibit 1, p. 3.

31. Furthermore, LUMA provided an overview of the workstreams that would be needed to support the full ASAP Program Plan, and described as part of the program development the task to "Perform Site Visits & Interconnection Studies". *See id*., Exhibit 1, p. 5. LUMA also explained that:

> LUMA's original recommendation to the Energy Bureau was to develop the details of a program plan prior to widespread circulation of the Standard Offer Agreements. The Energy Bureau determined that the emergency conditions in the Puerto Rico electric grid today require that BESS deployment is treated as an urgent priority and as a result, all activities are proceeding on an accelerated basis.
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> a. This Program Plan is being "fast-tracked" and shared with stakeholders and regulators as the draft documents are being developed. LUMA's plan is to receive initial feedback from the Energy Bureau on budget and scope issues, and the Final ASAP Implementation Program Plan will be completed by February 28, 2025[.]
>
> b. A high-level overview of milestones to achieve Regulatory approval for all the SO Agreements is shown in the exhibit below. Please note that there are three separate groupings of ASAP contracts shown: First are the four SO1 agreements that have been approved by the Energy Bureau and are enroute to FOMB approval. Second are the other nine SO1 agreements that have been sent to generators and are currently in their hands. The third group is the SO2 agreements that have been sent to generators and are also currently in their hands. In the next few weeks as several items become clearer, this milestone schedule will be adapted to communicate status in a more detailed manner.

See id., Exhibit 1, p. 6.

32. On February 4, 2025, the Energy Bureau issued a Resolution and Order ("February 4th Order") taking notice of the ASAP Implementation Program Plan proposal and funding mechanism and granting LUMA until February 28, 2025, to file the complete ASAP Implementation Program Plan. *See* February 4th Order, pp. 1-2. The Energy Bureau also directed that LUMA include in the final version of the SO2 Agreements an estimated cost of interconnection improvement works for these projects and any other costs that were not referred to by LUMA in the ASAP Implementation Program Plan. *See id*. p. 2.

33. On February 7, 2025, LUMA filed the master template of the SO2 Agreement ("SO2 Master Template Agreement"), explaining that it was the same version as the draft SO2 Agreement submitted on December 19, 2024, given that LUMA had not identified a need to perform any revisions to that previous draft and this template included the details judged by LUMA

to be appropriate. *See Motion to Submit ASAP SO2 Master Template Agreement in Compliance with Resolution and Order of January 14, 2025, and Update on ASAP Program Implementation and Request for Confidential Treatment*, p. 3, Exhibit 1, p. 2 and Exhibit 1. LUMA also explained, among others, that a definite number could not be provided at the time on the interconnection costs for SO2 projects until each of the specific sites was visited and the feasibility study was completed to confirm what improvements would be required, if any. *See id*, p. 13 and Exhibit 1, p. 2. In addition, LUMA provided a status update on the implementation of ASAP, in which it described the efforts to date and identified the required next steps, providing context of when the site visits and future required tasks for ASAP implementation (e.g., development of queuing management program, amendment and change order procedure, a BESS MTR compliance program, Agreed Operating Procedures, self-charging protocol, BESS dispatch procedures, among others). *See id*., p. 14 and Exhibit 1, pp. 3-11. LUMA explained in Exhibit 1 that it had:

> Conducted numerous LUMA-internal planning meetings about the BESS MTR compliance program, coordinating schedules to **conduct initial site visits**, conducted preliminary discussions about LUMA and contractor staffing and project management structure and internal roles and responsibilities, project numbers and other project controls steps, scoping and **completing final documentation to retain engineering firm to conduct Battery Feasibility Evaluation**.

Id., Exhibit 1, p. 4.

34. On February 11, 2025, the Energy Bureau issued a Resolution and Order ("February 11th Order") in which it conditionally approved the SO2 Master Template Agreement and indicated that the final approval of the SO2 projects "is subject to the completion of the interconnection feasibility studies and the evaluation of costs associated with interconnection works". *See* February 11th Order, p. 2. In addition, the Energy Bureau ordered LUMA to "provide all cost information (incurred and projected) as soon as it becomes available", explaining that once "it receives this information, it will assess whether the agreed prices align with the public interest

and are reasonable" and "will then issue further determinations, including any necessary steps involving [PREPA] and the [FOMB] approval process". *See id*.

35. On February 28, 2025, LUMA submitted to the Energy Bureau the "ASAP Program Implementation Plan". *See Motion to Submit ASAP Program Implementation Plan and Associated Documents, Request for Approval of ASAP Cost Recovery Mechanism, and Request for Confidential Treatment*, pp. 1, 3,11-13 and Exhibit 1. LUMA described the ASAP Program Implementation Plan (or "Plan") as representing "an assessment by LUMA of what is required to implement and manage the ASAP program deployment" and that it is "a living "evergreen" document that will be built upon and amended as appropriate in coming months to address any emergent issues" *See id*., Exhibit 1, p. 4; *see also* February 28th Motion, p. 11. LUMA further explained that LUMA developed this program to "better convey the full scope and extent of the ASAP Implementation Program and the numerous inter-related work tasks, as well as to develop and provide context to a reasonable and defensible estimate of program expenditures". February 28th Motion, p. 11; *see also id*., Exhibit 1, p. 4.

36. LUMA also explained that "[i]n order to accelerate BESS deployment and increase efficiencies, LUMA is adopting several best practices that have been used at other electric utility procurement programs to define required management control practices that are described in the Plan" and that the Plan "contains 43 tasks that describe the main areas for program facilitation and specific steps for each" and it includes an "ASAP Program Tasks matrix to show how each of these tasks align within the three identified time phases of the ASAP Program: Program Development; Program Facilitation and Execution; and Post COD Expenditures". *See* February 28th Exhibit, p. 11. As described in the Plan, these tasks included "finalization of SO1 and SO2 Agreements; facilitating regulatory approvals; legal review of agreements; queue management; control of

amendments and change orders; administration and management of interconnection agreement documentation; technical oversight of Minimum Technical Requirements; compliance with Agreed Operating Procedures, the SO and System Operation Principles procedures designed for the program; coordination with developers; site visits and interconnection study coordination; coordination of testing requirements; outage schedules, testing schedules and certifications; metering and relaying responsibilities; BESS dispatch procedures and integration; and progress reporting", among others. *See id*., pp. 11-12. Task #5, in particular, which relates to the "Queue Management Program" provides as follows:

> Background
> After Participants express interest in ASAP by responding to a specified email, completing informational document regarding the project proposal and submitting earnest money, the project is given an Identification number and placed into the Cluster Study for the SO1 or SO2 cluster of Participant projects. LUMA will pay these expenditures **and those expenditures will be submitted for recovery as part of the PPCA process**.
>
> Specific Steps
> 1. Renewable Integration **provides all Interconnection Studies including the System Impact Study, in these cases all Participants will be placed in an SO1 or SO2 cluster and studied at once in order to accelerate the process**.
> 2. Cluster Study costs to be tracked via a Financial Project Number assigned by the Finance/Accounting department.
> 3. Cluster Study expenditures will be submitted for recovery via the ASAP Expenditure Collection, Reporting and Recovery Procedure.

See id., Exhibit 1, p. 13.

37. Task #20, which relates to "[p]erform[ing] site visits and interconnection studies", also addressed the interconnection studies and provides the following:

> Background
> There will be a need to coordinate and facilitate site visits to each location that contemplates a battery addition. **These site visits will confirm project layout and identify any potential geographic or locational issues that could affect the project's success. Following the site visits, information will be gathered that**

will be used to develop the system impact studies and other analysis required to support the project.

Specific Steps

1. Identify sites that will host a site visit. Coordinate logistical schedules to allow the LUMA team and its advisors to visit the sites in an organized, efficient manner.
2. Create a template of required information from each site that can be given to each Participant for them to fill out and also provide the requested information such as layout drawings, one-line diagrams, or other relevant information.
3. Cluster the individual sites to be analyzed in a manner that streamlines the analysis process and makes it more efficient. This will be determined by engineering planning.
4. Conduct system impact studies as required.
5. Summarize all assessment memos describing any major challenges associated with that particular site.
6. Develop a more detailed feasibility study and analysis as appropriate.

See id., Exhibit 1, p. 28 (emphasis added).

