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

IN RE: LUMA'S ACCELERATED STORAGE ADDITION PROGRAM ("ASAP")	**CASE NO.**: NEPR-MI-2024-0002

PREPA'S MOTION FOR APPROVAL OF THE PROPOSED FIRST AMENDED AND RESTATED ECOELÉCTRICA BESS STANDARD OFFER AGREEMENT, REQUEST FOR CONFIDENTIAL TREATMENT AND MEMORANDUM OF LAW IN SUPPORT OF CONFIDENTIAL TREATMENT

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority ("PREPA") through its undersigned legal counsel and respectfully informs and requests as follows:

1. On April 19, 2024, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") opened this proceeding to evaluate the Accelerated Storage Addition Program ("ASAP") proposed by LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively, "LUMA") and directed LUMA to file the final version of its ASAP concept. The proposal contemplated adding battery energy storage systems ("BESS") at existing independent power producer facilities through standard offers.

2. On April 26, 2024, LUMA filed its *Motion Submitting the Accelerated Storage Addition Program (ASAP) Concept* whereby it proposed standardized terms for eligible generators to add BESS capacity at their facilities and described potential benefits, including faster deployment, improved reliability, reduced load shedding, and lower costs.

3. On May 8, 2024, the Energy Bureau issued a *Resolution and Order* finding that ASAP aligned with Puerto Rico's energy public policy and was consistent with the approved Integrated Resource Plan. The Energy Bureau approved the ASAP concept and authorized LUMA and participating generators to develop the Standard Offer and related agreements.

4. On August 8, 2024, the Energy Bureau issued a *Resolution and Order* whereby it noted that the proposed Standard Offer Agreements had not been submitted for review and directed LUMA to file them or provide a detailed status update.

5. On October 18, 2024, LUMA filed *Motion Submitting the Phase 1 Standard Offer Agreements* where it submitted the draft Phase 1 Standard Offer Agreements.

6. On November 1, 2024, the Energy Bureau issued a *Resolution and Order* where it approved four (4) draft agreements and directed LUMA to finalize them, submit the final versions to PREPA's Governing Board for approval, and provide the Energy Bureau with evidence of that submission.

7. On November 12, 2024, LUMA filed *Motion Requesting Extension of Time* where it informed the Energy Bureau that three (3) Phase 1 agreements had been finalized and requested additional time to finalize the other agreement, pertaining to the Fourth Participant, because of site-specific technical matters concerning BESS integration.

8. On November 14, 2024, the Energy Bureau granted LUMA fifteen (15) days to finalize the agreement relating to the Fourth Participant and directed that

substantial changes be resubmitted for review and approval. The Energy Bureau also clarified that proposed adjustment mechanisms, including pass-through cost adjustments, would constitute substantial changes requiring its review and approval.

9. On December 23, 2024, LUMA filed *Motion Submitting Proposed Final Phase 1 Standard Offer Agreement for Fourth Participant* whereby it submitted the proposed final Phase 1 Standard Offer Agreement for the fourth participant, EcoEléctrica BESS, LLC ("EcoEléctrica"), including a proposed Pass-Through Cost Adjustment.

10. On January 14, 2025, the Energy Bureau approved the proposed final Phase 1 Standard Offer Agreement with EcoEléctrica ("First Proposed Ecoeléctrica Agreement"), including the proposed Pass-Through Cost Adjustment. The Energy Bureau directed LUMA to seek approval from the Financial Oversight and Management Board for Puerto Rico ("FOMB") prior to execution.

11. On May 5, 2025, PREPA filed a *Motion in Compliance with the February 5, 2025 Resolution and Order*, informing the Energy Bureau that PREPA's Governing Board had approved the First Proposed Ecoeléctrica Agreement on April 30, 2025, and that PREPA had submitted it to FOMB for review and approval on May 2, 2025.

12. On June 13, 2025, FOMB issued its contract review letter, classifying the submitted First Proposed Ecoeléctrica Agreement as "Approved with Observations" and stating that material changes required FOMB review and approval before execution.

