

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

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IN RE:
LUMA’S ACCELERATED STORAGE
ADDITION PROGRAM

CASE NO. NEPR-MI-2024-0002

SUBJECT: Informative Motion and Request
for Confirmation or Approval from the Energy
Bureau Relating to Certain ASAP Matters

**INFORMATIVE MOTION AND REQUEST FOR CONFIRMATION OR APPROVAL
FROM THE ENERGY BUREAU RELATING TO CERTAIN ASAP MATTERS**

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

In connection with the Standard Offer Phase 1 (“SO1”) Agreements developed under the Accelerated Storage Addition Program (“ASAP”), LUMA is respectfully submitting this motion to obtain the Puerto Rico Energy Bureau’s approval or confirmation with respect to the approach proposed by LUMA with respect to three matters related to the SO1 Agreement arising in LUMA’s discussions with the SO1 developers, as well as provide an update on ASAP matters.

LUMA is submitting several Exhibits with related information and documents for which LUMA is requesting confidential treatment as having commercially sensitive information.

II. RELEVANT PROCEDURAL HISTORY

1. On April 19, 2024, the Energy Bureau issued a Resolution and Order opening the instant docket for the evaluation of the ASAP and related submission processes to follow.

2. On April 26, 2024, LUMA submitted to the Energy Bureau the ASAP concept for the Energy Bureau's review.¹

3. On May 8, 2024, the Energy Bureau issued a Resolution and Order determining that the ASAP concept is aligned with Puerto Rico's energy public policy and is consistent with the IRP², approving the ASAP concept, and authorizing LUMA and the independent power producers ("IPPs") to proceed with the development of the Standard Offer ("SO") Agreements.³

4. 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 four interested IPPs.⁴ LUMA also submitted a discussion of the SO Agreements and the process going forward.⁵

5. On November 1, 2024, the Energy Bureau issued a Resolution and Order approving the four (4) draft SO1 Agreements submitted with the October 18th Motion and issued directives for its finalization and approval by PREPA's Board of Directors, among others. *See* order, pp. 1-2.

6. On November 12, 2024, LUMA informed the Energy Bureau that it had finalized three of the four SO Phase 1 Agreements and submitted these to PREPA's Board of Directors.⁶

¹ *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*, Exhibit 1.

² The IRP was 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 the Energy Bureau also ordered the adoption and implementation of a Modified Action Plan.

³ *See* order p. 4.

⁴ *See Motion in Compliance with Resolution and Order of October 11, 2024, and Request for Confidential Treatment* ("October 18th Motion"), p. 13 and Exhibit 2 (2a, 2b, 2c and 2d).

⁵ *See id.*, pp. 13-16 and Exhibit 1.

⁶ *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*, pp. 3, 7-8. These were the SO1 Agreements submitted as confidential Exhibits 2b, 2c and 2d of the October 18th Motion.

7. On December 23, 2024, LUMA submitted to the Energy Bureau the fourth finalized version of the SO1 Agreement for the Energy Bureau’s approval (that is, the agreement with the “Fourth Participant”).⁷ LUMA proposed that the Pass-Through Cost Adjustment (“PCA”) mechanism in the SO1 Agreement be used to pay for a large capital investment needed to provide more capability to the proposed battery energy storage system (“BESS”) more specifically described in a confidential Exhibit 3 to the December 23rd Motion.⁸

8. On January 14, 2025, the Energy Bureau issued a Resolution and Order (“January 14th Resolution and Order”) in which it approved the finalized version of the SO1 Agreement with the Fourth Participant, “including the proposed Pass-Through Cost Adjustment (“PCA”) to pay for a substantial capital investment to provide more capability to the proposed BESS”, and issued directives for its approval by PREPA’s Board of Directors, among others.

9. On July 23, 2025, issued a Resolution and Order granting PREPA five (5) days to provide “a detailed explanation regarding the cause of the delay in the execution of the four (4) approved BESS Phase 1 projects and why their immediate execution should not proceed, in a manner consistent with the paramount public interest”.

