

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

NEPR

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IN RE: LUMA’S ACCELERATED
STORAGE ADDITION PROGRAM

CASE NO. NEPR-MI-2024-0002

SUBJECT: Motion to respond to Resolution and Order pertaining to Motion in compliance with Resolution and Order of July 23, 2025, filed by the Puerto Rico Electric Power Authority

MOTION TO RESPOND TO RESOLUTION AND ORDER

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW Infinigen Oriana ASAP LLC (“**IOASAP**”) and Infinigen Horizon ASAP LLC (“**IHASAP**”), without submitting to the jurisdiction of the Honorable Puerto Rico Energy Bureau (the “**Bureau**”),¹ through the undersigned counsel, and respectfully states and requests the following:

I. INTRODUCTION

IOASAP and IHASAP are affiliates of Infinigen Renewables LLC (“**Infinigen**”), which is in turn the indirect parent company of Oriana Energy, LLC (“**Oriana**”) and Horizon Energy, LLC (“**Horizon**”). Horizon and Oriana operate solar power generation facilities in the municipalities of Isabela and Salinas and were invited by Luma Energy to participate in Phase 1 of the Accelerated Storage Addition Program (“**ASAP**”).² Although it was originally contemplated that Oriana and Horizon would participate directly in the ASAP, Infinigen formed IOASAP and IHASAP with the purpose of participating in the ASAP and developing battery energy storage systems thereunder (each an “**ASAP Facility**”).

On October 18, 2024, Luma Energy filed a draft of a Standard Offer Agreement (an “**SOA**”) with each of IOASAP and IHASAP before this Energy Bureau. The SOAs were approved by this Energy Bureau on November 1, 2024.

On August 4, 2025, the Bureau issued a Resolution and Order ordering, among other things, IHASAP, IOASAP and certain other proponents to submit an explanation which includes (i) a detailed explanation of the current compliance status with the Signing Conditions outlined in Exhibit 21 of the SO Agreement, (ii) an identification of any obstacles causing the delay, and (iii) updated timeline and proposed corrective actions to allow execution of the contracts.

¹ IOASAP and IHASAP were formed with the purpose of developing battery energy storage systems under the ASAP. Since both entities’ projects are still in pre-development stages, neither entity has applied for as an electric service company and therefore neither entity is a certified electric service company.

² The ASAP is described in detail in that certain *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* filed on April 26, 2024.

For the reasons further explained below, neither IOASAP nor IHASAP are ready or able to satisfy the Signing Conditions nor execute the SOAs. A description of the issues that are, from in our view, preventing execution is also included herein, as are our proposed actions to resolve such issues.

IOASAP and IHASAP hereby express their full support of the ASAP concept, affirming that the ASAP will be instrumental in developing a reliable and stable electric grid in Puerto Rico by adding energy storage quickly and in a cost-effective manner. IOASAP and IHASAP are therefore committed to resolving the remaining open issues promptly in order to progress into the following stages of implementation.

II. RELEVANT PROCEDURAL HISTORY

Infinigen first learned of the ASAP initiative in 2023 during informal meetings with Luma, including a meeting held in January 2023 with multiple stakeholders of Puerto Rico's energy sector. Initially, it was contemplated that the ASAP would be achieved through amendments to the power purchase and operating agreements ("*PPOAs*") of existing power generation facilities, including Oriana and Horizon. Infinigen participated in several meetings with Luma to discuss the general concept of the ASAP and provide preliminary feedback.

Infinigen has supported and collaborated with the ASAP since its inception. To that end, Infinigen submitted its comments to ASAP project under this docket on September 9, 2024. IOASAP and IHASAP stand by the comments made by Infinigen on such date.

A detailed description of the ASAP was submitted by Luma to the Energy Bureau under this docket on April 26, 2024. On June 7, 2024, the initial draft of the SOA was shared by Luma's outside counsel with Infinigen. Notably, such draft did not state the consideration that would be paid for the battery storage services. Although the principal commercial terms of the SOA remained unclear, Infinigen returned a revised draft of the SOA to Luma, and their outside counsel, on July 19, 2024, together with additional comments with respect to the general structure of the ASAP.