38. Furthermore, LUMA **described as part of the costs** to be separately managed, tracked, submitted, and recovered as part of the quarterly PPCA process, **the costs of the interconnection studies** to be performed as cluster studies. *See id*. p.12. Regarding these cluster studies, LUMA explained:

> LUMA will **coordinate system impact studies to be performed as "cluster studies" to accelerate timing required to analyze SO1 and SO2 candidate projects**. LUMA will pay the costs of these studies, and those costs will be submitted for recovery as part of the PPCA process. Managing these studies as a cluster is expected to reduce the total study costs required, as well as reducing any potential risks or schedule impacts to individual projects. Since the BESS facilities will benefit all ratepayers, this cost treatment is appropriate.

See id., Exhibit 1, p. 5 (emphasis added).

39. Finally, LUMA included an update summarizing the status of all ASAP projects and estimated timeline for future steps. *See id*., Exhibit 3. In this document, LUMA explained, among others, the following:

- Ongoing system-wide cash constraints are having an impact on LUMA's ability to start work to support the Program Management phase of the program. In particular, it limits **LUMA's ability to hire the Engineering firm that will perform the site assessments and system impact modeling work which is a critical path activity on the Program schedule**.
- To reduce the schedule impact of delays in hiring the Engineering firm to perform necessary modeling, LUMA is conducting an initial site assessment of the four additional interested SO 1 participants and will modify its sequence of activities to minimize schedule impact. The site assessment will investigate whether commercial arrangements can be utilized to allow construction to begin before any interconnection modifications are required. For example, LUMA will initially assume all charging will be performed at night, to eliminate the impact of operating the BESS and the generation assets at the same hours of the day. This will allow procurement activities to proceed. **If additional interconnection modifications are required (which is still not expected, but is a possibility), then LUMA will propose these additional modification costs are borne by the ASAP Program Plan and recovered through the PPCA rather than being imposed on the individual generators**.
- To further mitigate schedule impacts, LUMA is requesting timely and explicit approval for a budget and cost reconciliation process which is based on the previously submitted not-to-exceed estimate of $15 million. This not-to-exceed estimate will be reviewed quarterly, and the Energy Bureau will be kept informed of any changes to this estimate.

Id., Exhibit 3, p. 3

40. LUMA further explained that "[d]eveloper coordination activities have been on hold due to internal funding and finance approvals required to proceed with site visits and engineering studies"; that [e]ngineering studies will be included as part of the interconnection costs"; that [t]hese will include site visits and some preliminary engineering conceptual design";

and that a specific engineering firm "has been engaged for this purpose and a cost estimate is being developed". *See id*., p. 4.

41. LUMA then requested the Energy Bureau to approve the ASAP Program Implementation Plan and a companion document submitted with it (referred to as the "ASAP Program Expenditure Collection, Reporting and Recovery Procedure") and the proposed process and procedures for recovery of the ASAP program costs as defined in these documents through the PPCA in quarterly submissions. *See id*., p. 13-14.

42. LUMA further informed that based on the estimated not-to-exceed program costs for ASAP of $15 million, it would budget costs at $1.15 million per month for calendar year 2025, after allowing for the $1.7 million in costs already incurred through February 2025 and LUMA would update this amount as the program progresses noting that these costs could potentially be reduced to the extent amendments to SO Agreements are limited. *See id*., p. 14. Accordingly, LUMA proposed to budget an average of $3.45 million per quarter (as forecasted costs) to be submitted for recovery through the PPCA factors filing in Case No. NEPR-MI-2020-0001, *In re: Puerto Rico Electric Power Authority Permanent Rate* ("Permanent Rate Docket") subject to later reconciliation based on actual expenditures- all as determined, managed and documented in accordance with the ASAP Program Implementation Plan and companion ASAP Program Expenditure Collection, Reporting and Recovery Procedure. *See id*., p. 15. LUMA also provided an optimistic case budget of $8 million based on an assumption that no amendments to the SO Agreements would be required. *See id*., Exhibit 3, pp. 5-6. Therefore, LUMA requested the Energy Bureau to approve this approach for LUMA to proceed with the quarterly PPCA submittals in the Permanent Rate Docket (NEPR-MI-2020-0001) for ASAP program costs and proposed to make its first submittal forecasted costs for April to June 2025 in the PPCA factors filing of the Q4

FY2025 in the Permanent Rate Docket (NEPR-MI-2020-0001) on March 17, 2025. *See* February 28th Motion, p. 15.

43. On March 5, 2025, the Energy Bureau issued a Resolution and Order ("March 5th Order") in which it approved the ASAP Implementation Program Plan and companion document; authorized LUMA to use the PPCA rider as a cost recovery mechanism for ASAP until December 2025, commencing with the March 17, 2025 PPCA filing; and directed LUMA to justify all ASAP expenses in PPCA filings. *See id*., pp. 2-3. In addition, the Energy Bureau ordered LUMA to submit: (i) any changes in the ASAP Implementation Program Plan for the Energy Bureau's review and approval, (ii) any changes to the estimated expenditures to implement ASAP, and (iii) a quarterly report discussing in detail the progress of ASAP implementation. *See id*.

44. In accordance with the March 5th Order, on March 17, 2025, LUMA submitted in the Permanent Rate Docket the ASAP implementation costs up to February 28, 2025 and the projected expenses for the period from April to June 2025 for recovery in the PPCA quarterly filing, with an explanation of the actual costs incurred and the justification of the forecasted costs. *See Motion Submitting FCA and PPCA Reconciliations for December 2024 through February 2025, Submission of FCA, PPCA and FOS Calculated Factors, and Request for Confidential Treatment* ("March 17th Permanent Rate Motion") in case NEPR-MI-2020-0001, pp. 2, 12-13 and Exhibit 1.

45. On March 28, 2025, the Energy Bureau issued a Resolution and Order in the Permanent Rate Docket in which, among others, it approved the previously incurred ASAP implementation costs for expenditures before February 28, 2025 and projected expenses from April to June 2025, both of which were submitted by LUMA in the March 17th Permanent Rate Motion. *See Resolución y Orden, Asunto: Determinación sobre los Factores de las Cláusulas de*

Ajuste Trimestral para el periodo del 1 de abril de 2025 al 30 de junio de 2025, Caso Núm. NEPR-MI-2020-0001, *In re: Tarifa Permanente de la Autoridad de Energía Eléctrica de Puerto Rico*, pp. 3 and 8.

46. On June 16, 2025, LUMA submitted in the Permanent Rate Docket the projected ASAP expenses for the period from July to September 2025 for recovery in the PPCA quarterly filing and justification for these costs. *See Motion Submitting FCA and PPCA Reconciliations for March through May 2025 and Updated Annual Reconciliation and Submission of FCA, PPCA and FOS Annual Calculated Factors and Request for Confidential Treatment* ("June 16th Permanent Rate Motion") in case NEPR-MI-2020-0001, pp. 12-13 and Exhibit 1. LUMA also informed on the expenditures incurred from March 1, 2025 to April 30, 2025 for the ongoing development of the ASAP program and provided a status of the program and associated activities. *See id*. In particular, LUMA explained that:

> Site visits to the SO1 facilities are being scheduled in two parts with the engineering firm. The initial site visits for the two most recently added SO1 participants […] were prioritized and completed in May. These site visits focused on performing an initial screening in order to prepare a memo of findings, which will identify any major issues with the proposed ASAP projects. If no major issues are identified in the memo (expected memo completion by mid-June), LUMA expects to submit the individual SO1 agreements to the Energy Bureau for consideration and approval. **Coordination also started for the second part of the engineering firm's scope of work, which consists of more detailed site and substation visits to complete a Feasibility Study and System Impact Study**.

See id., Exhibit 1, p. 2 (emphasis added).

47. On June 16, 2025, the Energy Bureau issued a Resolution and Order ("June 16th Order") in the instant proceeding in which it ordered LUMA to provide, within five (5) days from the notification of the June 16th Order, "all **interconnection studies** conducted to date; a detailed report on the current status of any pending interconnection studies; a clear timeline for the completion of outstanding studies; and all available cost **information,** including detailed

estimates, incurred costs, supporting documentation, associated with the interconnection process and a detailed status report of all the Phase 1 projects". *See* June 16th Order, p. 2 (emphasis in the original). The Energy Bureau highlighted that in the February 11th Order it had conditionally approved the SO2 Master Template Agreement warning that "the final approval of the Phase 2 Projects was subject to completing the interconnection feasibility studies and evaluation of costs associated with interconnection works" and had ordered LUMA to "submit all cost information (incurred and projected) as soon as it became available to assess whether agreed upon prices align with the public interest and are reasonable". *See* June 16th Order, p. 2. The Energy Bureau further noted that, as of the June 16th Order, LUMA had "not provided the relevant information nor any update regarding status or progress". *See id*., p. 3.