10. On August 1, 2025, PREPA submitted a *Motion in Compliance with Resolution and Order of July 23, 2025* (“August 1st Motion”) in which it informed that on June 27, 2025, “PREPA initiated formal communications via email with the developers of the four ASAP projects” and that in each of these communications “PREPA outlined the list of Signing Conditions that must be fulfilled for contract execution, as detailed in Exhibit 21 of the [SO 1 Agreement] approved by the

⁷ See *Motion to Submit Proposed Final SO1 Agreement with Fourth Participant in Compliance with Resolution and Order of December 4, 2024, and Request for Confidentiality* (“December 23rd Motion”). This refers to the SO1 Agreement submitted as confidential Exhibit 2a of the October 18th Motion.

⁸ See *id.*, pp. 5-6 and Exhibit 3.

Energy Bureau”.⁹ PREPA further informed that on July 24, 2025, PREPA issued a follow up email to all four developers to request an update and that only one of the developers had responded, and that this developer indicated it was preparing the necessary documentation and coordinating with LUMA to finalize items related to the execution of the SO1 Agreement.¹⁰ Moreover, PREPA informed that this developer had indicated that it anticipated being ready to execute the contract by September 2025.¹¹ Finally, PREPA emphasized that it could not execute any ASAP contract until the developer has fulfilled the Signing Conditions, given the applicable and regulatory frameworks.¹²

11. On August 4, 2025, the Energy Bureau issued a Resolution and Order, in connection with the delay in the execution of ASAP contracts, ordering four SO1 participants with approved SO1 Agreements to submit an explanation, no later than Thursday August 14, 2025, including a detailed explanation of the current compliance status with the Signing Conditions of the SO Agreement, identifying any obstacles causing the delay and an updated timeline, and proposing corrective actions to allow execution of the contracts.

12. On August 5, 2025, LUMA submitted to the Energy Bureau for its approval a draft SO1 Agreement with a fifth participant (“Fifth Participant”).¹³

13. On August 8, 2025, the Energy Bureau issued a Resolution and Order (“August 8th Order”) in which it approved the Fifth Participant’s draft SO1 Agreement and issued directives for its finalization and approval by PREPA’s Board of Directors.

⁹ See August 1st Motion, pp. 1-2.

¹⁰ See *id.*, p. 2.

¹¹ See *id.*

¹² See *id.*

¹³ See *Request for Approval of Standard Offer Phase I Agreement with Fifth Participant*.

14. On August 14, 2025, two of the original three participants with approved SO1 Agreements (for purposes of this writing, the “First and Second Participants”¹⁴) submitted a motion in response to the August 8th Resolution and Order (“August 14th Motion”). In their motion, the First and Second Participants indicated that there were four technical issues that needed resolution before they could proceed with execution of their SO 1 Agreements- namely their understanding that addressing technical issues relating to the proposed simultaneous operation of their generating facility with the proposed BESS would require amendment to their PPOA; and the need to establish one set of Minimum Technical Requirements (“MTRs”) to both the generating facility and the BESS (instead of two separate sets of MTRs as currently contemplated) which they argued would require modifications of the SO Agreements and amendments to their PPOAs.¹⁵ They also indicate that the Signing Conditions require the delivery of certain technical documents which they cannot complete until the Agreed Operating Procedures (“AOP”) are completed and proposed that the AOP be finalized before executing the SO1 Agreements.¹⁶ Furthermore, they have made consistent progress on the projects and these are “expected to progress swiftly once the items that remain open in the [SO1 Agreements] are clarified and the agreements are executed”.¹⁷

15. Also on August 14, 2025, another one of the original SO1 participants (for purposes of this writing, the “First Participant”)¹⁸ submitted a confidential motion in response to the August 8th Order discussing the process toward satisfying the Signing Conditions.