An initial draft of the SOA was submitted by Luma to PREB on September 16, 2024. Meanwhile, Luma and Infinigen continued to exchange drafts of the SOA. On September 19, 2024, after submitting the first draft to the Energy Bureau, Luma notified Infinigen of its offer and the complicated formula with adjustments to the price.

On October 16, 2024, Luma requested certain information from Infinigen to complete the SOA drafts for IOASAP and IHASAP. The email request states that the information is being requested while questions on pricing and other matters remain under consideration. The requested information was provided by Infinigen that same day.

Drafts of the SOAs were filed by Luma with PREB on October 18, 2024. Such drafts were shared with Infinigen on October 19, 2024, after they had been filed. Infinigen was not aware of which changes had been accepted or rejected by Luma until after the filing made on October 18, 2024. However, since Luma had acknowledged that certain matters remained under consideration, Infinigen understood that Luma would continue to engage in productive negotiation. To that end, Infinigen has provided comments to the drafts SOAs on multiple occasions since the filing, in meetings and via email.

III. DISCUSSION

A. Open Items in SOA

As mentioned above, the drafts of the SOAs that were submitted for approval of the Energy Bureau were not shared with Infinigen until after they were filed. Infinigen has remained in communication with Luma after the filing. Such communication has been useful and Infinigen has achieved a level of comfort on some matters, but several matters remain and Infinigen cannot accept the agreement as currently drafted.

Infinigen has, with consent from Luma, shared the drafts of the SOAs with potential lenders and equity investors. As we expected, lenders and investors have expressed that they do not feel comfortable with the agreements as currently drafted, and have raised concerns with the language that we have requested be revised. We do not feel confident that we would be able to secure funding to develop the ASAP Facilities in the form of equity or debt to unless Infinigen's comments are addressed.

IOASAP and IHASAP have accepted the pricing offered by Luma, even though such pricing is considerably lower than local trends. IOASAP and IHASAP remain committed to developing the projects and has not requested any revisions to the consideration to adjust to fluctuations in industry pricing. IOASAP and IHASAP hereby stress that the requested changes would not improve their economic terms; the proposed changes would remove certain discretionary language as well as certain language that could be subject to differing interpretations. Notably, the revised language would align with the understanding of the parties, as such terms have been discussed in meetings with Luma.

B. Agreed Operating Procedures

Infinigen has also maintained throughout its conversations with Luma that the Agreed Operating Procedures (AOPs), which are to be included as Exhibit 8 of the SOA, need to be finalized prior to execution of the SOAs. Although the current drafts of the SOAs allow for the AOPs to be completed after execution of the SOAs, Infinigen is unable to accept commercial terms with Luma or any of its potential suppliers or contractors until the AOPs are finalized given that the AOPs will have significant impact on the design, performance, required maintenance and forecasted degradation of the ASAP Facilities.

The AOPs will, together with Exhibit 6 (BESS Operating Procedures) and other sections of the SOA, establish the parameters pursuant to which the BESS Facilities will operate. Understanding these parameters is essential, as system requirements will vary depending on the expected use profiles for the BESS system.

Based on conversations held in earlier stages of the negotiation of the SOA, Infinigen's understanding was that the ASAP Facility and the PV facility would not operate simultaneously. However, it is clear from the latest draft of the AOPs that was shared with Infinigen, as well as multiple conversations with Luma, that it is Luma's intention for the ASAP Facilities to be available 24-hours a day.

Infinigen is not opposed to a configuration in which both facilities, the ASAP and the PV, operate simultaneously. In fact, Infinigen believes that this configuration will maximize the usability of the ASAP Facilities, given that the needs of the Puerto Rico electric grid are not limited to the times in which the PV facilities are offline. While this is not impossible, this is a shift from the original conversations that presents significant additional complexities. Principally, Infinigen must ensure that its existing PV operations are not impacted by the addition of the ASAP.