48. On June 23, 2025, LUMA filed with the Energy Bureau a status update on the interconnection studies of the ASAP projects, ASAP interconnection process cost information, and status update of the SO1 projects, in compliance with the June 16th Order. *See Motion in Compliance with Resolution and Order of June 16, 2025 and Request for Confidential Treatment* ("June 23rd Motion"), Exhibits 1, 2 and 3. Among others, LUMA explained the following:

> Requests for Information (RFIs) have been distributed to all SO1 participants to commence a review of technical materials and engineering studies. **Coordination also started for the second part of the engineering firm's scope of work, which consists of the second round of more detailed site and substation visits prior to completing the Feasibility Study and System Impact Study**.
>
> Regarding the requests for the status of interconnection studies and a clear timeline of the outstanding studies, see Table 2 in Section 3. **The interconnection studies will be completed as a cluster study approximately three months after the RFIs are received from SO1 developers. The Cluster study requires that all preliminary analyses (memos of findings) be completed prior to their commencement.** The engineering and procurement activities are progressing in parallel as the parties continue to await P3A approval for the Agreements which were submitted in February 2025.

Id., Exhibit 1, p. 5 (emphasis added).

49. LUMA also explained that it would be filing a quarterly report on ASAP within thirty (30) days from the end of the fourth quarter in compliance with the March 5th Order. *See id*. p. 8.

50. On June 26, 2025, the Energy Bureau issued a Resolution and Order ("June 26th Order") indicating that LUMA had provided in the June 23rd Motion a status update of the SO1 Agreements but "did not provide the status of the SO2 Agreements, including interconnection studies and cost information". See June 26th Order, p. 1. The Energy Bureau then ordered LUMA to within five (5) business days, provide "all interconnection studies conducted to date; a detailed report on the current status of any pending interconnection studies; a clear timeline for the completion of outstanding studies; and all available cost information, including detailed estimates, incurred costs, supporting documentation, associated with the interconnection process". *Id*.

51. On July 2, 2025, LUMA filed the information required by the June 16th Order. *See Motion in Compliance with Resolution and Order of June 25, 2025 and Request for Confidential Treatment* ("July 2nd Motion"). Specifically, LUMA provided a status of interconnection studies, the timeline for completing these studies, and available cost information associated with SO2. See id., Exhibit 1.LUMA also submitted a task order from the external engineering firm engaged in connection with the interconnection studies for ASAP outlining the details and estimates related to the cost of the interconnection studies and related support activities "Task Order"). LUMA explained in particular that:

> LUMA anticipated that the site visits and system studies, as well as discussions with the six SO1 development projects that had indicated their interest in the ASAP Standard Offer, would be completed before initiating the site assessments relating to the SO2 interested participants and associated system studies. Exhibit 3 of the February 28, 2025, motion provides SO1 and SO2 indicative timelines. Showing SO2 site visits happening one month after SO1.

> This ASAP Implementation Program Plan was based on the principle that the SO1 development projects were already operating with existing points of interconnection (POIs) and were more knowledgeable about the details of the ASAP BESS deployment issues since they have been engaged with detailed discussions with LUMA over the previous year. As LUMA informed in the past, there were several elements of the ASAP SO Program that needed to be completed before expanding the SO Agreements to the other interested SO2 parties. Many, but not all, of those items have been resolved as a result of detailed discussions with the SO1 participants. The resolution of these elements will be useful in proceeding with the SO2 projects. As a result, most of LUMA June 23rd Response discussed SO1 status with only references to SO2 interconnection project status.
>
> With the above context in mind, it is clarified that there have been no interconnection studies started or completed for SO2 projects as of this date. There have been several meetings and discussions with SO2 developers who have expressed significant interest in ASAP.

See id., Exhibit 1, p. 4.

52. LUMA further explained:

> Regarding the current status of pending interconnection studies, **Requests for Information (RFIs) are currently being exchanged between the SO1 project participants and the engineering firm, which is a necessary step before the actual studies can begin**. However, the studies themselves have not yet commenced. For the SO2 projects, the RFI exchange process has not yet started. Notably, **the SO1 contract project schedules are not expected to be impacted by the timing of the SO1 interconnection studies**.
>
> A timeline for the completion of the outstanding **interconnection studies has been established: the SO1 studies are expected to be completed three months following the initial site assessment**, which points to a projected completion in September 2025. For the SO2 studies, the same three-month completion timeframe will apply following the site assessments; however, these have not yet been scheduled. Based on current expectations, the SO2 studies would be completed around late October. A more specific schedule for the SO2 studies will be developed and submitted to the Energy Bureau once the SO1 studies are completed.
>
> **In terms of costs associated with the interconnection process, LUMA has provided a copy of engineering firm Task Order as Exhibit 2**. This document outlines all currently available details and estimates related to the cost of the interconnection studies and related support activities. The costs forecasted and incurred to date for ASAP program are being reported under docket NEPR-MI-2020-0001 and are inclusive of both SO1 and SO2.

See id., pp. 4-5.

53. On July 9, 2025, the Puerto Rico Energy Bureau ("Energy Bureau") issued an Order to Show Cause ("July 9th Order") in connection with the July 2nd Motion arguing that the costs associated with SO1 projects in the Task Order were "neither disclosed nor justified" by LUMA during the ASAP approval process; that the Task Order, reflecting an estimated cost of $1.3 million for SO1 interconnection studies, "directly contradicted" LUMA's prior representation that no upgrades on interconnection costs were required for SO1; and that LUMA had "strayed from the approved ASAP". *See* July 9th Order, p. 3.

54. The Energy Bureau also argued that LUMA's "failure to comply with and abide by the Energy Bureau's orders and/or directives constitute[d] non-compliance and warrant[ed] the imposition of fines, under Section 6.36 of Act 57-2014." *See id*. The Energy Bureau then ordered LUMA to Show Cause, within five (5) days of the July 9th Order, as to why the Energy Bureau should not: 1) impose an administrative fine of one hundred thousand dollars ($100,000) for "willful non-compliance and/or misrepresentation of material facts and deviation from the Energy Bureau's directives"; and 2) disallow the mentioned costs of the interconnection studies based on "inaccurate or misleading information" submitted to the Energy Bureau. *See id*. The Energy Bureau further directed that LUMA explain in detail the reasons for this alleged "misrepresentation and disregard of" the Energy Bureau's directives and provide justification for the Energy Bureau to consider regarding the imposition of fines, noting that failure to respond to the July 9th Order

would result in the immediate imposition of fines, and a continuing fine of up to twenty-five thousand dollars ($25,000) per day until full compliance is achieved. *See id*.

III. Discussion

A. A Fine Pursuant to the July 9th Order Has No Basis in the Applicable Law, Regulation and Case Law, Contravening the Due Process Guarantees.

55. The constitutional guarantee of due process assures everyone that they shall not be deprived of liberty or property without a fair, equitable, and reasonable trial. *See* Const. E.L.A. art. II, sec. 7, 1 L.P.R.A.; Const. USA Amdt. XIV §1; Const. USA, Amdt. V; *see e.g., Rivera Rodríguez & Co. v. Lee Stowell*, 133 DPR 881, 887 (1993); *López Vives v. Policía de PR,* 118 DPR 219, 231 (1987). In its substantive aspect, the guarantee of due process of law requires evaluating the constitutionality of a state action to protect fundamental rights. *Rivera Santiago v. Srio. Hacienda*, 119 DPR 265, 273 (1987). Under this guarantee, the State is prevented from affecting property or freedom interests of an individual in an unreasonable, arbitrary, or capricious manner. *Hernández v. Secretario*, 164 DPR 390, 394-95 (2005) (citing cases); *see also, e.g., Meléndez de León v. Keleher*, 200 DPR 740, 759 (2018) ("due process of law 'represents a barrier to arbitrary or capricious state actions affecting citizens' fundamental rights.").

