



## DEFINITIVE PROPOSAL FORM 1.3 CONFIRMATION OF ACCEPTANCE OF O&M AGREEMENT

The consortium of Quanta Services, Inc., Canadian Utilities Limited and Innovative Emergency Management, Inc. (the "Consortium") doing business as Luma Energy (the "Qualified Respondent") hereby acknowledges and affirms the following:

1. The Qualified Respondent's Definitive Proposal is based on the final form of the O&M Agreement and the information contained in the Data Room as of the date of the Proposal Submission Deadline.
2. The Qualified Respondent accepts and agrees to execute the final form of the O&M Agreement, save for the terms and conditions contemplated for the Qualified Respondent's Definitive Proposal described in Section 4.1.8 (*Operational and Financial Proposals*) of the RFP, immaterial amendments to incorporate party names, details and execution mechanics, and subject to further discussion on the following material comments (note that further rationale for the material qualifications noted below is also set out in Form 1.8 and as such, we ask that in addition to your reviewing the following, you refer to Form 1.8 for further context to these comments):

A. The Operator Termination Fee should be payable in the event that ManagementCo terminates the O&M Agreement for failure of Owner to achieve the Owner Service Commencement Date Conditions, which requires the following amendments to Sections 4.8(b)(ii), 4.8(b)(v), 14.6(c)(i) and 14.6(c)(iii)(A):

**Section 4.8(b)(ii)** - ManagementCo shall have the right to terminate this Agreement upon not less than thirty (30) days' prior written notice to Administrator (with copy to PREB) if all of the ManagementCo Service Commencement Date Conditions are satisfied but any of the Owner Service Commencement Date Conditions are not satisfied by Owner or waived by Operator (unless such failure to satisfy the Owner Service Commencement Date Conditions is the result of the acts, omissions or breach of Operator) by the date that is six (6) months following the Target Service Commencement Date or such later date as Administrator and ManagementCo may agree. In the event Operator terminates this Agreement pursuant to this section, Owner shall pay Operator the Operator Termination Fee.

**Section 4.8(b)(v)** - In the event of the termination of this Agreement pursuant to this Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*), (A) ManagementCo shall retain any Front-End Transition Service Fee earned as of the effective date of such termination, and shall within five (5) Business Days of the effective date of such termination, return to Administrator any amounts held in the Front-End Transition Account in excess of any earned Front-End Transition Service Fee and (B) ManagementCo shall pay any accrued and unpaid Delay Liquidated Damages as of the effective date of such termination. This Agreement (other than with respect to the aforementioned payment obligations, which shall continue in effect and any caps on liability set out elsewhere in this Agreement) shall thereafter become void and have no effect, without any liability on the part of any Party or its Affiliates or Representatives in respect thereof, except that (x) if Operator terminated this Agreement pursuant to Section 4.8(b)(ii) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*), Owner shall be responsible for paying Operator the Operator Termination Fee and (y) nothing herein shall relieve any party from liability that cannot be waived as a matter of Applicable Law, claims of fraud or intentional breach or misrepresentation, provided in any such event the caps specified in this Agreement (including Section 14.6(d) (Additional Remedies), Section 18.3(a) (Operator General Limitations) and Section 18.3(b) (Gross Negligence,



Willful Misconduct) shall notwithstanding the foregoing continue to apply. Furthermore, the remedies provided in this Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*) shall be the sole and exclusive remedies of the Parties for any termination of this Agreement pursuant to Section 4.8(b) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*).

**Section 14.6(c)(i)** - In the event this Agreement is (A) terminated, revoked, nullified, cancelled or otherwise rendered invalid by any duly enacted law of the Commonwealth, as determined by a final non-appealable judgment by a court of competent jurisdiction (a “Contract Nullification or Cancellation”), (B) terminated by Operator or Administrator pursuant to Section 14.5(a) (*Additional Termination Rights – T&D System Sale*) or (C) terminated by Operator pursuant to Section 14.5(f) (*Additional Termination Rights – Change in Regulatory Law*), but only if such termination is as a result of the circumstances described in clauses (ii), (iii) or (iv) of the definition of “Change in Regulatory Law”, Owner shall pay Operator the termination fee set forth in Annex XII (*Operator Termination Fee*) (the “Operator Termination Fee”). For the avoidance of doubt, Owner shall have no obligation to pay the Operator Termination Fee other than in the circumstances described in Section 4.8(b)(ii) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*) and in clauses (A), (B) and (C) of the preceding sentence.