¹⁴ This refers to the participants that would be counterparties to the SO1 Agreements submitted as Exhibits 2b and 2c of the October 18th Motion.

¹⁵ See August 14th Motion, pp. 3-4.

¹⁶ See *id.*, pp. 5-6.

¹⁷ See *id.*, p. 7.

¹⁸ This refers to the participant that would be counterparty of the SO1 Agreement submitted as confidential Exhibit 2c of the October 18th Motion.

III. UPDATE AND REQUESTS

16. LUMA informs that in the past several months it has been engaging with the six interested SO1 participants (that is, the five participants with approved SO1 Agreements described above and a six participant with which LUMA is negotiating an SO1 Agreement) in an effort to address remaining outstanding items conducive to, in the case of the first five participants, having these participants take the remaining steps to execute their agreements or, in the case of the sixth participant, achieve agreement on a mutually acceptable SO1 Agreement. LUMA has identified certain matters with respect to which the Energy Bureau's approval or confirmation will help set the stage for at least two participants to proceed with these final steps. In *Exhibit 1* herein, LUMA discusses these matters, as summarized below, as well as provides an update and background information.

A. Monthly Payment Pass-Through Components

17. The approved SO1 Agreement provides for certain costs to be passed through by the resource provider as Monthly Payment Pass-Through Components ("MPPTC").¹⁹ The MPPTC includes costs associated with increased insurance premiums and increased tariff costs, as more specifically described in the SO1 Agreement, which costs are subject to approval by PREPA in its sole discretion.²⁰ Once approved, these costs can be incorporated in the monthly payment to be paid to the resource provider under the SO1 Agreement.²¹ Including these costs as pass-through expenditures was reasonable and necessary given the unique uncertainties resulting from both the insurance market in Puerto Rico and the evolving policies on import tariffs being implemented by the U.S. Government.²²

¹⁹ See *Exhibit 1*, p. 2 and SO1 Agreement, Exhibit 2.

²⁰ See SO1 Agreement, Exhibit 2.

²¹ See *id.*, p. 2.

²² See *id.*

18. While the SO Agreement recognizes the resource provider's right to pass on insurance and tariff-related costs, it does not specify the manner in which costs which the resource provider is seeking to include within the MPPTC will be reviewed and determined to be reasonable.²³ SO1 developers expressed that this discretionary situation was an unacceptable risk that they could not incur.²⁴

19. To address this concern, LUMA prepared two position papers (the "Position Papers"), described in more detail in and attached to *Exhibit 1* herein, providing details defining the decision process for the mentioned cost items.²⁵ LUMA reached agreement on the Position Papers with two participants and shared these Position Papers with all SO1 participants on August 21, 2025.²⁶

20. LUMA has agreed to include the Position Papers as part of Appendices J and K to the Agreed Operating Procedures ("AOP").²⁷ The AOP is a document that defines the mutually agreed operating procedures between the resource provider and the System Operator for ASAP, and defines, among others, how the BESS facility will be dispatched and operated, how communication will occur between parties, how performance will be tracked and monitored, and how LUMA, as System Operator, will ensure safe, reliable, and efficient integration of the BESS into the power system while maintaining compliance with all applicable MTRs, the System Operation Principles Procedures (SOPPs), normal acceptable reliability standards, and the SO1 Agreement.²⁸ LUMA is submitting herein as *Exhibit 2* the first version of the AOP developed by LUMA to date.

²³ See *id.*

²⁴ See *id.*, p. 4.

²⁵ See *id.*

²⁶ See *id.*

²⁷ See *id.*, p. 5.

²⁸ See *id.*

21. The SO1 Agreement provides for the finalization of the AOP no later than 270 days after the Closing Date.²⁹ Therefore, in order to provide certainty as to the binding nature of the Position Papers, LUMA is requesting this honorable Energy Bureau to approve the Position Papers.³⁰ This action will give the parties sufficient certainty that they can sign the agreement, and these two items will no longer be an issue of uncertainty. The Position Papers are included as Appendices J and K to the AOP in *Exhibit 2* herein.

