

April 4, 2025

To: Puerto Rico Public-Private Partnership Authority

Attention: Josué E. Colón Ortiz
Executive Director
Roberto Sánchez Vilella (Minillas) Government Center
De Diego Ave. Stop 22
San Juan, PR 00907

To: Puerto Rico Electric Power Authority

Attention: Eng. Mary C. Zapata Acosta
Executive Director
PO Box 364267
San Juan, Puerto Rico 00936-4267

RE: LUMA's Response to P3A's and PREPA's Communications – Use of Seconded Employees

Dear Executive Director Colón and Executive Director Zapata:

I write in response to your letters of January 26, 2025, March 7, 2025 and March 12, 2025, in which you discuss the Federal Emergency Management Agency's ("FEMA") December 27, 2024 determination ("December 27th Determination") and March 7, 2025 letter ("March 7th Letter") concerning the eligibility for reimbursement of costs associated with work performed by LUMA employees seconded from affiliates of our parent companies. As highlighted by our conversation during the stakeholder meeting hosted by the Financial Oversight and Management Board ("FOMB"), addressing the pressing challenges faced by Puerto Rico's energy system and providing the maximum benefit to the island's residents requires close and open collaboration between all key actors in the reconstruction of the grid. FEMA's Determination is detrimental to reconstruction efforts and will delay the deployment of critical projects necessary to stabilize the energy system.

Value of Seconded Labor

As we have highlighted in prior occasions, and as you have also acknowledged, our ability to rely and call upon specialized and skilled resources from affiliates of our parent companies helped lead to LUMA's selection by the Government of Puerto Rico to operate the Transmission and Distribution System ("T&D System"). LUMA's ability to call on resources from affiliate to supplement and add to locally sourced workforce of more than 4,000 LUMA employees and contractors was, and continues to be, one of the valuable and foundational pillars that differentiated LUMA and led to our selection, and to the strategy agreed on with the Government of Puerto Rico to tackle the challenge to restore and modernize the T&D System. This ability is neither inconsistent with, nor in lieu of, the ongoing effort to competitively procure services from qualified contractors to perform the enormous volume of work that is required to rebuild, strengthen and modernize Puerto Rico's electric grid.



To that end, LUMA has onboarded 262 contractors and launched, directly or through the Third-Party Procurement Office within the P3A, 444 procurement events, 176 of which are ongoing. More than 44 of those procurement events received inadequate participation (as this term is defined by federal regulations) and 12 of those have received no participation from interested bidders, highlighting the challenges associated with procuring contractors in an environment with strong industry demand and limited resources. Allocating resources from affiliates of our parent companies provides an exceptional opportunity for Puerto Rico to continue to perform work that would otherwise be delayed due to limited contractor resources, particularly when such work is critical to the reconstruction of the energy system and in the best interest of our customers.¹

As part of LUMA's broader workforce management, training and development strategy—and even before receipt of FEMA's December 27th Determination—we have already taken steps to increase non-seconded employee and contractor resources to enable a structured reduction in the need for resources seconded from our parent companies' affiliates. As non-seconded and contractor resources were retained, work otherwise performed by seconded employees has been assigned to these new resources.

For example, within LUMA's Engineering and Capital Programs Department, the increase of non-seconded or contractor resources has progressively reduced the need for seconded field craft workers. Subject to the successful completion of the procurement and contract negotiation processes, there are at least seven ongoing procurement processes that will enable contractors to replace a further 250 seconded field craft workers. One hundred of those workers are expected to be replaced within the next 2 to 3 months. These efforts, taken prior to the December 27th Determination, show that employees seconded from our affiliates serve as a tool to accelerate reconstruction work, and were not meant to permanently replace other internal or contractor resources.