**Section 14.6(c)(iii)(A)** - if this Agreement is (1) terminated due to a Contract Nullification or Cancellation, (2) terminated by Operator pursuant to Section 14.5(a) (*Additional Termination Rights – T&D System Sale*), or (3) terminated by Operator pursuant to Section 14.5(f) (*Additional Termination Rights – Change in Regulatory Law*) (but only if such termination is as a result of the circumstances described in clauses (i), (iii) or (iv) of the definition of “Change in Regulatory Law”), or (4) terminated by Operator pursuant to Section 4.8(b)(ii) (*Failure of Service Commencement Date Conditions – Termination for Failure of Service Commencement Date Conditions*), Operator’s damages would be difficult or impossible to quantify with reasonable certainty, and accordingly, the payment to Operator of the Operator Termination Fee (x) is a payment of liquidated damages (and not penalties), which is based on the Parties’ estimate of damages Operator would suffer or incur, and (y) shall constitute Operator’s sole and exclusive remedy for all monetary damages, costs, losses and expenses of whatever type or nature arising from or related to this Agreement due to the events described in clauses (1), (2), ~~and (3)~~ and (4) of this sentence; and

B. The Liability Waiver should, consistent with the changes made in Section 4.1(g) of the O&M Agreement to the definition of Liability Waiver in the last version of the O&M Agreement dated November 15, 2019, waive direct damages for gross negligence and willful misconduct. Also, the Service Date Commencement Condition should solely require that the Liability Waiver be approved. The foregoing requires the following amendments to the definition of “Change in Regulatory Law” (clause (v)) and Sections 4.1(g) and 4.5(p):

**“Change in Regulatory Law”, clause (v)** - rescinds or in any way amends in a materially adverse manner the Liability Waiver, ~~if such Liability Waiver is in effect.~~

**Section 4.1(g) - Liability Waiver.** In connection with the submission of the Initial Budgets to PREB, the Parties agree to apply for inclusion in the Rate Order that the associated tariff or terms of service include: (i) a waiver of Owner’s, ManagementCo’s and ServCo’s liability to customers or any Person receiving Power and Electricity for any Losses arising in any way out of or in connection with the operation of the T&D System and the provision of Power and Electricity including any events of interrupted, irregular or defective electric



service due to Force Majeure Events, other causes beyond Owner's, ManagementCo's or ServCo's control or ordinary negligence, ~~(excluding gross negligence and/or willful misconduct)~~ of Owner, ManagementCo or ServCo, or their respective employees, agents or contractors; and (ii) a waiver in all cases of responsibility for any loss of profits or revenues, special, exemplary, punitive, indirect, incidental or consequential damages, including loss of revenue, loss of use of equipment, cost of capital, cost of temporary equipment, overtime, business interruption, spoilage of goods, claims of customers of electric customers or other economic harms, in each case howsoever and whensoever arising, including where caused by any of Owner's, ManagementCo's or ServCo's ordinary negligence, gross negligence or willful misconduct (collectively the "Liability Waiver").

**Section 4.5(p)** - Third Party Claims. ~~Any of the following shall have been approved or otherwise implemented: (i) a~~ Liability Waiver generally consistent with Section 4.1(g) (Front-End Transition Period Generally – Liability Waiver) shall have been approved and implemented by PREB and shall be in full force and effect, ~~(ii) adequate insurance coverage for the liability described in the foregoing clause (i) or (iii) a mutually acceptable alternative agreed upon by Administrator and Operator, each acting reasonably, that achieves a result similar to that in the foregoing clauses (i) or (ii).~~