56. Substantive protection extends to arbitrary and capricious government actions by administrative agencies. *See, e.g., Henriquez Soto v. Consejo Educación Superior*, 120 DPR 194, 202 (1987) ("due process of law also provides protection against administrative arbitrariness"); *Pearson v. City of Grand Blanc*, 961 F.2d 1211, 1217 (6th Cir. 1992) ("The right not to be subject to "arbitrary or capricious" action by a state either by legislative or administrative action is commonly referred to as a "substantive due process right."). Procedural due process, on the other hand, deals with "the minimum procedural guarantees that the State must provide an individual when affecting his life, property or liberty." *Rivera Santiago*, 119 DPR 273. "The essential

guarantee of the due process clause is that of fairness. The procedure must be fundamentally fair to the individual in the resolution of factual and legal basis for government actions which deprive him of his life, liberty, or property." *Id.*, p. 274 (citations and internal quotation marks omitted).

57. In evaluating claims of due process violations, courts first determine whether a proprietary or libertarian interest is at stake. *Rivera Rodriguez*, 133 DPR at p. 887. Once it is determined that this requirement has been met, due process is defined given that "different situations may require different processes, but the general requirement that the government procedure be fair and impartial must always prevail." *Id*. at p. 888. Due process is circumstantial and pragmatic in nature, so its requirements will depend on the context of the procedure. *Punta de Arenas Concrete v. Junta de Subastas, Mun. Hormigueros*, 153 DPR 733, 740-42 (2001).

58. Among the guarantees that make up due process, jurisprudence has recognized that the administrative decision must be informed, with knowledge and understanding of the evidence corresponding to the case. *A.D.C.V. v. Tribunal Superior*, 101 DPR 875, 883 (1974). *See also Rafael Rosario & Assoc., Inc. v. Dept. Familia*, 157 DPR 306, 330 (2002). In addition, the findings of fact and the reasons for the administrative decision must be stated. *Rivera Santiago*, 119 DPR at p. 274. To ensure due process guarantees, parties must have an opportunity to present and refute evidence and be able to do so effectively. *See Rentas Nieves v. Betancourt Figueroa*, 201 DPR 416, 429 (2018). Those parties to an administrative procedure have the right to participate effectively. *Comision de Ciudadanos al Rescate de Caimito v. G.P. Real Property S.E.*, 173 DPR 998, 1014 (2008) (by the imperative of due process, parties must be notified of administrative determinations so that they can effectively participate and challenge determinations in court). In view of this, "[t]he right to a public hearing would be meaningless if [the administrative body] were allowed to base its decision on evidence received without the

knowledge of the parties and outside the hearing, without allowing the interested parties to rebut or explain it by cross-examining or presenting other evidence to the contrary." *Lopez v. Junta de Planificacion*, 80 DPR 646, 670 (1958) (translation supplied). After all, due process guarantees are constitutional imperatives.

59. Due process guarantees include giving individuals adequate notice of actions the state prohibits or requires. *See Blanca Telephone Co. v. Fed. Commc'ns Comm'n*, 991 F.3d 1097, 1116 (10th Cir. 2021) (citation omitted). This pursues two guiding purposes: (1) that the regulated entity can conform its conduct to the requirements of the State; and (2) to prevent agencies from acting unreasonably or arbitrarily. *See FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253, (2012); *Henríquez v. Consejo Educación Superior*, 120 DPR 194, 202 (1987).

60. On due process guarantees in administrative proceedings, Section 3.1 of Puerto Rico's Uniform Administrative Procedures Act (LPAU for its Spanish acronym), 3 LPRA § 9641 (2023), provides as follows:

> The following rights shall be safeguarded in every formal adjudicative proceeding before an agency:
>
> (a) The right to be timely notified of the charges or complaints or claims against one of the parties.
> (b) The right to present evidence.
> (c) The right to an impartial adjudication.
> (d) The right to have the decision based on the record.

Id.

61. Section 1.3(b) of the LPAU defines "adjudication" as the pronouncement by which an agency determines the rights, duties, or privileges of a party. 3 LPRA §9603(b). The Supreme Court of Puerto Rico has recognized that the informal or summary nature of an adjudicative procedure is not an obstacle to guaranteeing affected parties the "irreducible minimum of procedural guarantees recognized as fair and equitable." *Torres Santiago v. Dept.* de Justicia, 181

DPR 969, 993 (2011) (determining that the Department of Justice must grant minimum procedural guarantees to applicants for the benefit of legal representation) (translation supplied); *Id*., 994 ("the nature of informality cannot obliterate the minimum guarantees of a fair and equitable process") (translation supplied); *see also Baerga Rodríguez v. F.S.E.*, 132 DPR 524, 538 (1993) (recognizing in the context of an Informal proceeding before the Puerto Rico Industrial Commission that the minimum procedural guarantees applicable to formal proceedings that have been deemed fair and equitable apply to informal proceedings). Even if the proceedings are informal or summary, the affected party must be given adequate notice, an opportunity to confront the other party's evidence and present its own evidence. *Almonte et al. v. Brito*, 156 DPR 475, 482 (2002). Regarding the requirement to provide fair warning to regulated parties, the U.S. Supreme Court has held that a court cannot make a deference to a new interpretation that creates an "unfair surprise" for regulated parties. *Kisor*, 139 S. Ct. at p. 2418.

62. In our jurisdiction, given the existing due process guarantees, decisions by administrative agencies imposing fines shall not exceed statutory authorization, must be supported by substantial evidence in the administrative record, and cannot amount to a clear abuse of discretion. See *Comisionado de Seguros v. Antilles Ins. Co.*, 145 DPR 226, 233-34 (1998); *Assoc. Ins. Agencies, Inc. v. Com. Seg. De PR*, 144 DPR 425, 439-41 (1997); See also e.g. *ECP Incorporated v. Oficina del Comisionado de Seguros*, 205 DPR 268, 281 (2020) (stating the general rule that decisions by administrative agencies should be reasonable); see also *Graciani Rodríguez v. Garage Isla Verde*, 202 DPR 117, 126-27 (2019).

63. The determination to impose a fine entails the exercise of discretion and a concomitant avoidance of arbitrary actions. In the context of administrative law, the Puerto Rico Supreme Court has held that the exercise of discretion by an administrative agency must be rooted

in reasonableness and accordance with applicable law. *See e.g*., *Ramírez v. Policía de PR*, 158 DPR 320, 339 (2002). Discretion, in turn, has been defined as a form of reasonableness applied to judicial discernment to reach a just conclusion. See, e.g., *Banco Popular de PR v. Mun. de Aguadilla*, 144 DPR 651, 657-58 (1997); *Pueblo v. Ortega Santiago*, 125 DPR 203, 211 (1990).

64. Section 6.36 of Act 57-2014, as amended by Act 17-2019, gives the Energy Bureau the authority to "impose administrative fines for violations of this Act, or the regulations and orders issued thereunder, committed by any person or electric power company subject to its jurisdiction, from ten thousand dollars ($10,000), up to a maximum of one hundred and twenty-five thousand dollars ($125,000) per day." 22 LPRA §1054jj (2025) (translation supplied). Article XII of Regulation No. 8543, also known as *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceeding* ("Regulation 8543"), establishes that the Energy Bureau "may issue any order or resolution it deems necessary to give effect to the purpose of Act. No. 57-2014, as amended, to compel compliance with any law whose interpretation and implementation is subject to the jurisdiction of the [Energy Bureau] and to enforce its rules, regulations, orders, and decisions." Regulation 8543, Section 12.01. It also provides that the Energy Bureau may also impose administrative fines due to a party's noncompliance with the provisions of Act 57-2014, Energy Bureau regulations, and/or laws subject to their jurisdiction. *See id*., Section 12.02.

65. Regulation 8543 applies to all notices of non-compliance and investigations addressed before or by the Energy Bureau. *See id.,* Section 1.04. Pursuant to Regulation 8543, the Energy Bureau may issue a Notice of Noncompliance if it learns that a person has incurred, is, or may be incurring a violation of the energy public policy set forth in Act No. 57-2014. *See id.*, Section 14.01. The Notice of Noncompliance shall be issued by summoning the person. *Id*. The

Notice of Noncompliance shall state the alleged breach, according to public information or the information that forms part of the administrative record, as well as the facts that give rise to the Notice of Noncompliance. *See id.*, Section 14.02. The Notice of Noncompliance shall inform the person of his/her right to address the Energy Bureau to examine the information and documentation in the administrative record. *Id*. As part of the proceedings, the person can submit witnesses and testimonies. *See id.*, Section 14.04.