B. Early Completion Bonus

22. Each approved SO1 Agreement includes a mechanism allowing developers to earn early completion bonuses if their project could reach certain defined Commercial Operation Date targets (“Early Completion Bonus”).³¹ This is an important incentive to motivate developers to achieve faster project completion. LUMA submits that the delays in getting the SO1 Agreements approved by the pertinent government entities, among other factors described in *Exhibit 1*, have affected the ability for the developers to achieve these target dates.³² LUMA still calculates that there will be the same economic benefits to ratepayers from early completion of the ASAP Bess facilities and it is reasonable to extend the target milestones for the Early Completion Bonus to reflect the mentioned delays.³³ Therefore, LUMA is respectfully requesting the Energy Bureau to approve the extension of these target dates as described in *Exhibit 1*. This change will require a revision of the approved SO1 Agreement. Accordingly, LUMA is submitting with this Motion the draft of the SO1 Agreements of the Fourth and Fifth Participants (which LUMA indicated are ready to move forward with their SO1 Agreements) in redline, showing the revisions made to

²⁹ See *id.*

³⁰ See *id.*

³¹ See *id.*, p. 4.

³² See *id.*

³³ See *id.*

incorporate the change in the Early Completion Bonus target dates, and in clean copy, for the Energy Bureau's approval, in order to expedite the process with respect to these agreements. *See Exhibits 3 and 4.* The same change would be made with respect to the other SO1 Agreements if approved by the Energy Bureau, which LUMA would then submit subsequently for approval. LUMA respectfully requests the Energy Bureau to schedule a confidential technical conference to discuss in more detail the justifications for this and other proposals in this Motion, as needed.

G. Conclusions

23. LUMA understands that, at a minimum, the Fourth and Fifth participants will be ready to complete the steps for execution of their SO1 Agreements upon obtaining confirmation or approval from this Honorable Energy Bureau of the items discussed above (subject to the internal approvals they may require).³⁴

24. As discussed in *Exhibit 1*, LUMA continues to believe that the execution of these agreements will result in a more cost-effective and expeditious deployment of BESS than under the Tranches. LUMA believes these agreements still represent considerable value to ratepayers having a significantly lower Levelized Cost of Storage (LCOS) than any of the Tranche projects and are still projected to be on-line than most Tranche BESS projects.³⁵

25. LUMA respectfully requests the Energy Bureau to maintain *Exhibits 1, 2 and 3* herein confidential as validated trade secret information under applicable laws and regulations and the Energy Bureau's Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 2016, as amended on September 21, 2016 ("Policy on Confidential Information"). The Memorandum of Law in support of this request is provided below.

³⁴ *See id.*, p. 5.

³⁵ *See id.*, p. 1.

IV. REQUEST FOR CONFIDENTIAL TREATMENT

a. Applicable Laws and Regulation to submit information confidentially before the Energy Bureau

i. General Framework

26. Section 6.15 of the *Puerto Rico Energy Transformation and RELIEF Act*, Act No. 57-2014, as amended (“Act 57-2014”) regulates the management of confidential information filed before this Energy Bureau. It provides, in pertinent part, that: “[i]f any person who is required to submit information to the Energy [Bureau] believes that the information to be submitted has any confidentiality privilege, such person may request the Commission to treat such information as such [....]” 22 LPRA §1054n. If the Energy Bureau determines, after appropriate evaluation, that the information should be protected, “it shall grant such protection in a manner that least affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted.” *Id.* Section 6.15 (a).

27. In connection with the duties of electric power service companies, Section 1.10 (i) of *Puerto Rico Energy Public Policy Act*, Act No. 17-2019, as amended (“Act 17-2019”) provides that electric power service companies shall submit information requested by customers, except for confidential information in accordance with the Rules of Evidence of Puerto Rico. 22 LPRA §1141i.

