

**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 IN RESPONSE TO SEPTEMBER 19, 2025 ORDER TO SHOW CAUSE

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**" or "**Energy Bureau**"),¹ through the undersigned counsel, and respectfully states and requests the following:

I. INTRODUCTION

As indicated in its August 14, 2025, *Motion to Respond to Resolution and Order* ("**August 14 Motion**") 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 ("**LUMA**") 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 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 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)

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. Consequently, this Honorable Bureau lacks jurisdiction over both parties, at this juncture.

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.

updated timeline and proposed corrective actions to allow execution of the contracts.

As ordered by this Bureau, on August 14, 2025, IOASAP and IHASAP explained why they cannot satisfy the Signing Conditions nor execute the SOAs, an identification of the present obstacles and updated timeline regarding the execution of the SOAs.

On September 19, 2025, the Bureau issued an Order to Show Cause requesting that the developers, Ecoeléctrica, San Fermín Battery Project LLC, Oriana and Horizon, within three (3) business days to explain: (1) all reasons preventing the current compliance status with the Signing Conditions; (2) identify any obstacles that have prevented execution of the agreements; and (3) to state why the Bureau should not impose fines under these circumstances.

In compliance with the *Order to Show Cause*, IOASAP and IHASAP hereby inform that they are committed to supporting 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. However, IOASAP and IHASAP must highlight that they are under no legal obligation to execute or enter into an SOA particularly an SOA with unreasonable terms and conditions and/or subject to an arbitrary timeline. To that end, IOASAP and IHASAP rely on contractual principles regarding freedom of contracts as defined by the Puerto Rico Civil Code of 2020. See, 31 LPRA § 9753.

For the reasons further explained below, neither IOASAP nor IHASAP are ready or able to satisfy the Signing Conditions nor execute the SOAs at this time.

I. DISCUSSION

A. Status with the Signing Conditions & Obstacles causing the Delay

IOASAP and IHASAP hereby emphasize, as indicated in its August 14 Motion, that the parties must reach the Agreed Operating Procedures (“**AOP**”) before executing the SOAs. In this regard the AOPs will have a significant impact on the design, performance, required maintenance and forecasted degradation of the ASAP Facilities. Further obtaining documentation such as the certificates of tax status, items (a)-(j), would be counterproductive at this time since, such items are contingent and dependent on finalizing the AOPs. Likewise, those items consist of certificates issued by multiple Government entities with a short validity period. In the same manner, items (g) through (j) pertain to statements and certifications which need to be executed on the Agreement Date and not before. Thus, delivering items (g) through (j) at this time will not satisfy the Signing Conditions and will ultimately result in a duplicative effort. Finally, item (k), regarding the technical documents, also require resolution of the principal open items in the AOPs for their final development.

A revised draft of the AOP was sent by LUMA to IOASAP and IHASAP on Friday, September 19, 2025. LUMA requested comments be delivered by Friday, September 26, 2025, and IOASAP and IHASAP are working diligently to provide its comments within the proposed deadline.

Moreover, IOASAP and IHASAP inform that they met with LUMA on September 2, 2025, whereby both parties reached multiple agreements and gained significant ground regarding the SOAs and the AOPs. Further, as recent as yesterday, September 22, 2025, counsel to IOASAP and IHASAP met with LUMA’s counsel where the parties made substantial progress.

Thus, it is evident that both parties are actively negotiating and discussing the terms of the SOAs. However, IOASAP and IHASAP remain uneasy with the current language of the SOA’s.

The current drafts of the agreements include economic terms that are at PREPA's sole discretion, which poses a risk that IOASAP and IHASAP cannot assume. The compensation to which participants of the ASAP will be entitled under the SOAs is considerably lower than market trends,³ and the projects will be therefore developed with a contingency for cost overruns that is much lower than the industry standard. The projects would not be financially feasible if PREPA has the discretion to determine if it will make certain payments. In addition, we anticipate these terms would present difficulties to securing funding to develop the ASAP facilities. Instead of pursuing a bulwark stance, IOASAP and IHASAP have conceded on the pricing terms as offered by LUMA. Thus, IOASAP and IHASAP are of the opinion that LUMA agreeing to altering the current discretionary language in order to avoid future contradictory interpretations would be a step in the right direction and would further benefit all involved parties.⁴

B. Reasons as to why PREB should not impose sanctions

Respectfully, IOASAP and IHASAP posit that since they are in the pre-development stages, neither entity is a certified electric service company. A certified electric service company, as defined in Article 1.08 of Regulation 8701 dated February 17, 2016, is "any natural or legal person that generates electric power through the use of fossil fuels or renewable energy sources for sale to PREPA or any other electric service company in accordance with a power purchase agreement. . .". In addition, duly certified electric service companies have to comply with certain filing requirements such as providing updated personal information and the filing of a formal request for certification in order to become duly authorized to operate or offer any sort of electric power in Puerto Rico. See, generally Article 3. Consequently, at this juncture, this Bureau lacks any jurisdiction over both parties, and is therefore legally impeded from imposing any sanctions.

Moreover, Regulation 8701 provides for the imposition of fines only to certified electric service companies, in a certain set of instances such as "substantially or repeatedly failed to comply with one or more of the [Energy Bureau's] orders". IOASAP and IHASAP have voluntarily cooperated with the Energy Bureau's orders and have not engaged in any of the conduct that would merit a fine. IOASAP and IHASAP have not executed the Standard Offer Agreements, but note that neither entity has been ordered to do so. We believe this Energy Bureau would agree that ordering a private entity to execute an agreement would be inappropriate and unlawful.

However, and as a *bona fide* effort to reach a consensus with LUMA, IOASAP and IHASAP hereby reiterate 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, however the current delays are not within IOASAP and IHASAP's control. However, given IOASAP and IHASAP's requirement to comply with the Grant Agreements, its openness to reach reasonable agreements with LUMA, IOASAP and IHASAP are optimistic that all parties will reach a feasible timeline for the execution of the SOAs.

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 and

³ The lowest price proposed under Tranche 3 of was \$25,000/MW-month while the compensation to be paid under the Standard Offer Agreement is \$16,000 /MW-month (for projects that will generate investment tax credits).

⁴ For further details on the items necessary for SOAs, IOASAP and IHASAP incorporate by reference its August 14 Motion.

deem the September 19, 2025, *Order to Show Cause* duly complied with.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 24th day of September 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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