66. After providing the notified party an opportunity to be heard, if the Energy Bureau determines that said party has engaged in one or more of the breaches alleged in the notice, it may impose the appropriate remedy, in accordance with the law, or with the remedies set forth in Sections 10.01 through 10.03. *See id.*, Section 14.05. If the notified party fails to comply with any of the Energy Bureau's orders issued during a Notice of Noncompliance proceeding, the Energy Bureau may impose any fine or sanction it deems appropriate, including fines and penalties set forth in Section 12.02 of the Regulation. *See id.*, Section 14.06.

67. As Article 14 of Regulation 8543 establishes, the Energy Bureau must notify of the non-compliance to the person that has incurred or is incurring a violation of the public energy policy of Puerto Rico or any law or regulation under the jurisdiction of the Energy Bureau. However, the July 9th Order does not comply with the requirements of Article 14, as it does not state the legal baseline of the alleged breach LUMA has incurred. *See id*., Section 14.02. The Notice of Noncompliance shall order the party to present its response in writing and provide its defenses and position regarding the alleged violation. *Id*. The notice shall also state the period the party has to present its response and the warning that if it does not comply with the notice, a penalty of imposition of fines may be imposed. *Id*. Once the Notice of Noncompliance is issued

and the party has the opportunity to respond and present their defenses, if the Energy Bureau determines that breach or violation has occurred, it may impose a remedy or fines.

68. The July 9th Order does not identify the alleged violation, and it does not order LUMA to present a response and to provide its defenses and position. The only opportunity the July 9th Order gives LUMA is to explain why a fine should not be imposed, as the July 9th Order concludes that LUMA engaged in willful non-compliance and/or misrepresentation of material facts and deviation from the Energy Bureau's directives. The July 9th Order also provides LUMA with a short period of time to respond to why a fine should not be imposed. In this way, the Energy Bureau has already concluded that LUMA has incurred alleged conduct or noncompliance. Instead of only warning of a penalty if LUMA does not respond to the order, the Energy Bureau has already concluded that it will impose a fine. Thus, the Energy Bureau only gives LUMA a chance to express the reasons why a fine should not be imposed.

69. Another reason why the July 9th Order does not comply with Article 14 of Regulation 8543 is that, instead of the Energy Bureau providing LUMA the opportunity to be heard before deciding on the possible imposition of a fine, the Energy Bureau has already concluded that LUMA has incurred in the alleged act or noncompliance and that it will be imposing a fine against LUMA therefor. This action, as stated above, violates due process. LUMA is entitled to be heard before concluding a violation has taken place and before imposing a penalty.

70. In addition, Regulation 8543, in its Article 15, provides the Energy Bureau with the mechanism of an investigation to identify if a party is violating or breaching an energy public policy under the jurisdiction of the Energy Bureau. Article 15 of Regulation 8543 establishes that once the investigation results reveal a violation or breach of the public energy policy of Puerto Rico, the Energy Bureau may issue a Notice of Noncompliance to the party. Thus, if the

investigation results conclude that a violation or breach has been committed, the Energy Bureau may issue a Notice of Noncompliance to the party and start proceedings against them, where penalties may be imposed. However, before the Energy Bureau imposes a penalty, a Notice of Noncompliance must be issued to preserve the party's due process rights. Nevertheless, in this proceeding the Energy Bureau did not align its actions with said regulatory structure. Through the July 9th Order, the Energy Bureau did not open an investigation or issue a Notice of Noncompliance to understand better the circumstances surrounding its allegations and objectively gauge what recourse to require or what actions should be asked of LUMA in said matter.

71. As the July 9th Order does not comply with the requirements of Article 14 to be considered a Notice of Noncompliance or Article 15 to be regarded as an ongoing investigation proceeding, LUMA respectfully requests that this Energy Bureau vacate the July 9th Order. This Energy Bureau should also refrain from imposing a fine against LUMA.

72. Lastly, if this Honorable Energy Bureau issues a Notice of Noncompliance to LUMA regarding the same matter contained in the July 9th Order, LUMA respectfully requests a hearing where it can provide evidence and essential testimonies that may ease the Energy Bureau's concerns with respect LUMA's actions relating to the development of ASAP, as permitted by Section 14.04 of Regulation 8543.

B. Imposing a fine on LUMA in connection with ASAP would be arbitrary and unreasonable given the lack of substantial evidence justifying such an action.

73. In our jurisdiction, given existing due process guarantees, judicial review of decisions by administrative agencies imposing fines shall be limited to preventing agencies from acting illegally, arbitrarily, exceeding statutory authorization, or acting in the absence of substantial evidence justifying the measure imposed, such that capricious action or abuse of discretion on the agency is evident. *See Comisionado de Seguros de P.R., 145 DPR, at* 233-34;

Assoc. Ins. Agencies, Inc. v. Com. Seg. PR, 144 DPR, at 439-41; *See also, e.g., ECP Incorporated, 205 DPR, at* 281 (stating the general rule that decisions by administrative agencies should be reasonable); *see also Graciani Rodríguez v. Garage Isla Verde*, 202 DPR 117, 126-27 (2019).

74. The determination to impose a fine entails the exercise of discretion and a concomitant avoidance of arbitrary actions. In the context of administrative law, the Puerto Rico Supreme Court has held that the exercise of discretion by an administrative agency must be rooted in reasonableness and accordance with applicable law. *See, e.g*., *Ramírez v. Policía de PR*, 158 DPR 320, 339 (2002). Discretion, in turn, has been defined as a form of reasonableness applied to judicial discernment to reach a just conclusion. *See, e.g*., *Banco Popular de PR v. Mun. de Aguadilla*, 144 DPR 651, 657-58 (1997); *Pueblo v. Ortega Santiago*, 125 DPR 203, 211 (1990).

75. As the discussion below will demonstrate, the record is devoid of any evidence that LUMA willfully non-complied with ASAP or willfully misrepresented the terms in question of the ASAP, and, therefore, imposing a fine on LUMA for such actions would be arbitrary and unreasonable.

C. The record is devoid of any evidence sustaining willful actions.

76. The legal standard for "willful" conduct is stringent. "Willful" is defined as

> [d]one wittingly or on purpose, as opposed to accidentally or casually; voluntary and intentional, but not necessarily malicious. The word connotes blameworthiness. A voluntary act becomes willful, in law, only when it involves conscious wrong or evil purpose on the part of the actor, or at least inexcusable carelessness, whether the act is right or wrong. The term willful is stronger than voluntary or intentional; it is traditionally the equivalent of malicious, evil, or corrupt.

Willful, Black's Law Dictionary(12th ed. 2024) (emphasis original).

77. "Misrepresentation" is "[t]he act or an instance of making a materially false or misleading assertion about something, usu[ally] **with the intent to deceive**. … An assertion need not be fraudulent to amount to a misrepresentation, but it must be important enough to be

considered material." *Misrepresentation*, Black's Law Dictionary (12th ed. 2024) (emphasis added). Notably, a misrepresentation can be innocent, negligent, or fraudulent, but "willful" misrepresentation requires intent or at least reckless disregard for the truth.

78. "Misrepresent" is "[t]o give a false or misleading explanation or description of (something), esp. with the intent to deceive". *Misrepresent*, Black's Law Dictionary (12th ed. 2024).

79. In Puerto Rico, in the contractual context, willfulness has been described as an equivalent of "dolo" and dolo" is described as an intent to illegally injure, a deceit or a machination, and therefore "dolo" is related to the will of the agent and is of a eminently subjective and personal character. *See Doral Fin. Corp. v. Estado Libre Asociado de Puerto Rico*, 2014 PR App. Lexis, 3578, 27-28. In the Civil Law tradition, for misrepresentation or false representation to occur, intent is required to void an agreement, except when the misrepresentation concerns a material fact. *See id*. 29-30.

80. As LUMA will demonstrate, there is no evidence on the record to show that LUMA purposely represented to the Energy Bureau something that was incorrect with malicious intent or intent to injure. The record demonstrates that LUMA's actions were neither willful nor did they constitute misrepresentation, let alone willful misrepresentation. LUMA's filings, communications, and program design for ASAP were transparent, consistent with industry standards, and made in good faith. At every stage, LUMA provided the Energy Bureau with detailed descriptions of the program, its phased approach, and the rationale for its structure.

D. LUMA did not willfully non-comply with ASAP or misrepresent the ASAP program requirements or costs or attempt to mislead the Energy Bureau, and

the imposition of a penalty under the July 9th Order is unreasonable and an abuse of discretion.

