

FINANCIAL OVERSIGHT & MANAGEMENT BOARD FOR PUERTO RICO



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BY ELECTRONIC MAIL

November 29, 2022

Mr. Fermín Fontanés Gómez
Executive Director
Puerto Rico Public-Private Partnerships Authority

Re: LUMA Supplemental Agreement Extension

Dear Mr. Fontanés Gómez,

In accordance with the contract review policy of the Financial Oversight and Management Board for Puerto Rico (“FOMB”) established pursuant to Section 204(b)(2) of PROMESA, we have reviewed the proposed amendment to the Puerto Rico Transmission and Distribution (“T&D”) System Supplemental Terms Agreement dated as of June 1, 2021 (the “Supplemental Agreement”) executed by, on the one hand, the Puerto Rico Public-Private Partnerships Authority (the “P3A”), as administrator, and the Puerto Rico Electric Power Authority (“PREPA”), as owner; and, on the other hand, LUMA Servco, LLC and LUMA Energy Servco, LLC (together, “LUMA”) (the “Proposed Amendment”).

After reviewing the Proposed Amendment, the FOMB concludes “Approved with Observations.” Observations related to the Proposed Amendment are set forth in Appendix A attached hereto.

Our review is solely limited to compliance of the Proposed Amendment with Section 204(b)(2) of PROMESA, which seeks to ensure proposed contracts promote market competition and are not inconsistent with approved Fiscal Plans. For the avoidance of doubt, the review performed by the FOMB does not cover a legal review of the contractual documentation or the contracting process, including without limitation: (i) compliance with contracting requirements under applicable laws, rules, and regulations, both federal and local; and (ii) compliance with applicable laws, rules, and regulations governing procurement activities, both federal and local.

In addition, the FOMB has not engaged in any due diligence or background check with respect to the contracting parties nor whether the contracting parties comply with the requirements under the

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applicable contract. Any material changes to the Proposed Amendment or the original contract must be submitted to the FOMB for review and approval **prior to execution**.

This letter is delivered as of the date hereof and we reserve the right to provide additional observations and modify this letter based on information not available when the review was conducted. In addition, during the course of our review, we may receive information which we may refer to the relevant authorities.

This letter is issued only to the P3A and solely with respect to the Proposed Amendment.

Sincerely,



Jaime A. El Koury
General Counsel

APPENDIX A

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PUERTO RICO PUBLIC-PRIVATE PARTNERSHIPS AUTHORITY/PUERTO RICO ELECTRIC POWER AUTHORITY – LUMA ENERGY, LLC/LUMA ENERGY SERVCO, LLC

Fiscal Plan Alignment

This review covers the proposed Amendment to the Supplemental Agreement executed by, on the one hand, the P3A, as administrator, and PREPA, as owner; and, on the other hand, LUMA.

The Proposed Amendment arises from the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated as of June 22, 2020 (the “O&M Agreement”) and the Supplemental Agreement signed by the P3A, PREPA, and LUMA.

Pursuant to the Supplemental Agreement, as of June 1, 2021, LUMA assumed interim operational control of PREPA’s T&D System, in advance of the Service Commencement Date (as defined in the O&M Agreement) and has been providing operation and maintenance services since that time. PREPA’s Title III exit and the confirmation of a Plan of Adjustment for PREPA that is reasonably acceptable to LUMA are the only remaining conditions precedent to the occurrence of the Service Commencement Date and LUMA’s 15-year term under the O&M Agreement. The Supplemental Agreement was executed to allow LUMA to assume operational control of the T&D System before PREPA exits Title III, and to give the FOMB and PREPA more time to obtain a favorable resolution of PREPA’s Title III case.

Pursuant to their respective terms, the O&M Agreement and the Supplemental Agreement will expire on **November 30, 2022**, unless the Supplemental Agreement is extended in accordance with its terms. The Proposed Amendment extends the term of the Supplemental Agreement, pursuant to its Section 7.1(a), until the following Service Commencement Date Conditions (as defined therein) are satisfied or waived: (i) PREPA’s Title III exit; and (ii) LUMA’s acceptance of the Title III Court’s confirmation of PREPA’s Plan of Adjustment. Upon the occurrence of these events, the Supplemental Agreement will permanently expire, and the Service Commencement Date under the O&M Agreement shall occur.