13. After other procedural incidents, on September 30, 2025, the Energy Bureau issued a *Resolution and Order* whereby it, among other things, approved a

revised version of the proposed Phase 1 Standard Offer Agreement with EcoEléctrica ("Second Proposed Ecoeléctrica Agreement"), as one of two Phase 1 project agreements PREPA was authorized to advance. The Energy Bureau directed the proponents to provide PREPA with the outstanding documents needed for execution and ordered PREPA to file each executed agreement within five (5) days after receiving those documents and FOMB approval.

14. On October 3, 2025, the Energy Bureau issued a further *Resolution* directing LUMA to offer the Phase 1 Standard Offer Agreement to Phase 2 proponents interested in participating and willing to accept its terms without reservation.

15. On October 10, 2025, LUMA filed an informative motion seeking modification of the October 3, 2025 order and identifying issues with the Phase 1 Standard Offer Agreement template.

16. On October 17, 2025, LUMA filed a *Motion to Submit Additional Information in Support of Motion Filed by LUMA on October 10, 2025, Request for Modification of October 3, 2025 Order, and Request for Confidential Treatment*, whereby it proposed an updated Phase 1 Standard Offer Agreement template and that participants with approved agreements, including Ecoeléctrica, be permitted to request revisions to conform their agreements to the updated template or to substitute the updated agreement.

17. On October 21, 2025, the Energy Bureau issued a *Resolution and Order* noting that the execution period established by its September 30, 2025 order had lapsed without PREPA filing executed agreements. The Energy Bureau directed

PREPA to submit a status report explaining the nonexecution and addressed the Phase 2 process.

18. On October 27, 2025, PREPA filed a *Motion in Compliance with the October 21, 2025 Resolution and Order* where, among other things, it identified EcoEléctrica as one of the two (2) proponents covered by the September 30, 2025 order and informed the Energy Bureau that PREPA had submitted the Second Proposed Ecoeléctrica Agreement to FOMB for review and approval on October 3, 2025, where it remained pending as of the filing.

19. On January 28, 2026, FOMB issued its determination on the Second Proposed Ecoeléctrica Agreement, classifying it as "Approved with Conditions." FOMB explained that its June 13, 2025 approval with observations concerned an earlier version that had not been executed because of misalignment among PREPA, EcoEléctrica, and LUMA ServCo. FOMB further stated that, after modifications, the proposed agreement was approved by the Energy Bureau and resubmitted to FOMB.

20. On April 7, 2026, PREPA and EcoEléctrica executed the Second Proposed Ecoeléctrica Agreement (hereafter, the "Ecoeléctrica BESS Standard Offer Agreement"). *See* **Exhibit A** - PREPA Governing Board Resolution 5266, p. 2.

21. On September 10, 2026, LUMA submitted Transmittal No. LUMA-PREP-T-27-00046 to PREPA, requesting approval and execution of an amended and restated BESS Standard Offer Agreement with EcoEléctrica (hereafter, the "Proposed First Amended Ecoeléctrica BESS Standard Offer Agreement"). LUMA represented that the proposed agreement would incorporate updated terms addressing insurance and tariff pass-through procedures, an interconnection-related condition precedent,

order of precedence, Tested Storage Capability, and price parity for an Energy Bureau-approved increase under another amended and restated ASAP agreement. LUMA also represented that the proposal would not change the existing Storage Capability Payment Price, 20 MW Design Storage Capability, twenty-year Supply Period, Early Commercial Operation Date Bonus, black-start pass-through cap, insurance requirements, liability provisions, PREPA's budget estimate, or allocation of risk. *See* **Exhibit A** - PREPA Governing Board Resolution 5266, p. 3.

22. On September 25, 2026, PREPA's Governing Board adopted Resolution 5266, approving the Proposed First Amended Ecoeléctrica BESS Standard Offer Agreement for a 20 MW, four-hour BESS facility at the EcoEléctrica site in Peñuelas. PREPA's Governing Board authorized submission of the proposed amended and restated agreement to the Energy Bureau and FOMB, and authorized PREPA's Executive Director to execute it after those approvals were obtained and the agreement finalized. *See* **Exhibit A** - PREPA Governing Board Resolution 5266, p. 3-4.