Infinigen has actively collaborated with Luma to discuss AOPs to propose a solution that

adequately addresses the needs of the Puerto Rico power grid while remaining acceptable to Infinigen from a commercial perspective. To that end, a meeting was held on April 30, 2025 to discuss ASAP technical aspects. Infinigen was informed that many open issues would be addressed in the upcoming AOPs (Agreed Operating Procedures). After several email exchanges, LUMA shared the initial draft of the proposed AOPs on May 23, 2025.

Infinigen has provided comments to the AOPs in a general coordination meeting that was held on May 28, 2025, through formal written comments delivered via email on June 6, 2025.

Unfortunately, after thorough analysis and discussions with Luma, Infinigen finds that the PV facilities will be significantly impacted if both facilities (PV and ASAP) operate simultaneously and the meters remain in their currently proposed locations. Infinigen has proposed an alternative that would require a minor amendment to the existing PPOAs, believing this to be the only alternative under which the operation of the ASAP and PV facilities could operate at the same time without undermining the PV operations.

Infinigen continues to engage with Luma to achieve a solution that will serve the interests of IOASAP, IHASAP, the Puerto Rico electric grid and the people of Puerto Rico. Luma has indicated that it will propose a viable solution that will not require an amendment to the existing PPOA. We are looking forward to evaluating such proposal, and trust that a solution will be feasible through technology, innovation and creativity.

C. Minimum Technical Requirements (MTRs)

The MTRs are the requirements established in the PPOA with PREPA for renewable facilities to provide ancillary services to support the grid, such as voltage regulation, frequency regulation, spinning reserve response, among others. The SOAs also require MTR compliance, and as currently drafted such compliance will be achieved separately by the PV and ASAP facilities. Infinigen has recommended that compliance with minimum technical requirements (MTRs) be evaluated at the full facility level, treating the PV and BESS as a single, integrated system.

Both assets (PV and ASAP) will inject or absorb power at the same 34.5kV node. Evaluating them separately introduces real-world risks: if both systems respond independently to voltage or frequency fluctuations, their corrections could conflict or cancel each other, creating oscillations, delays, or potential grid instability.

Evaluating MTR compliance as if the PV and ASAP were a single facility would ensure that the Puerto Rico electric grid receives the same or improved ancillary services as are currently required under the existing PPOA, and would prevent the risks associated with two parallel systems competing at a single point of interconnection. Infinigen has discussed this matter with Luma and they have agreed to evaluate it from a technical perspective.

However, this differs from what is currently contemplated in the draft SOA, which requires MTRs that operate separately from the MTRs of the existing PV facilities. Therefore, modifications will need to be incorporated into the SOAs and the existing PPOAs would need to be amended.

D. Status of Signing Conditions

1. Certificates of tax status (items (a)-(j))

The documents that are required to be submitted under items (a) through (f) of the list of Signing Conditions for the SOAs are certificates of status issued by multiple agencies of the Government of Puerto Rico. Each of these certificates expires after a specified number of days from issuance.

Traditionally, these certificates are delivered days prior or on the same day of execution of an agreement with the Government. IOASAP and IHASAP have not delivered these certifications since we anticipate that these certifications will expire prior to execution of the SOAs.

Items (g) through (j) include sworn statements and certifications, all of which are to be dated as of the Agreement Date. IOASAP and IHASAP have not delivered these documents since delivering them with current dates would not satisfy the requirements for the Signing Conditions.

Notwithstanding the foregoing, IOASAP and IHASAP do not foresee any issues to obtain these certifications or execute the required sworn statements and certifications. IOASAP and IHASAP will be ready to deliver such documents when they are ready to execute the SOAs.

2. Technical documents (item (k))

The Signing Conditions also require delivery of (i) a preliminary engineering design of the ASAP Facility and related interconnection facilities, (ii) a proposed relay protection scheme and (iii) a certified PSS/E mathematical model of the ASAP Facility, the manufacturer's performance data and expected output curve. These items cannot be completed while the expectations for the ASAP Facilities, which shall be set forth in the AOPs, remain unclear. However, IOASAP and IHASAP expect that they will be able to develop and deliver these requirements promptly upon completion of the AOPs.