28. Access to the confidential information shall be provided “only to the lawyers and external consultants involved in the administrative process after the execution of a confidentiality agreement.” *Id.* Section 6.15(b), 22 LPRA §1054n. Finally, Act 57-2014 provides that this Energy Bureau “shall keep the documents submitted for its consideration out of public reach only in exceptional cases. In these cases, the information shall be duly safeguarded and delivered exclusively to the personnel of the [Energy Bureau] who need to know such information under

nondisclosure agreements. However, the [Energy Bureau] shall direct that a non-confidential copy be furnished for public review.” *Id.* Section 6.15(c).

29. The Energy Bureau’s Policy on Confidential Information details the procedures that a party should follow to request that a document or portion thereof be afforded confidential treatment. In essence, the Policy on Confidential Information requires the identification of confidential information and the filing of a memorandum of law explaining the legal basis and supporting evidence for a request to file information confidentially. *See* CEPR-MI-2016-0009, Section A, as amended by the Resolution of September 16, 2016, CEPR-MI-2016-0009. The memorandum should also include a table that identifies the confidential information, a summary of the legal basis for the confidential designation and a summary of the reasons why each claim or designation conforms to the applicable legal basis of confidentiality. *Id.* paragraph 3. The party who seeks confidential treatment of information filed with the Energy Bureau must also file both a “redacted” or “public version” and an “unredacted” or “confidential” version of the document that contains confidential information. *Id.* paragraph 6.

30. The Energy Bureau’s Policy on Management of Confidential Information states the following regarding access to validated Trade Secret Information:

1. Trade Secret Information
Any document designated by the [Energy Bureau] as Validated Confidential Information because it is a trade secret under Act 80-2011 may only be accessed by the Producing Party and the [Energy Bureau], unless otherwise set forth by the [Energy Bureau] or any competent court.

Id. at § D (on Access to Validated Confidential Information).

31. Relatedly, Regulation 8543 includes a provision for filing confidential information in adjudicatory proceedings before this Honorable Energy Bureau. To wit, Section 1.15 provides that,

a person has the duty to disclose information to the [Energy Bureau] considered to be privileged pursuant to the Rules of Evidence, said person shall identify the allegedly privileged information, request the [Energy Bureau] the protection of said information, and provide supportive arguments, in writing, for a claim of information of privileged nature. The [Energy Bureau] shall evaluate the petition and, if it understands [that] the material merits protection, proceed accordingly to [. . .] Article 6.15 of Act No. 57-2014, as amended.

ii. Commercially Sensitive Confidential Information

32. The Puerto Rico legal system recognizes and protects the confidentiality of certain information considered to be privileged. In part, privileged materials are exclusively referred to as the privileges codified in the Rules of Evidence. *E.L.A v. Casta*, 162 DPR 1, 10 (2004). One of these recognized privileges is the company's Trade Secrets:

The owner of a trade secret has a privilege, which may be claimed by such person or by his or her agent or employee, to refuse to disclose and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. If disclosure is directed, the court shall take such protective measures as the interest of the owner of a trade secret and of the parties and the interests of justice require.

See R. Evid. 513, 32 LPRA Ap. IV, R. 513 (2024).

33. In essence, this privilege “protects confidential commercial information” and is “based on public policy considerations aimed at promoting innovation, commercial production and business operation improvement, which in turn contributes to economic and technological development”. (translation provided). *Colón Rivera v. Triple-S Salud, Inc.*, 2020 WL 8458051, p. 7 (Puerto Rico Court of Appeals, December 22, 2020).

34. The Puerto Rico Trade and Industrial Secrets Protection Act - Act. No. 80 of June 3, 2011, as amended, 10 LPRA § 4131 (2024) (“Act 80-2011”) considers a trade secret any information that:

(a) From which an independent economic value, whether current value or potential value, or a commercial advantage is derived because such information is not

commonly known or accessible by appropriate means to those persons who may derive pecuniary benefit from the use or disclosure of such information, and
(b) which has been subject to reasonable security measures, under the circumstances, to maintain its confidentiality.