A. Request for Approval of the Proposed First Amended Ecoeléctrica BESS Standard Offer Agreement

23. In compliance with PREPA Governing Board Resolution 5266 and the Energy Bureau's directives, PREPA submits as **Confidential Exhibit B** the Proposed First Amended Ecoeléctrica BESS Standard Offer Agreement for the Energy Bureau's approval. The Word native version of the proposed amended and restated agreement will be submitted directly to the Confidential of the Energy Bureau. **Confidential Exhibit B** (Redline LUMA - Executed SO Agreement vs A&R SO

Agreement) is the Proposed First Amended Ecoeléctrica BESS Standard Offer Agreement with all proposed changes identified in redline, for ease of review.

B. Request for Confidential Treatment of the Proposed First Amended Ecoeléctrica BESS Standard Offer Agreement

24. Section 6.15 of the Puerto Rico Energy Transformation and RELIEF Act of May 27, 2014, as amended, Act No. 57-2014, 22 L.P.R.A. § 1054n ("Act 57-2014"), establishes the statutory framework that governs the treatment of confidential information submitted to the Energy Bureau. Specifically, it provides 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 L.P.R.A. § 1054n. If, after appropriate evaluation, the Energy Bureau determines 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. § 1054n(a).

25. The Energy Bureau's *Policy on Confidential Information* prescribes the procedure for requesting confidential treatment. A party must identify the information for which protection is sought and submit a memorandum of law explaining the legal basis and support for the request. *See* CEPR-MI-2016-0009, § A, as amended by subsequent *Resolution and Order* dated September 16, 2016. The memorandum must also include a table identifying the confidential information,

summarizing the legal basis for its designation, and explaining why the designation conforms to that legal basis. Id.

26. The Energy Bureau's *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures*, Regulation No. 8543, Section 1.15, provides that when a person is required to disclose information to the Energy Bureau that the person considers privileged under the Rules of Evidence, the person must identify the allegedly privileged information, request its protection, and provide written supporting arguments. The Energy Bureau then evaluates the request and, if the material merits protection, proceeds in accordance with Article 6.15 of Act 57-2014, as amended.

27. Article 4(iv) of the *Puerto Rico Open Government Data Act*, Act No. 122 of August 1, 2019, as amended ("Act 122-2019") exempts from disclosure information and official information related to decision-making in public policy-making processes, as recognized by case law, including deliberative materials. 3 L.P.R.A. § 9894(iv).

28. The Puerto Rico Supreme Court has recognized that predecisional and deliberative documents may be shielded from public disclosure. Bhatia Gautier v. Gobernador, 199 D.P.R. 59, 86 (2017). The deliberative process privilege applies to materials that are both predecisional, that is, created before the agency's final determination, and deliberative, reflecting opinions, assessments, or recommendations relevant to governmental decision-making. Id.

29. PREPA seeks confidential treatment of the Proposed First Amended Ecoeléctrica BESS Standard Offer Agreement because it has not been approved by

the regulatory entities whose approval is required, to wit, this Energy Bureau and the FOMB. The proposed terms remain under consideration and may be evaluated, revised, accepted, or rejected through that approval process. The Proposed First Amended Ecoeléctrica BESS Standard Offer Agreement therefore precedes a final decision and forms part of the deliberative process leading to that decision.

30. As explained, the deliberative process privilege protects predecisional materials that reflect the give-and-take of governmental decision-making. Bhatia Gautier, 199 D.P.R. at 86. The Proposed First Amended Ecoeléctrica BESS Standard Offer Agreement is not a final, approved agreement or a statement of PREPA's final action. It is a proposed instrument being submitted for review and approval. As such, the Proposed First Amended Ecoeléctrica BESS Standard Offer Agreement therefore precedes a final decision and forms part of the deliberative process leading to that decision.

31. Public disclosure while that process remains open would expose proposed terms before the responsible authorities have completed their review and could interfere with the candid evaluation of the proposal. The requested protection is consistent with Article 4(iv) of Act 122-2019 and the deliberative-process protection recognized in Bhatia Gautier. Confidential treatment during the pendency of the required approvals will preserve the integrity of that decision-making process while allowing the Energy Bureau to review the proposed agreement.

32. PREPA accordingly requests protection only for the Proposed First Amended Ecoeléctrica BESS Standard Offer Agreement itself and only while the required approval process remains pending.