E. Identification of any Obstacles Causing the Delay

As stated previously, the current drafting of certain sections of the SOA represents a significant obstacle to the execution by IOASAP and IHASAP, and execution may not be possible until these comments are addressed.

Luma has refused to accept any changes to the SOAs after they were filed with the Energy Bureau on October 18, 2024, attributing such refusal to the principle of maintaining uniformity between agreements. We agree that uniformity will be essential for the success of the ASAP but insist that addressing our changes would not void this effort. Our request is for our proposed changes to be included in the SOAs with all participants; they are not intended to provide any preferential treatment to IOASAP or IHASAP. We believe these changes will benefit all participants of the ASAP (including Luma), will avoid conflicts and disputes under the SOAs and will eliminate language that could be problematic for all parties that seek funding.

In addition, we believe that we IOASAP and IHASAP, as affiliates of Oriana and Horizon, will not be able to move forward with the execution of the SOAs unless the current terms of the existing PPOAs are modified. The intention of the amendments would be limited to allowing the interconnection of the ASAP Facilities and the operation thereof. The amendments would not improve the terms of the PPOAs for the existing power producers and would not be detrimental to PREPA or Puerto Rico ratepayers. Infinigen has identified certain sections that we believe would need to be amended, but finalization of the AOPs will be crucial to determine what amendments will ultimately be needed.

Luma remains reluctant to modify the SOAs or amend existing agreements and has expressed their belief that solutions are feasible within the current drafts and agreements. Although IOASAP and IHASAP agree that such solutions may exist, the solutions that have been proposed so far would incorporate complex technical configurations in conjunction with overcomplicated metering and invoicing structures and formulas. IOASAP and IHASAP maintain that incorporating modifications and amendments to the SOAs and PPOAs, none of which would alter business terms

or economic results for any of the parties, would be a simpler and faster approach.

F. Updated Timeline

IOASAP and IHASAP anticipate that the ASAP Facilities can be completed within the following development timeline:

1. Delivery of Signing Conditions – within 30 days of resolution of open items discussed in this Motion.
2. Execution of SOA – upon delivery of Signing Conditions.
3. Execution of purchase and construction agreements – upon execution of SOAs.
4. Issuance of permits – within 90 days of execution of SOAs.
5. Engineering design – within 90 days of execution of SOAs.
6. Commencement of construction – within 6 months of execution of SOAs.
7. Delivery of batteries – within 12 months of execution of SOAs.
8. Commercial Operation – within 18 months of execution of SOAs.

Unfortunately, IOASAP and IHASAP cannot anticipate a timeframe for a resolution of open items. We note that although Luma and Infinigen remain engaged in finding solutions, the open items are of a technical nature that require highly specialized input and analysis to protect the integrity of the Puerto Rico electric grid and the interests of all parties involved.

G. Proposed Corrective Actions

As stated elsewhere in this Motion, IOASAP and IHASAP remain committed to addressing the outstanding issues that are currently hindering the progress of the ASAP. IOASAP and IHASAP are optimistic about the feasibility of the ASAP and of the benefits that it will provide to the Puerto Rico power grid. IOASAP and IHASAP propose the corrective actions described below.

First and foremost, IOASAP and IHASAP believe that addressing the comments to the drafts of the SOAs submitted by Infinigen is unavoidable to proceed with the execution of the SOAs. As mentioned previously, the modifications would not alter the basic economic terms, but would eliminate uncertainty and ambiguity from the SOAs, avoiding conflict, disputes and facilitating funding for the projects.

Specific comments to the SOAs have not been discussed herein as they include information that IOASAP and IHASAP consider sensitive. However, further context and specificity can be provided if the Energy Bureau so requests.

IOASAP and IHASAP also believe that allowing amendments to the existing PPOAs would result in simpler and safer design solutions. The amendments would not alter the economic terms of the existing agreements, but would rather be limited to technical changes that are needed to permit both systems to interconnect at a single point of interconnection.