81. LUMA respectfully, but categorically, denies that there was any willful misrepresentation from LUMA in describing the terms of ASAP. In support of this position, LUMA is submitting herein, as *Exhibit 1*, a statement from, Brian Walshe, a LUMA key subject matter expert involved in the development and implementation of ASAP providing context to the statements and submittals made in this proceeding. As explained in *Exhibit 1*, LUMA notes that the issues raised by the Energy Bureau in the July 9th Order revolve around phrases and terminology referring to "interconnection costs", "interconnection studies", "preliminary studies", and "interconnection related costs." *See Exhibit 1*, pp. 2-3. *Exhibit 1*, presents a discussion of the definitions of these terms as typically used in the industry and as used by LUMA in connection with ASAP. *See id*. LUMA is providing these definitions to provide more clarity moving forward in the discussion of the Program terms.[6]

82. LUMA concedes that its submittals could have benefited from more consistency in the use of some phrases or terms used to describe the program. *See id*., p. 2. LUMA respectfully

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[6] As discussed in Exhibit A, these terms are defined as follows:

> "Preliminary Studies" is the term used to describe original site assessments at five SO1 candidate sites. Its purpose is to perform a preliminary assessment of equipment configuration and condition, and to review one-line diagrams. It is intended to identify any "red flag" issues that might complicate interconnection instead of any exact determination of engineering results. […]
>
> "Interconnection feasibility studies" (or "interconnection studies") is a common industry term used to describe the system impact and feasibility studies, before the addition of any new injection source. System impact and feasibility studies are two separate and different types of studies required for virtually any new generator that is to be installed anywhere in North America. […]
>
> "Interconnection costs" relate primarily to capital costs that might be required at a given site location. […]
>
> "Interconnection related costs" is an all-inclusive term used by the Energy Bureau in its July 9th Order. As LUMA interprets this term, it would mean any and all costs required to interconnect an ASAP BESS to the network. This includes potentially significant costs such as a network upgrade

submits that this situation sometimes happens among industry practitioners when speaking in an abbreviated manner and, regrettably, losing some precision depending upon the context. *See id*. This can happen when information is being simplified or aggregated to a higher level or summarized. However, the detailed SO Agreements, and the reports and exhibits submitted were specific. We highlight the following statements LUMA made in its various submittals regarding the subject of interconnection costs:

- "Development risk and regulatory uncertainty can be reduced compared to greenfield projects because IPPs already have existing land and point of interconnection. Consequently, ASAP projects have **significantly reduced capital costs** compared to other BESS projects". December 21st Motion, Exhibit 1, p. 1 (emphasis added).

- "Customers benefit[…] because **traditional costs of BESS integration are avoided or reduced**, improvements in service reliability are accelerated, renewable energy integration is facilitated; and energy costs are reduced." April 26th Motion, p. 5 (emphasis added); *see also id*., Exhibit 1, p. 8.

- Generators will be expected to deliver up to 360 MW of 4-hour storage with **minimal network upgrades or interconnection costs**. April 26th Motion, p. 6 (emphasis added); s*ee also id*., Exhibit 1, pp. 5-6.

- "**Lower costs** result primarily from use of existing sites and interconnection points, **reducing or minimizing the need for additional infrastructure studies or investments**, as well as avoiding the significant time and costs associated with traditional procurements". *Id*, p. 2 (emphasis added).

- "Preliminary studies conducted by LUMA have been performed at the facilities of some of the interested IPPs and indicate no operational restrictions or adverse effects from the ASAP Phase 1 on the existing transmission system - batteries can be installed **with negligible interconnection costs**". *Id*. Exhibit 1, pp. 6-7 (emphasis added).

> at a substation, and smaller items such as some cable or wiring at the site. It would also seem to include any costs to study the project or develop commercial documentation by engineers, consultants, or lawyers including all the $8 million ASAP Program Implementation costs described in the February 28, 2025 submittal of ASAP Program Implementation Plan.

Id., pp. 2-3.

- "To reduce the schedule impact of delays in hiring the Engineering firm to perform **necessary modeling, LUMA is conducting an initial site assessment of the four additional interested SO 1 participants** and will modify its sequence of activities to minimize schedule impact. The site assessment will investigate whether commercial arrangements can be utilized to allow construction to begin before any interconnection modifications are required. For example, LUMA will initially assume all charging will be performed at night, to eliminate the impact of operating the BESS and the generation assets at the same hours of the day. This will allow procurement activities to proceed. **If additional interconnection modifications are required (which is still not expected, but is a possibility), then LUMA will propose these additional modification costs are borne by the ASAP Program Plan and recovered through the PPCA** rather than being imposed on the individual generators." *See* February 28th Motion, Exhibit 3, p. 3 (emphasis added).

- "**Lower costs** result primarily from use of existing sites and interconnection points, **reducing or minimizing the need for additional infrastructure studies or investments**, as well as avoiding the significant time and costs associated with traditional procurements". September 16th Motion, p. 2 (emphasis added).

83. In addition, a reading of Exhibit 2 ("Components of Monthly Payment and Calculation Formulas") to the SO1 Agreement submitted to and approved by the Energy Bureau[7] reflects that the SO1 Agreement contemplates that there could be interconnection costs. The SO1 Agreement includes a mechanism to adjust the monthly payment to the resource provider to cover approved costs incurred in connection with the interconnection facilities or the interconnection of the storage facility subject to PREPA agreement at its sole discretion[8] (the "Interconnection

[7] The SO1 Agreement was submitted as Exhibit 2 to October 18th Motion, and it was approved by the Energy Bureau by the November 1st Order.

[8] *See* SO1 Agreement, Exhibit 2, Section 2(a). This section provides, in pertinent part, that: "If, after the Closing Date, Resource Provider is required to incur costs in connection with the Interconnection Facilities or the interconnection of the Storage Facility, notice of which Resource Provider provides to PREPA, then, the Monthly Payment shall be subject to an adjustment ("**Interconnection Adjustment**") pursuant to this Section 2 (*Interconnection Adjustment*) of this Exhibit 2 (*Components of Monthly Payment and Calculation Formulas*) solely in respect of such commercially reasonable costs as are actually incurred by or on behalf of Resource Provider in connection with the Interconnection Facilities or the interconnection of the Storage Facility and that are subject to PREPA's agreement, in PREPA's sole discretion (the "**Additional Interconnection Costs**")"..

Adjustment"). The proposed SO2 Agreement[9], which the Energy Bureau also approved[10], contains an identical provision.[11]

84. As evidenced by the above statements and documents, LUMA contemplated there would be some interconnection costs and on various occasions discussed these costs in the context of these being "lower", "reduced" or "negligible".

85. LUMA respectfully submits that it would be impossible to interconnect the new battery storage systems without some type of minimal work. *See Exhibit 1*, p. 4. By indicating that the costs would be minimal, lower, reduced, or negligible, LUMA did so in comparison to the interconnection costs required for the Tranche 1 projects. *See id*. Based on the preliminary studies, LUMA does not anticipate that interconnection costs in the case of the SO1 projects would reach 10% of all interconnection related costs in Tranche 1. *See id*. However, LUMA stresses that these assessments are based on the preliminary studies at only a fraction of the total sites, and do not take into account unanticipated or unknown conditions that could only be identified after completion of the interconnection studies. *See id*.

86. LUMA acknowledges that it may have used broad terms on some occasions that could have created a different impression regarding the costs, and if it did so, it was an inadvertent error without having any intention or purpose to misrepresent. *See id*. In the context of the statements

[9] The preliminary version of the SO Agreement for ASAP Phase 2 was submitted to the Energy Bureau as Exhibit 1 to the December 19th Motion and approved by the Energy Bureau by Resolution and Order of January 14, 2025. The master template agreement for ASAP Phase 2 was submitted to the Energy Bureau as Exhibit 1 with the February 7th Motion.

[10] The SO2 Agreement was conditionally approved by the Energy Bureau by Resolution and Order of February 11, 2025.

[11] *See* SO2 Agreement, Exhibit 2, Section 2(a). This section provides, in pertinent part, that: "If, after the Closing Date, Resource Provider is required to incur costs in connection with the Interconnection Facilities or the interconnection of the Storage Facility, notice of which Resource Provider provides to PREPA, then, the Monthly Payment shall be subject to an adjustment ("**Interconnection Adjustment**") pursuant to this Section 2 (*Interconnection Adjustment*) of this Exhibit 2 (*Components of Monthly Payment and Calculation Formulas*) solely in respect of such commercially reasonable costs as are actually incurred by or on behalf of Resource Provider in connection with the Interconnection Facilities or the interconnection of the Storage Facility and that are subject to PREPA's agreement, in PREPA's sole discretion (the "**Additional Interconnection Costs**")".

made above, it is evident LUMA did not intend to mislead or misrepresent, as it indicated several times that there would be interconnection costs. The inconsistent use of some terms or phrases may have caused confusion, but it was not willful or intentional.