33. In compliance with the Energy Bureau's *Policy on Confidential Information* below submits the required table identifying the confidential information, summarizing the legal basis for its designation, and explaining why the designation conforms to that legal basis:

Information for which protection is requested	**Legal basis**	**Why the designation conforms to the legal basis**
Confidential Exhibit B - Proposed First Amended Ecoeléctrica BESS Standard Offer Agreement, in its entirety.	Deliberative process privilege as recognized in Bhatia Gautier; Section 6.15 of Act 57-2014; Section 1.15 of Regulation No. 8543; Energy Bureau Policy on Confidential Information, CEPR-MI-2016-0009, § A as amended; Article 4(iv) of Act 122-2019.	The Proposed First Amended Ecoeléctrica BESS Standard Offer Agreement has not been approved by the required authorities and remains under consideration. It is a predecisional proposed agreement. Its proposed terms may be evaluated, revised, accepted, or rejected. Confidential treatment while the approval process remains pending protects the governmental deliberative process and is limited to the period before a final decision.

WHEREFORE, PREPA very respectfully requests that the Energy Bureau **TAKE NOTICE** of the foregoing; **APPROVE** the Proposed First Amended EcoEléctrica BESS Standard Offer Agreement submitted herewith; **GRANT** confidential treatment to the Proposed First Amended Ecoeléctrica BESS Standard Offer Agreement (**Confidential Exhibit B**) ; and **MAINTAIN** the Proposed First Amended Ecoeléctrica BESS Standard Offer Agreement under seal or otherwise restrict public access to it while the required approval process remains pending.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on the 16th day of October 2026.

CERTIFICATE OF FILING AND SERVICE: It is hereby certified that this document was filed with the Office of the Clerk of the Energy Bureau through its electronic filing system, available at https://radicacion.energia.pr.gov/login. It is further certified that a file-stamped copy of the foregoing document was served upon the parties in the above-captioned proceeding, through their counsels of record, at the following email addresses: LUMA Energy, LLC and LUMA Energy ServCo, LLC: laura.rozas@us.dlapiper.com; Yahaira.delarosa@us.dlapiper.com; margarita.mercado@us.dlapiper.com.

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Exhibit A - PREPA Governing Board Resolution 5266

PUERTO RICO
ELECTRIC POWER AUTHORITY

PREPA

GOVERNMENT OF PUERTO RICO

RESOLUTION 5266

Approval of Amended and Restated BESS Standard Offer Agreement with EcoEléctrica BESS LLC
Accelerated Storage Addition Program

WHEREAS: The Puerto Rico Electric Power Authority (PREPA) is a public corporation and an instrumentality of the Government of Puerto Rico created by Act No. 83 of May 2, 1941, as amended (Act No. 83). PREPA was created to provide electrical energy in a reliable way contributing to the general welfare and sustainable future of the people of Puerto Rico, maximizing benefits and minimizing social, environmental, and economic impacts. In addition, it provides a service based on affordable, fair, reasonable, and non-discriminatory costs consistent with environmental protection, non-profit, focused on citizen participation, and its clients.

WHEREAS: Act No. 83 authorizes PREPA, in the management of its purposes, to grant contracts and formalize all the instruments that are necessary or convenient in the exercise of any of its powers.

WHEREAS: Act 17-2019, titled the "Puerto Rico Energy Public Policy Act," establishes public policy to transform the electric power system, integrate renewable energy safely and reliably, establish energy storage goals suited to Puerto Rico's needs, and provide reliable electric service at just and reasonable cost.

WHEREAS: On August 24, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board (Energy Bureau) issued a Final Resolution and Order related to PREPA's Integrated Resource Plan (IRP) under Case No. CEPR-AP-2018-0001, through which it approved in part and rejected PREPA's proposed IRP. As part of the IRP Final Resolution and Order, the Energy Bureau ordered the adoption and implementation of a Modified Action Plan, which contains specific directives and requirements, including the formulation of a Renewable Generation Resource and Battery Energy Storage Resource Procurement Plan.

WHEREAS: The Accelerated Storage Addition Program (ASAP) was established to accelerate the development of energy storage capability in Puerto Rico through standardized pricing, terms, and conditions for eligible generators with power purchase and operating agreements with PREPA. ASAP has been reviewed by the Energy Bureau in Case No. NEPR-MI-2024-0002.