If PREPA, Luma or this Energy Bureau understand that amendments to the existing PPOAs would not be appropriate, IOASAP and IHASAP would propose for the AOPs to be modified so that the ASAP and PV facilities cannot operate simultaneously.

H. Continued Progress on Projects

Notwithstanding the fact that neither IOASAP nor IHASAP are ready to execute their corresponding SOAs, Infinigen and both project companies have completed substantial work on the projects. IOASAP and IHASAP have achieved significant milestones in terms of permitting, funding, procurement and other relevant matters.

IOASAP has commenced and significantly progressed the site consultation (*consulta de ubicación*). According to permitting consultants, a site consultation will not be needed for the ASAP facility to be developed by IHASAP since it will be developed within the footprint of the existing PV facility. Although neither entity can apply for construction permits until design is completed, neither entity anticipates significant hurdles in the permitting process.

IOASAP and IHASAP are recipients of Grant Agreement under the ER2 program, which distributes Community Grant Development Block – Disaster Recovery funds and is administered by the Puerto Rico Department of Housing. Each Grant Agreement covers up to 60% of the project costs. IOASAP will receive up to \$43,200,000 while IHASAP will receive a maximum amount of \$19,200,000.

As part of the requirements for such funding, both entities will be required to complete reviews under the National Environmental Protection Act (“NEPA”). Both IOASAP and IHASAP have initiated the process and expect no significant delays as a result.

Moreover, IOASAP and IHASAP applied for decrees of tax incentives under Act 60-2019, known as the Puerto Rico Incentives Code. Decrees for both entities have been issued by the Department of Economic Development and Commerce.

IOASAP and IHASAP have maintained communication with equipment suppliers and have received quotes for batteries, inverters, the energy management system (EMS) and from the general contractor. Drafts of the agreements and purchase orders have been exchanged with potential suppliers and contractors. Unfortunately, none of these agreements can be finalized or executed until IOASAP and IHASAP reach an agreement with Luma with respect to how the ASAP Facilities will operate.

In summary, IOASAP and IHASAP have made consistent progress on the projects, and both projects are expected to progress swiftly once the items that remain open in the SOAs are clarified and the agreements are executed.

I. Shared Interest in Expedited Development

IOASAP and IHASAP have expended significant time, effort and money into the ASAP and are committed to bringing their respective ASAP Facilities to fruition. Both entities will significantly benefit if the projects are set in motion in coming months.

Both entities are highly motivated to execute purchase orders for major equipment in the near future. With the enactment of the One Big Beautiful Bill Act (“*OBBA*”), eligibility for investment tax credits will be more cumbersome for projects that do not “begin construction” (as such term is defined in relevant guidance issued by the United States Treasury)³ before the end of 2025. Although IOASAP and IHASAP believe that their projects would remain eligible for ITC even if

³ Under guidance currently in effect, a project may be deemed to have “begun construction” if it has spent certain amounts in eligible costs.

construction were to commence in 2026, it is in both IOASAP's and IHASAP's to commence construction as soon as possible.

In addition, IOASAP and IHASAP are required to adhere to the development timelines set forth in the Grant Agreements executed under the ER2 program. Failure to demonstrate sustained progress could jeopardize the grants. IOASAP and IHASAP are highly motivated to maintain the grants as they represent a combined amount of \$62,400,000.

Lastly, IOASAP and IHASAP are part of the Infinigen group of entities and are therefore committed to improving the Puerto Rico electric power grid for the benefit of the people of Puerto Rico. With this sense of commitment, we continue to support the ASAP initiative and will remain available to discuss potential solutions with Luma, PREPA, the Energy Bureau and all other stakeholders in the energy sector.

WHEREFORE, IOASAP and IHASAP respectfully request that the Energy Bureau take notice of the aforementioned; determine that there is no cause to fine IOASAP or IHASAP.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 14th day of August, 2025.

We hereby certify that this motion was filed using the electronic filing system of this Energy Bureau which will notify counsel of record.

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