87. Regarding the interconnection studies, LUMA did not indicate in its submittals that no interconnection studies were needed; rather, since December 2024, when LUMA started to develop the more specific program parameters and requirements, LUMA has expressly discussed the need to conduct System Impact Studies for both SO1 and SO2. In addition, LUMA clearly stated several times that there would be interconnection studies following site visits and receipt of responses to requests for information from SO1 participants. The following statements are highlighted in support of these assertions:

- "[…] LUMA is proposing that the costs of the interconnection studies required to support SO1 and SO2 also be submitted later in the PPCA for cost recovery. Doing this will reduce the timing required for these studies since they can all be **performed together as a cluster study** which could occur in the next several weeks, in time to support current schedule expectations." December 19th Motion, pp. 10-11 (emphasis added).

- "LUMA is proposing that all **costs related to interconnection studies**, and associated T&D System Operator's Interconnection Works expended for the specific purpose of supporting the deployment of ASAP BESS under SO1 and SO2 Agreements shall be collected by LUMA, and submitted to the Energy Bureau for cost recovery under the Power Purchase Cost Adjustment process similar to what the Energy Bureau approved for Tranche 1 cost treatment." December 19th Motion, Exhibit 3, p.1 (emphasis added).

- LUMA will "**coordinate system impact studies to be performed as "cluster studies" to accelerate timing required to analyze SO1 and SO2 candidate projects.**" […] Managing these studies as a cluster is expected to reduce the total study costs required, as well as reducing any potential risks or schedule impacts to individual projects". *See* January 31st Motion, Exhibit 1, p. 2.

- "After Participants express interest in ASAP by responding to a specified email, completing informational document regarding the project proposal and submitting earnest money, the project is given an Identification number and **placed into the**

Cluster Study for the SO1 or SO2 cluster of Participant projects." February 28th Motion, Exhibit 1, p. 13 (emphasis added).

- 'There will be a need to coordinate and facilitate site visits to each location that contemplates a battery addition. These site visits will confirm project layout and identify any potential geographic or locational issues that could affect the project's success. **Following the site visits, information will be gathered that will be used to develop the system impact studies and other analysis required to support the project**. *Id*. Exhibit 1, p. 28.

- "LUMA will coordinate system impact studies to be performed as "**cluster studies" to accelerate timing required to analyze SO1 and SO2 candidate projects**." *Id*., Exhibit 1, p. 5 (emphasis added).

- "Requests for Information (RFIs) have been distributed to all **SO1 participants** to commence a review of technical materials and engineering studies. Coordination also started for the second part of the engineering firm's scope of work, which consists of the **second round of more detailed site and substation visits prior to completing the Feasibility Study and System Impact Study**". June 23rd Motion, Exhibit 1, p. 5 (emphasis added).

- "The interconnection studies will be completed as a **cluster study approximately three months after the RFIs are received from SO1 developers**. The Cluster study requires that all preliminary analyses (memos of findings) be completed prior to their commencement". *Id*. (emphasis added).

- "Regarding the current status of pending interconnection studies, Requests for Information (RFIs) are currently being exchanged between the **SO1 project participants and the engineering firm, which is a necessary step before the actual studies can begin**". *See* July 2nd Motion, Exhibit 1, p 4.

88. LUMA would like to stress that it is standard utility practice to conduct system impact studies prior to interconnecting any electric injection points into the grid. *See Exhibit 1*, p. 6. Under LUMA's System Operation Principles (SOP)[12] Procedure number 2[13] system impact studies are generally required for new interconnection proposals. *See id*. Furthermore, NERC

[12] This refers to the SOP approved by the Energy Bureau by Resolution and Order of May 31, 2021 in NEPR-MI-2021-0001, *In re: Review of T&D Operator's System Operation Principles*.

[13] *See* Motion in Compliance with Order Submitting Revised System Operation Principles, Phase 1 Draft Procedures and Additional Information, NEPR-MI-2021-0001, May 19, 2021, Exhibit 1, RFI-LUMA-MI-21—0001-210511-PREB-009, Att. 1, Procedure 2 (New Generation Interconnection), Sections 3.1.1 and 3.2, 3.2.4, 3.2.5, 3.2.6 .

practices[14]; IEEE standards[15]; and FERC policy[16] provide for conducting system impact studies prior to interconnecting new electric injection points into the grid. *See id*.

89. LUMA clarifies that it does not consider the estimated costs for interconnection studies as interconnection costs. *See id.* The term "interconnection costs" as generally used in the industry refers to costs relating to a range of items such as metering, instrumentation, wiring and other costs, generally occurring on the facility property behind the meter and generally paid for by the developer. *See id*.. It could in some cases include items such as replacement of faulty equipment or upgrades to increase transformer capacity, but none of those larger items are anticipated in ASAP. *See id*.. Therefore, the costs set forth in the Task Order are not interconnection costs. However, as evidenced by the language cited above, these studies and their costs are generally required utility practices and were contemplated as part of the ASAP Implementation Program Plan[17] and accordingly in the estimated costs included in the ASAP implementation budget approved by the Energy Bureau[18].

90. As evidenced by the quotes above and explained in Exhibit 1, LUMA always planned to visit all sites and confirm through system studies any potential interconnection costs. *See* Exhibit 1, p. 6. Since utility engineers see this approach as a self-evident requirement, LUMA

[14] NERC FAC-002-4- Facility Interconnection Studies, which requires studies to evaluate the impact of interconnecting new or changed facilities on the Bulk Power System.
[15] IEEE-1547-2018 – IEEE Standard for Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power System Interfaces- which requires studies of distributed/solar/battery for new projects.
[16] FERC Order 2023 "Improvements to Generator Interconnection Procedures and Agreements."
[17] *See* February 28th Motion, Exhibit 1, ASAP Implementation Program Plan, Task #20 "Perform site visits and interconnection studies"; Task #5 "Queue Management Program" ("Renewable integration provides all Interconnection Studies including the System Impact Study[;] in these cases all Participants will be placed in an SO1 or SO2 cluster and studied at once in order to accelerate the process").
[18] *See id*., Exhibit 1, p. 4 ("In order to develop a reasonable and defensible estimate of program expenditures as ordered by the Energy Bureau, LUMA created this ASAP Implementation Program Plan to better convey the full scope and extent of the ASAP Implementation Program.").

did not make this fact more explicit in its initial submittals. *See id*. LUMA reasserts that not performing a system impact study would be against industry standard. *See id*.

91. 77. Confirming from the initial site reviews that any interconnection costs were likely to be relatively small and agreeing in advance that any unexpected interconnection costs could be recovered through the Interconnection Adjustment was a key benefit of the SO Agreements. *See id*., pp. 6-7. Without this assurance, developers would not be willing to proceed with the contract until all potential interconnection costs were explicitly defined and agreed upon. *See id*. This approach is anticipated to significantly shorten the ASAP development cycle. *See id*. The SO2 sites are expected to incur some interconnections costs that are likely to be more substantial. *See id*., p. 7. Many of these sites are green fields right now and it is impossible to state there will be negligible expected costs. *See id*., p7.

92. In sum, although the use of some terms or phrases may have not been consistent, LUMA respectfully submits that it never intended to mislead or provide inaccurate descriptions, as evidenced by the language cited above in some of the submittals where it directly stated that there would be some costs for both SO1 and SO2 projects and that system impact studies would be conducted for SO1 and SO2 projects.

93. In addition, as evidenced by the description of the ASAP Implementation Program Plan and the terms of the SO Agreements, LUMA is acting in accordance with these documents in the manner in which it is treating program and interconnection costs. *See Exhibit 1*, p. 8.

94. Furthermore, LUMA asks that the Energy Bureau take into consideration that, throughout this process, LUMA has acted in good faith in voluntarily proposing ASAP to facilitate an approach to deploy energy storage to Puerto Rico, which is a critical need. LUMA has been compliant with the Energy Bureau's directives during the process of development of the SO

Agreement and the terms of ASAP and has maintained the Energy Bureau informed of the developments. LUMA has moved as rapidly as possible to comply with the Energy Bureau's orders and timeline at each step of the process.