FEMA's Determination, and, consequently, P3A and PREPA's letters regarding seconded labor participation in federally funded projects ignore ongoing efforts to grow and retain non-seconded and contractor resources. Implementation of COR3, P3A and PREPA's directives on this matter also create the risk of significant delays to critical reconstruction and stabilization work, including LUMA's System Stabilization Plan, designed to address key vulnerabilities by replacing critical out-of-service equipment. Over 100 federally funded projects expected to be performed in 2025 would be at risk of being indefinitely delayed until qualified replacement resources can be retained or competitively procured, including substation rebuilds, transformers replacements, distribution automation device installations and the replacement of transmission and distribution pole and structures. Limiting seconded employee engagement in federally funded work also deprives Puerto Rico of immediate access to lifesaving mutual aid resources during future emergencies and other declared disaster events. Our ability to call on seconded employees in response to an emergency significantly improves the wherewithal with which we can restore service to our customers.

Finally, the use of seconded employees is a reasonable and cost-effective when compared to contractor resources procured in comparable circumstances. LUMA has conducted cost analysis

¹ Because seconded employees are ServCo Employees, as defined in the T&D OMA, the cost associated with the work by these employees is performed "at cost", without any markup for profit.

exercises of recent major emergency events including Hurricane Fiona and Tropical Storm Ernesto. On average, LUMA seconded employees resulted in lower cost to the utility (T&D Pass Through Expenditures) compared to the use of equivalent contractors. This analysis objectively demonstrates the additional value achieved in terms of expertise and experience by leveraging secondees from LUMA's parent companies' affiliates while also benefiting from lower cost labor, as intended by the parties when negotiating the T&D OMA.

FEMA's December 27th Determination

As we have previously communicated, LUMA is both surprised and disappointed with FEMA's December 27th Determination and March 7th Letter, and fundamentally disagrees with the conclusions outlined therein. The two letters incorrectly construe the inter-affiliate agreements between LUMA and its parent companies' affiliates as contracts subject to the procurement requirements established in federal regulations and as resources that were required to be procured under LUMA's Procurement Manual.

As outlined in our appeal,² sent to the Central Office for Recovery Reconstruction and Resiliency ("COR3") on February 25, 2025, FEMA's determination incorrectly considers employees seconded from our affiliates as contractors procured on behalf of PREPA, despite the clear, unambiguous and overriding language in the T&D OMA that employees seconded from affiliates are considered ServCo Employees.³ The December 27th Determinations is also inconsistent with agreements reached amongst LUMA, COR3 and P3A, in coordination with FEMA, developing a framework authorizing employees seconded from affiliates to perform federally funded work.⁴ The parameters agreed to by the parties expressly acknowledged that "in the performance of self-performed work, LUMA may use its internal [workforce], which may include a blend of LUMA seconded employees" without LUMA being required to follow the procurement standards outlined in the December 27th Determination.⁵ FEMA "acknowledge[d] the approved process".⁶

We are also concerned both P3A and PREPA have elected to prematurely adopt FEMA's Determination despite FEMA stating that "there has not yet been a denial of funding or assistance", thus not being "ripe for appeal".⁷ FEMA's December 27th Determination provided notification of the

² LUMA's Appeal to FEMA's December 27th Determination is included as Attachment 1 to this communication.

³ The Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("T&D OMA") executed on June 22, 2020, by and amongst the Puerto Rico Electric Power Authority ("PREPA"), the Puerto Rico Public-Private Partnerships Authority ("P3A") and LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively, "LUMA") states in § 4.2(k) "[o]n the Service Commencement Date and during the Term, ServCo shall employ such other employees, including any employees of Operator or any of its Affiliates as of the Effective Date hired for the operation of the T&D System ("Other Employees" and, together with the Hired Former Employees of Owner, the "ServCo Employees"), as are necessary to provide the O&M Services.

⁴ See, letters between FEMA and COR3 dated August 12, 2022, August 11, 2023 and August 23, 2023, included as Attachments 2, 3 and 4 to this letter.

⁵ See, Attachment 3.

⁶ See, Attachment 4.