C. Liability arising from Operator's gross negligence and willful misconduct should be subject to a cap, which cap will be equal to or higher than the cap applicable to other types of liability. In addition, consistent with the P3 Responses to Quanta/ATCO Additional Clarifications (Fifth Submission) Distributed November 19, 2019, Ref. #1, the liability cap in Section 14.6(d) should be clarified. This requires the following amendments to Sections 14.6(d) and 18.3(b):

**Section 14.6(d)** - Additional Remedies. The Parties agree that, except as otherwise provided in this Agreement (including the sole and exclusive remedies set forth in Section 4.1(c) (Front-End Transition Period Generally – Administrative Expense Treatment), Section 4.8 (Failure of Service Commencement Date Conditions) and Section 14.6(c) (Remedies Upon Early Termination – Termination Fee)) in which cases the remedy specified in such Sections is the sole remedy available, in the event that the Agreement is terminated early due to an Event of Default in accordance with the terms hereof, any other Party may exercise any rights it has under this Agreement and under Applicable Law to recover damages, secure specific performance or obtain injunctive relief.; ~~provided, however, that: Notwithstanding anything to the contrary herein, including either Parties rights otherwise available under this Agreement or under Applicable Law:~~

(i) except as specified in Section 18.3(a) (Operator General Limitations) and Section 18.3(b) (Gross Negligence, Willful Misconduct) for the Losses specified in each of Section 18.3(a) (Operator General Limitations) and Section 18.3(b) (Gross Negligence, Willful Misconduct), in which event the caps specified in Section 18.3(a) (Operator General Limitations) and Section 18.3(b) (Gross Negligence, Willful Misconduct) respectively shall apply regardless of how or when any such Losses arise or occur, and except for the exclusive remedies set forth above in this Section 14.6(d) (Additional Remedies), any damages Losses payable by Operator to Owner howsoever and whensoever arising pursuant to this Agreement including whether for breach of contract or otherwise shall be limited to the amounts set forth in Annex XIV (Operator Damage Cap); and

(ii) any damages Losses payable by Owner to Operator howsoever and whensoever arising pursuant to this Agreement shall be limited to the amount equal to the lesser of (A) the Fixed Fee paid to Operator in the immediately preceding Contract Year plus the Incentive Fee earned by Operator in the immediately preceding Contract Year and (B) an amount equal to the net present value of the Fixed



Fee payable over the remainder of the Term discounted at a rate of six percent (6%) plus the Incentive Fee earned by Operator in the immediately preceding Contract Year, except, ~~in each case,~~ for ~~damages~~ Losses related to gross negligence or willful misconduct of the Owner Indemnitees which shall not be subject to any cap.

Furthermore, upon the termination of this Agreement pursuant to Section 14.2 (Termination for Operator Event of Default), Operator shall be disqualified from contracting with any Commonwealth Governmental Body for ten (10) years in accordance with Section 10(a)(15)(c) of Act 29.

**Section 18.3(b)** - Gross Negligence; Willful Misconduct. Operator's liability to Owner Indemnitees for any Losses attributable to any Operator Indemnitees' gross negligence or willful misconduct under this Agreement, including under Section 18.1 (Indemnification by Operator), including any Disallowed Costs attributable to Operator Indemnitees' gross negligence or willful misconduct. There shall be no limitation on Operator's liability for any Losses attributable shall be limited to (i) US\$[•] for all Losses occurring in each Contract Year for each of the first five (5) Contract Years, (ii) US\$[•] for all Losses occurring in each Contract Year for each subsequent Contract Year, and (iii) a total maximum of US\$[•] in the aggregate for all Losses during the Term; provided, however, that if any liability for Losses is attributable in part to gross negligence and in part to negligence, then such liability shall be apportioned such that the portion of the Loss attributable to negligence shall be subject to the limitation on liability set forth in set forth in Section 18.3(a)(i) (Limitations on Liability – Operator General Limitations).