95. LUMA has skillfully and successfully negotiated the ASAP SO Phase 1 Agreements and has had them approved for execution in about half the time it has taken the Tranche projects to reach the same milestones. LUMA has applied best practices for power contract negotiation, which has improved many of the Tranche contract's identified shortcomings. The ASAP SO allows for much more flexible operations and the ability to learn how to use batteries more effectively than under the Tranche contracts as they have been written. As discussed further below, the cost for the ASAP SO Phase 1 Agreement is significantly lower that the Tranche contracts.

96. LUMA wishes to express, with the utmost respect and candor, that any lack of precision in its prior communications was never the result of malice, intent to deceive, or reckless disregard for the truth. Rather, any inconsistencies or ambiguities in the language used to describe the necessity, timing, or cost of interconnection studies arose from the complexity and evolving nature of the Program, as well as the inherent challenges of communicating technical matters in a rapidly developing regulatory environment. LUMA acknowledges that, in hindsight, greater care could have been taken to clarify the conditional nature of certain statements and to more explicitly communicate the ongoing need for technical evaluation. However, at every stage, LUMA's actions were guided by a commitment to transparency, good faith, and the public interest.

97. As can be noted, given that LUMA did inform in various filings of the possibility of interconnection costs (even including these costs in the SO1 Agreements approved by this honorable Energy Bureau), and informed that interconnection studies would be conducted. LUMA

acted in good faith in voluntarily proposing and designing ASAP, a program directed at ensuring a successful interconnection and reducing associated costs, among others. Furthermore, there is simply no evidence in the record to suggest that LUMA ever acted with a conscious intent to mislead, nor that it engaged in any conduct that could be characterized as willful misrepresentation under the stringent legal standard.

98. Given this record, the imposition of fines against LUMA would be unreasonable and an abuse of discretion. Imposing such fines would penalize LUMA for taking actions in good faith for the implementation of ASAP in compliance with energy public policy. Therefore, LUMA respectfully submits that it should not be penalized as proposed in the July 9th Order.

E. The costs for the interconnection studies in the Task Order were included and justified in the approved budget and are necessary to implement ASAP and reasonable expenditures. Disallowing these costs would make it impossible to implement ASAP.

99. The estimated costs set forth in the Task Order are for the engineering firm to visit the identified SO1 and SO2 sites, identify any "red flags", confirm that all equipment was in an adequate state of repair and safe to operate, and gather the site data required to perform the system impact studies, as well as conduct some of the system impact studies. *See id*., p. 8. This is a specifically identified ASAP Implementation Program Plan task[19] and is included as a line item in the proposed expenditures which the Energy Bureau conditionally approved[20]. As thoroughly explained above, these interconnection studies are an indispensable and industry-standard prerequisite for the safe, reliable, and efficient integration of new BESS under the ASAP. Without these studies, it would be impossible to responsibly proceed with the deployment of BESS resources. *See Exhibit 1*, p. 8. The costs associated with these studies, as detailed in the Task Order,

[19] *See* February 28th Motion, Exhibit 1, Task #20 ("Perform site visits and interconnection studies").
[20] *See* February 28th Motion, Exhibit 1 ("Cluster study expenditures will be submitted for recovery via the ASAP Expenditure, Collection, Reporting and Recovery Procedure").

are therefore not only reasonable but essential and unavoidable. They represent a small fraction of the overall program cost and are necessary to protect the integrity of the electric system and the interests of ratepayers.

100. Disallowing recovery of these costs would have a direct and detrimental effect on the ASAP program. The absence of a funding mechanism for these studies would prevent LUMA from conducting the required technical analyses, thereby halting the implementation of ASAP in its entirety. *See id*.

101. The record demonstrates that LUMA has acted transparently and in good faith, providing detailed descriptions of the need for interconnection studies and their associated costs in all relevant program documents and regulatory filings. The Task Order's estimated costs were contemplated in the ASAP implementation budget, which was submitted to and conditionally approved by the Energy Bureau. LUMA consistently indicated that costs would be minimal compared to traditional projects, but nonetheless necessary and subject to confirmation through the required technical analyses. The mechanism for cost recovery, as set forth in the SO Agreements and the Program Implementation Plan, was designed to ensure that these essential expenditures could be made without delay, thereby supporting the timely and cost-effective realization of the Program's objectives.

102. In summary, the costs for the interconnection studies are not only necessary and reasonable, but their disallowance would render the implementation of ASAP impossible. The Energy Bureau's approval of the program, including its cost recovery mechanisms, was predicated on the understanding that such studies are a fundamental and non-negotiable aspect of responsible utility practice. To deny recovery of these costs would undermine the regulatory process, jeopardize the deployment of urgently needed storage resources, and ultimately harm the public

interest. For these reasons, the costs for the interconnection studies in the Task Order must be recognized as essential and recoverable expenditures under the Program.

103. LUMA must also address another statement made by this Honorable Energy Bureau in the July 9th Order. In it, the Energy Bureau stated that it would "not approve any interconnection related costs associated with SO1 project". LUMA notes that this broad statement would appear to refer to, not only the costs of the interconnection studies, but also the ASAP mechanism for recovering interconnection costs, which is included in the SO Agreements. If the Energy Bureau proceeds with such an approach, it is respectfully submitted that the ASAP program, as envisioned, may have to be suspended. *See Exhibit 1*, p. 8-9. This is because developers would no longer be assured of cost recovery, and they would not have the incentive to proceed with the project in an expedited fashion. *See id*. Such a situation would undermine the very purpose of ASAP, which is to expedite the deployment of critical energy storage resources, reduce capital costs compared to traditional procurement, and deliver substantial reliability and cost benefits to Puerto Rico's electric system.

104. It is important to note, as explained in Exhibit 1, even with any foreseeable interconnection costs scenario, LUMA estimates that the total capital costs for the 220 MW of SO1 projects will still be approximately $300 million, which is approximately 40% of the $500 million cost for a comparable capacity of the Tranche BESS projects which the Energy Bureau and PREPA negotiated prior to ASAP. *See id*., p. 10. Consequently, the ASAP projects are expected to save approximately $200 million in total capital construction costs compared to equivalent Tranche capacity. *See id*. Even considering the potential for what is expected to be negligible interconnection cost, which will not be known for sure until the studies are completed, these are preliminarily estimated to be equivalent to approximately 1% to 3% the construction

costs which would be approximately 90% or more of the interconnection costs of Tranche 1 projects and represent significant savings to ratepayers. *See id*. These lower costs for ASAP translate to savings of approximately $40 million in annual payments every year for the next 20 years or $800 million dollars over the 20-year life of the SO Agreements for the 220 MW of ASAP SO1 projects compared to the equivalent capacity of Tranche projects. *See id*.

105. For the foregoing reasons, the Energy Bureau should neither impose an administrative fine nor disallow the costs of interconnection studies. The record demonstrates LUMA's good faith, transparency, and compliance with all applicable directives and industry standards. Any contrary finding would be unsupported by the evidence and contrary to law.

106. In addition, LUMA requests that the Energy Bureau not alter the interconnection cost recovery mechanism set forth for ASAP as it could halt the Program and this result would be contrary to the interest of ratepayers given the cost savings associated with it.

WHEREFORE, LUMA respectfully requests that this Energy Bureau **take notice** of the aforementioned; **vacate** the July 9th Order; **decline** to impose a fine; and **determine** to not disallow the cost for the interconnection studies set forth in the July 2nd Motion. In the alternative, if the Energy Bureau determines to pursue a fine, LUMA requests that the Energy Bureau **deem** that LUMA complied with the July 9th Order and **schedule** a hearing where LUMA can provide evidence and essential testimonies regarding the Energy Bureau's concerns regarding LUMA's actions relating to ASAP, as permitted by Section 14.04 of Regulation 8543.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 21st day of July 2024.

We hereby certify that this motion was filed using the electronic filing system of this Energy Bureau and we will send a courtesy copy of this motion to hrivera@jrsp.pr.gov, oramos@pmalaw.com, and agraitfe@agraitlawpr.com.

DLA Piper (Puerto Rico) LLC
500 Calle de la Tanca, Suite 401
San Juan, PR 00901-1969
Tel. 787-945-9147 / 9145
Fax 939-697-6141 / 6145

/s/ Laura T. Rozas
Laura T. Rozas
RUA No. 10,398
laura.rozas@us.dlapiper.com

Exhibit 1

Statement from LUMA