⁷ In a communication sent on March 7, 2025, by FEMA Director Andrés R. García Martínó to PREPA's Executive Director Mary C. Zapata Acosta, concludes that "FEMA's determination of non-compliance was not ripe for appeal, because there has not yet been a denial of funding or assistance." This communication was not notified to LUMA by FEMA but included as an attachment to a communication sent by PREPA's Executive Director Mary C. Zapata Acosta to LUMA on March 12, 2025, regarding *Compliance with Federal Procurement Requirements and Use of Seconded Employees*.

right to appeal, which COR3 and P3A acknowledged in letters to LUMA dated December 30, 2024, January 22, 2025, January 26, 2025, and March 7, 2025. Applicable federal regulations allows for an "appeal [of] any determination previously made related to an application for or the provision of Public Assistance according to the procedures of this section."⁸ Thus, notwithstanding FEMA's March 7th Letter, the December 27th Determination should be considered as pending appeal, consistent with Section 206.206.

FEMA's Appeals and Arbitrations regulation also states that "FEMA will take no action to implement any determination pending an appeal decision from the Regional Administrator," except that it may "[s]uspend funding," "[d]efer or disallow other claims questioned for reasons also disputed in the pending appeal," or "[t]ake other action to recover, withhold, or offset funds if specifically authorized by statute or regulation."⁹

In any case, the determination is not final and remains subject to further review. Moreover, for the reasons described above, we categorically and emphatically disagree with any assertions that LUMA has failed to comply with any federal guideline or regulation or with any obligation under the T&D OMA.

Collaboration under the T&D OMA

FEMA's December 27th Determination and March 7th Letter are detrimental to ongoing reconstruction efforts, risk unwarranted delays in completing critical work and go against the contractual and legal framework established and agreed upon by the Government of Puerto Rico and LUMA after an 18 month long competitive procurement process. The T&D OMA lays the basis for the partnership relationship between LUMA, the P3A and PREPA, and each party's shared goal of maximizing federal funding opportunities.¹⁰ It is in that framework that I reiterate LUMA's request for the P3A and PREPA to work with LUMA to demonstrate that FEMA's interpretation of the T&D OMA and the determinations resulting from such interpretation are legally and factually incorrect.¹¹

Given that the collaborative process outlined above has not yet taken place, that FEMA's determination is not final, and LUMA's appeal has not been ruled on or addressed by FEMA, we respectfully believe that the P3A and PREPA's letters imposing restrictions and requirements of information related to the use of seconded employees by LUMA are premature. Accordingly, we respectfully request PREPA and P3A's reconsider the March 7th and March 12th letters and assist in advocating FEMA set aside its December 27th determination.¹²

We are optimistic that an agreement on a practical approach to manage this issue can be reached in furtherance of the best interests of Puerto Rico's residents. Separately, we are assessing the alternatives to comply with all applicable federal regulations and our T&D OMA rights and

⁸ 44 C.F.R. § 206.206(b).

⁹ See, 44 C.F.R. § 206.206(b)(1)(iv).

¹⁰ See, T&D OMA § 5.9(a).


¹¹ Id.

¹² See 44 C.F.R. § 206.206(b)(1)(ii)(A) (requiring the recipient (i.e., COR3) to "forward to the Regional Administrator the applicant's first appeal with a recommendation within 120 calendar days from the date of the FEMA determination that is the subject of the appeal").

responsibilities should the December 27th Determination stand. We are available to discuss these options with you in an open and transparent manner.

We remain available at your earliest convenience to begin working collaboratively for the benefit of our customers, the people of Puerto Rico.

Sincerely,



Juan D. Saca
President & Chief Executive Officer
LUMA Energy ServCo, LLC

cc: Irma Rosario, Administrator, P3A; irma.rosario@P3A.pr.gov
Eduardo Soria Rivera, Executive Director, COR3; esoria@cor3.pr.gov
Lionel E. Santa Crispín, General Counsel, PREPA; lionel.santa@prepa.pr.gov
Nelson Morales, Chief Financial Officer, PREPA; nelson.morales@prepa.pr.gov
Robert F. Mujica, Executive Director, FOMB; robert.mujica@promesa.gov
Alejandro J. Figueroa Ramírez, Chief Regulatory Officer, LUMA; alejandro.figueroara@lumapr.com
Francisco Prego, Vice President T&D OMA Contract Management, LUMA; francisco.prego@lumapr.com
Ángel Rotger Sabat, Chief Legal Officer, LUMA; angel.rotger@lumapr.com