D. The limitation of liability in the Guarantee should be set at a specified amount and a limitation should apply to liability with respect to gross negligence and willful misconduct, which requires the following amendments to Section 3.10 of the Guarantee (Exhibit D to the O&M Agreement):

**Section 3.10** - Limitation on Liability. Notwithstanding anything herein or otherwise to the contrary, the aggregate liability of Guarantor under or with respect to this Guarantee, ~~(i) with respect to matters other than gross negligence and willful misconduct shall not exceed the with respect to all matters whatsoever or howsoever arising, including where arising from gross negligence and willful misconduct of Operator, Guarantor or otherwise, and regardless of any other rights and remedies that Owner or Administrator may have against Operator under the O&M Agreement, under Applicable Laws, or otherwise, shall in no event exceed the sum of (A) the maximum amount of Delay Liquidated Damages (as defined in the O&M Agreement) available under Section 4.8(a) (Failure of Service Commencement Date Conditions – Remedy for Delay of Service Commencement Date Conditions) of the O&M Agreement plus (B) the maximum amount of the Owner Termination Fee (as defined in the O&M Agreement) available under Section 14.6(c)(ii) (Remedies Upon Early Termination – Termination Fee) of the O&M Agreement plus (C) the maximum amount of Operator's liability to Owner Indemnitees (as defined in the O&M Agreement) under Section 18.3 (Limitation on Liability) of the O&M Agreement US\$[•] and (ii) with respect to gross negligence or willful misconduct shall be unlimited. ~~Without limiting the foregoing, to the fullest extent permitted by law, in no event shall Guarantor be liable, whether in contract, indemnity, tort (including negligence, gross negligence and strict liability) or otherwise, for any loss of profits or revenues, special, exemplary, punitive, indirect, incidental or consequential damages which arise from, relate to or are connected with this Guarantee or the performance of or failure to perform the Obligations except for claims of fraud or intentional misrepresentation.~~~~

E. We propose a structural change to the Front-End Transition Fee, which is that the profit be paid as a lump sum mobilization payment instead of a profit margin on invoiced costs. This will require the following amendments to Section 4.6(b) of the O&M Agreement:



**Section 4.6(b)** - Front-End Transition Service Fee. The "Front-End Transition Service Fee" shall be an aggregate amount equal to (i) the hourly fully allocated cost rate for each category of ManagementCo employee or Affiliate personnel providing Front-End Transition Services, as set out in *Annex V (Front-End Transition Hourly Fully Allocated Rates)*, multiplied by (ii) the number of hours worked by each ManagementCo employee or Affiliate personnel in such category providing Front-End Transition Services plus (iii) ~~1%~~ of the product of (i) and (ii) a fixed fee in the amount of US\$[•] (the "Front End Transition Service Fixed Fee") (payable in monthly installments equal to one-twelfth (1/12) of the Front End Transition Service Fixed Fee, commencing on the Effective Date, and in the event of a partial month, the monthly installment shall be adjusted on a Pro Rata basis; provided that: (A) in the event the first month is a partial month, then any balance of the Front End Transition Service Fixed Fee outstanding in the twelfth month shall be paid with the last installment of the Front End Transition Service Fixed Fee; and (B) if the Service Commencement Date occurs prior to the expiration of the twelfth month following the Effective Date, then any balance of the Front End Transition Service Fixed Fee then outstanding shall be paid in full to the Operator on the Service Commencement Date), plus (iv) all other reasonable and documented costs and expenses incurred by ManagementCo (without markup for profit) that are necessary and reasonable in the course of providing the Front-End Transition Services and satisfying the Service Commencement Date Conditions, including the cost of any Front-End Subcontractors providing Front-End Transition Services.

F. With regard to T&D Pass Through Expenditures, we have the following issues: (a) In connection with Section 7.7 a provision needs to be added to address the mechanics to cover how amounts incurred over Budget will be paid; (b) we have set out our understanding of the Front End Transition Hourly Fully Allocated Rates listed in Annex V to the O&M Agreement in the Definitive Proposal Form 1.8, Section B 1.0. If the Owner's/Administrator's view of such issues does not align with that of the Qualified Respondent's, as set out in such Form 1.8, then an amendment to the O&M Agreement will be required to address any such misalignment; and (c) For the avoidance of doubt and to the extent included in the approved Budget, Operator expects to enter into a support services subcontract with its respective Parent Company to provide technical and subject matter expertise and support on an as needed basis for the Scope of Services by ServCo. To the extent such services are not within the strategy, planning, and oversight scope of ManagementCo, the cost of such support services will be on a fully allocated internal cost basis for individual employee time, without mark-up for profit, and will be considered T&D Pass-Through Expenditures. We believe this form of arrangement will provide an efficient and cost effective means of immediate access to the industry expertise and auxiliary resources of Qualified Respondent's Parent Companies and their respective Affiliates that are not already dedicated to the provision of O&M Services for the T&D System. This will require the following changes to paragraph 2 of Annex X – T&D Pass-Through Expenditures:

2. costs incurred by ServCo in performing the O&M Services, including costs of all subcontracted and seconded employees, costs of all Subcontractors, all goods and services (including all materials, supplies, spare parts, vehicles and mileage, equipment rental, other transportation, freight, purchased services, training, Subcontractor costs, employee per diems, administrative costs such as dues, subscriptions, meals and entertainment, office supplies, postage, rent and travel communications, utilities and other costs), repair and maintenance costs, and the costs (including fees) incurred or payable with respect to banking services and accounts, cash management, leases, equipment rentals, easements, licenses, permits, consents and similar instruments;

G. The Qualified Respondent's Definitive Proposal is based on the understanding that it will obtain a confirmation from the Puerto Rico Treasury Department (in the form of a Closing Agreement or letter ruling) concerning the application of Act 29 to the income to be derived by Operator, its equity holders and their respective affiliates providing the O&M Services under the O&M Agreement and that the Operator and its



affiliates providing the O&M Services will enjoy the same sales, use and excise tax exemptions that apply to Owner.

H. The Qualified Respondent confirms that it is delivering its Definitive Proposal (including, without limitation, the delivery of the Bid Security) in reliance on the Administrator's responses to the Qualified Respondent's requests for clarification dated November 4 (titled P3 Responses to Quanta/ATCO Clarifications re: O&M Agreement (Distributed November 4, 2019)), November 7 (titled P3 Responses to Quanta/ATCO Additional Clarifications re: Addendum No. 6 to RFP & O&M Agreement (Distributed November 7, 2019)), November 11 (titled P3 Responses to Quanta/ATCO Additional Clarifications (Third Submission) (Distributed November 11, 2019)), November 15 (titled P3 Responses to Quanta/ATCO Additional Clarifications (Fourth Submission) (Distributed November 15, 2019)), November 19 (Titled P3 Responses to Quanta/ATCO Additional Clarifications (Fifth Submission) (Distributed November 19, 2019)) and November 21, 2019 (Titled P3 Responses to Quanta/ATCO Additional Clarifications (Sixth Submission) (Distributed November 20, 2019)). The Qualified Respondent further confirms that its Definitive Proposal is provided on this basis.

I. Pursuant to Article 9(i) and 9(j) of Act 29, Act 120 and the corresponding sections of the Regulation, the Qualified Respondent has requested confidential treatment of the following sections of the Proposal (the "Confidential Sections") and is delivering its Definitive Proposal contingent on the approval of such request:

- Exhibit DP 1.4 Annex IV Operator Employment Requirements
- DP 1.6 2.e.i Existing work rules removed from CBA
- DP 1.6 2.e.ii Changes/amendments to CBAs

Capitalized terms not defined herein shall have the meaning set forth in the Request for Proposals for Puerto Rico Electric Power Transmission and Distribution System issued by the Puerto Rico Public-Private Partnerships Authority on February 1, 2019 (as amended and supplemented, the "RFP") or the final form of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (the "O&M Agreement"). If there is a term defined in both, and their definitions conflict, the definitions in the O&M Agreement shall prevail.

LUMA ENERGY  
QUALIFIED RESPONDENT  
Company Name

Gerald Albert Ducey Jr.  
Name of Qualified Respondent's  
Authorized Official

\_\_\_\_\_  
Authorized Representative  
Title

  
Signature of Qualified Respondent's  
Authorized Official

November 25<sup>th</sup> 2019  
Date