Regarding Fiscal Plan compliance, we note that PREPA’s 2022 Certified Fiscal Plan (the “Fiscal Plan”) highlights that Puerto Rico’s energy infrastructure and operations lag far behind national standards due to decades of operational and financial mismanagement by PREPA. Consequently, the Fiscal Plan requires, among other things, that PREPA enter into and maintain operation and maintenance contracts with private operators for both its generation assets and T&D System, such as the O&M Agreement with LUMA. Further, the O&M Agreement is the result of more than four years of efforts by the P3A, the FOMB, and the Government of Puerto Rico to select a private operator for the T&D System, implement the transaction, and transform PREPA’s T&D System through a competitive process.

The FOMB is aware of the debate that has surrounded LUMA’s O&M Agreement since its execution, and how it has developed during LUMA’s operation. However, while customers and stakeholders are entitled to continually demand improvements from its service providers, including LUMA, we also note the poor state of the T&D System when LUMA took over. Decades of underinvestment, deferred maintenance and lack of long-term planning resulted in one of the worst

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performing and least reliable energy systems in the United States, with customers experiencing 8 times more outages than customers of median U.S. utilities, and such outages lasting 10 times longer than those experienced by customers of median U.S. utilities. Addressing these fundamental deficiencies requires time and cannot be reasonably expected to be fully corrected within just 18 months of operations.

In addition, while certain metrics, such as outage duration, are areas LUMA must be required to improve, we note those areas where LUMA has achieved clear progress over the last 18 months, such as lower outage frequency, lower call wait times, increased number of answered calls, increased vehicle availability and improved workplace safety standards. Taken together, these metrics suggest that, during its first 18 months, customers and employees have seen their customer service and workplace experience improved when compared to pre-LUMA statistics. Perhaps more importantly, LUMA's greatest achievement has been its ability to exponentially accelerate the integration of distributed renewable generation resources, more than doubling the number of solar rooftop installations (from 25,820 in May 2021 to 59,168 in September 2022) and increasing total rooftop renewable energy capacity by 78%. We also note that LUMA has shown to be better equipped than PREPA to meet basic performance targets, as evidenced by the fact that, when comparing LUMA and PREPA's performance between June 2021 and May 2022, the Puerto Rico Energy Bureau ("PREB") determined that LUMA was able to meet 84% of its baseline performance targets, while PREPA only achieved 50% of its baseline performance targets.

Accordingly, an objective review of LUMA's performance over its first 18 months supports the conclusion that extending the Supplemental Agreement is consistent with PREPA's Fiscal Plan and provides Puerto Rico's residents and businesses with the best opportunity to achieve a reliable, modern and affordable energy system.¹

According to the P3A, the amount allocated for the Supplemental Agreement and the O&M Agreement in PREPA's Fiscal Year 2023 Certified Budget is **\$121,785,000**. As such, the amount that will be spent from the Proposed Amendment's effective date (December 1, 2022) until the end of Fiscal Year 2023 will be **\$71,041,250**. The P3A has confirmed that the Proposed Amendment shall be payable from PREPA's "Operator Service Fees" Certified Budget line item under heading "D. Gridco – Operating and Maintenance Expenses."

Therefore, the FOMB approves the Proposed Amendment. However, the P3A or PREPA must submit a Fund Availability Certification in the format required by the FOMB's contract review policy.

In the event that the Proposed Amendment causes PREPA to exceed its Fiscal Year 2023 Certified Budget, it must find savings in other areas to cover any overbudgeted amounts and request a reapportionment of any identified funds to the FOMB, in order to ensure compliance with the same.

¹ Nonetheless, we encourage the P3A and PREB to continue to enhance their oversight of LUMA, establishing rational expectations for LUMA's performance such that its customers can be well informed and their needs and expectations can be reasonably met.

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The P3A is expected to inform the FOMB of any budgetary differences other than those specified in Appendix A (Contract Submission Questionnaire) and to request a re-review of the Proposed Amendment should any changes occur.

This review was conducted on the basis of information submitted by the P3A. The FOMB has not independently verified the information included in the submission. Should the FOMB become aware of any inaccuracies or misrepresentations – whether intentional or not – it would re-evaluate its assessment.