WHEREAS: On April 26, 2024, LUMA submitted the ASAP concept to the Energy Bureau and reported interest from existing generators willing to add Battery Energy Storage System (BESS) capacity at their facilities.

WHEREAS: On May 8, 2024, the Energy Bureau determined that the ASAP concept is aligned with Puerto Rico's energy public policy and consistent with the Approved IRP and authorized LUMA and interested generators to proceed with the development of BESS Standard Offer Agreements.

WHEREAS: On November 1, 2024, the Energy Bureau approved four draft Phase 1 Standard Offer Agreements and directed LUMA to finalize the agreements, submit the final versions to PREPA's Governing Board for approval and execution by the Executive Director, and file evidence of such actions with the Energy Bureau.

WHEREAS: On November 18, 2024, PREPA's Governing Board approved Resolution 5163 authorizing three Phase 1 Standard Offer Agreements. On April 30, 2025, the Governing Board approved Resolution 5178 authorizing the fourth Phase 1 Standard Offer Agreement, corresponding to EcoEléctrica BESS LLC, and its submission to the Energy Bureau, FOMB, and other stakeholders for their respective approvals.

WHEREAS: The EcoEléctrica Standard Offer Agreement was approved by the Energy Bureau on January 14, 2025, by PREPA's Governing Board on April 30, 2025, and by FOMB on June 13, 2025. Following additional revisions, the Energy Bureau authorized PREPA to proceed on September 30, 2025, and FOMB approved the revised agreement on January 28, 2026. The agreement was executed on April 7, 2026.

WHEREAS: On October 17, 2025, LUMA filed a Plan to Implement Order proposing an updated SO1 template and stating that approved SO1 participants could amend their agreements to incorporate the updated terms. On November 13, 2025, the Energy Bureau approved four SO1 Agreements accepted without reservation by Phase 2 participants and found their terms consistent with Puerto Rico's electric public policy and the Approved IRP.

WHEREAS: On September 10, 2026, LUMA Energy, LLC, acting as System Operator under the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement, submitted Transmittal No. LUMA-PREP-T-27-00046 requesting PREPA's approval and execution of an Amended and Restated BESS Standard Offer Agreement with EcoEléctrica BESS LLC (Amended Agreement).

WHEREAS: LUMA represents that the Amended Agreement conforms EcoEléctrica's executed agreement to the updated SO1 terms, including insurance and tariff pass-through procedures, an interconnection-related condition precedent, an order-of-precedence provision, clarifications to Tested Storage Capability, and price parity for an Energy Bureau-approved increase granted under another amended and restated ASAP agreement.

WHEREAS: LUMA further represents that the Amended Agreement does not change the existing Storage Capability Payment Price, the 20 MW Design Storage Capability, the twenty-year Supply Period, the Early Commercial Operation Date Bonus, the black-start pass-through cap, the insurance requirements, the liability provisions, PREPA's budget estimate, or the allocation of risk.

WHEREAS: PREPA's Legal Affairs Directorate has reviewed the Amended Agreement and determined that it is subject to approval by the Governing Board, the Energy Bureau and the FOMB.

THEREFORE: In accordance with Act 83, PREPA's Governing Board resolves to:

1. Approve the Amended and Restated BESS Standard Offer Agreement between PREPA and EcoEléctrica BESS LLC for a 20 MW, four-hour battery energy storage facility at the EcoEléctrica site in Peñuelas under the Accelerated Storage Addition Program.

2. Authorize the submission of the Amended Agreement to the Puerto Rico Energy Bureau, the Financial Oversight and Management Board for Puerto Rico, and other stakeholders as required by law for their respective review and approval.

3. Authorize, following receipt of such approvals and completion of the finalization of the Amended Agreement, the execution of the Amended Agreement by PREPA's Executive Director.

4. Authorize the execution of such ancillary documents and take such other actions as are reasonably necessary to affect the transactions contemplated by the Amended Agreement.

Approved in San Juan, Puerto Rico, on this 25th day of September two thousand twenty-six.

Maricarmen Boria Goitia
Board Secretary

Confidential Exhibit B - Proposed First Amended Ecoeléctrica BESS Standard Offer Agreement (Redline LUMA - Executed SO Agreement vs A&R SO Agreement)

(Submitted under confidentiality)