10 PRA § 4132 (translation provided).

35. Act 80-2011 considers reasonable security measures such as those taken by the owner to limit access to information under particular circumstances. 10 LPRA § 4133. The following are considered reasonable measures, among others:

- (a) Not disclose the information to individuals or entities not authorized to have access to it;
- (b) limit the number of people authorized to access the information;
- (c) require employees of the company authorized to access the information to sign confidentiality agreements;
- (d) store the information in a separate place from any other information;
- (e) label the information as confidential;
- (f) take measures to prevent indiscriminate reproduction of the information;
- (g) establish control measures for the use or access of the information by employees, or
- (h) implement available technological measures when publishing or transmitting information through the Internet, including the use of email, webpages, discussion forums and any other equivalent means.

Id. (translation provided).

36. Article 11(c) of Act 80-2011 establishes that, before ordering any production of a commercial trade secret, it should be determined whether there is a substantial need for the information. (Our translation). 10 LPRA § 4139(c). Puerto Rico Courts in adversarial cases have interpreted a “substantial need” when the following four (4) conditions are present:

- (1) The allegations raised for the purpose of establishing the existence or absence of liability have been specifically raised;
- (2) the information sought to be discovered is directly relevant to the allegations specifically raised;
- (3) the information sought to be discovered is such that the party seeking discovery would be substantially prejudiced if not permitted access to it; and
- (4) there is a good faith belief that testimony or evidence derived from the information that is part of the trade secret will be admissible at trial.

Ponce Adv. Med. v. Santiago González, 197 DPR 891, 905 (2017) (translation provided).

a. Request for Confidential Designation

i. Commercially Sensitive Confidential Information

37. *Exhibits 1, 2, 3 and 4* contain proprietary commercial information that reflects LUMA's internal strategies and negotiations with private developers under the ASAP program. The documents include detailed discussions of cost recovery mechanisms, budgeting allocations, and technical issues, some of which *are preliminary and not yet finalized*. These elements are the result of internal analysis and negotiation, and they are not publicly disclosed or accessible to competitors or other market participants.

38. These Exhibits also outline specific commercial terms developed through extensive engagement with the developers and reflect LUMA's strategic approach to accelerating capacity deployment while managing system constraints. Public disclosure of these terms would reveal LUMA's negotiation posture, potentially undermining its position in future agreements with other developers.

39. LUMA has taken deliberate steps to protect the confidentiality of this information, including limiting access to authorized personnel, labeling the document as confidential, and restricting its distribution. The information derives independent economic value from its secrecy, as it provides LUMA with a commercial advantage in structuring and negotiating future agreements under the ASAP framework and future projects.

40. Disclosure of this information would not only compromise LUMA's competitive position but could also disrupt ongoing commercial negotiations. The confidentiality designation

is therefore necessary to protect the integrity of LUMA's business operations and to preserve the economic value of its proprietary strategies.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the above; **approve** the Position Papers included as Appendices K and J in *Exhibit 2* herein so as for these to be binding as part of the Agreed Operating Procedures required by the SO1 Agreements;; **approve** the proposed extension of the target dates for the Early Completion Bonuses under the SO1 Agreement in *Exhibit 1* herein and as shown in the draft SO1 Agreements in *Exhibits 3* and *4* herein; **schedule** a confidential Technical Conference with LUMA to further discuss the justification for these requests, as necessary; **find** that *Exhibits 1, 2, 3* and *4* constitute Validated Confidential Information; and **order** the Clerk of the Energy Bureau to maintain *Exhibits 1, 2, 3* and *4* under seal of confidentiality.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on the 27th day of August 2025.

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.



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Exhibit 1

[Submitted under Seal of Confidentiality]

Exhibit 2

[Submitted under Seal of Confidentiality]

Exhibit 3

[Submitted under Seal of Confidentiality]

Exhibit 4

[Submitted under Seal of Confidentiality]