



**GOVERNMENT OF PUERTO RICO**  
**Puerto Rico Public-Private Partnerships Authority**

Privileged & Confidential

January 12, 2020

**VIA POWERADVOCATE**

**LUMA Energy**

**Re: Notification of Selection of Preferred Proponent and Next Steps**

Dear LUMA Energy:

On behalf of the Partnership Committee, the Puerto Rico Public-Private Partnerships Authority (the "Authority") is pleased to inform you that, pursuant to Section 5.1 of the Regulation for the Procurement, Evaluation, Selection, Negotiation and Award of Partnership Contracts and Sale Contracts for the Transformation of the Electric System, under Act No. 120-2018, LUMA Energy has been selected as the preferred Proponent (the "Preferred Proponent"). As the Preferred Proponent, LUMA Energy will engage in exclusive discussions and negotiations with the Authority in connection with the Puerto Rico Electric Power Authority ("PREPA") transmission and distribution ("T&D") system procurement process based on the final form of Operation and Maintenance Agreement ("O&M Agreement") delivered via PowerAdvocate with this letter, save for certain terms and conditions included as part of LUMA Energy's Operational and Financial Proposal, immaterial amendments to incorporate party names, details and execution mechanics.

The Partnership Committee's selection of LUMA Energy as the Preferred Proponent is not an acceptance by the Partnership Committee of any or all of the conditions contained in its Definitive Proposal, as amended and supplemented by LUMA Energy after November 25, 2019. Indeed, the Partnership Committee would like to discuss with LUMA Energy certain aspects of LUMA Energy's Definitive Proposal (including, without limitation, the Operational and Financial Proposal, the Target Service Commencement Date and other related terms proposed by LUMA Energy) in a meeting at the offices of Cleary Gottlieb in New York City on Wednesday, January 15.

Please see Annex A, for a summary of the material changes to the O&M Agreement, which changes largely reflect the comments from LUMA's December 9 markup of the O&M Agreement, as supplemented by in-person discussions during the meeting on December 11 and certain improvements to LUMA's proposal provided by LUMA in writing on December 9, December 12, December 20 and December 26. Terms beginning with capital letters not



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specifically defined in this cover letter have the meaning ascribed to them in, as applicable, the O&M Agreement or the Request for Proposals for the T&D system.

In advance of the meeting on January 15, the Authority asks that LUMA Energy submit, no later than 9:00 AM EST on Tuesday, January 14, the documents submitted by LUMA Energy as part of its Definitive Proposal that will need to be included as annexes to the final O&M Agreement (e.g, the Front-End Transition Plan, the Back-End Transition Plan and the Operator Employment Requirements). The Authority has compiled the documents that have been submitted by LUMA Energy and that it believes will need to be included as annexes to the final O&M Agreement. Please find a zip file with those annexes attached to the PowerAdvocate message with which this cover letter was delivered. In particular, the Authority asks that LUMA Energy (i) review these documents to confirm whether these are the correct documents and (ii) provide the Authority with word versions of these documents so that they can be incorporated into one master document.

The Authority thanks LUMA Energy for its participation in the process for the transformation of the Puerto Rico T&D system and look forward to discussing the revised O&M Agreement with you.

If LUMA Energy has any questions on the above, please let the Authority know by replying to this message via the PowerAdvocate platform.

Sincerely,

A handwritten signature in blue ink, appearing to read "F. Fontanes Gomez".

Fermín E. Fontánes Gómez, Esq.  
Executive Director



**Annex A**  
**Summary of Material Changes to O&M Agreement**

## Summary of Material Changes to O&M Agreement

Please note the following with respect to the final form of O&M Agreement delivered via PowerAdvocate with this cover letter:

1. *Updated O&M Agreement* – The Authority has revised the O&M Agreement distributed to Qualified Respondents on November 17 to reflect comments received from LUMA Energy in your markup of the O&M Agreement submitted to the Authority on December 9, and the four addenda to LUMA Energy’s proposal submitted to the Authority on December 9, December 12, December 20 and December 26. In particular, some of the updates to the O&M Agreement include LUMA Energy’s proposed changes related to (i) the Operator termination fee payable if the Service Commencement Date is not achieved for reasons other than Operator Fault, (ii) the Service Commencement Date condition precedent related to the Liability Waiver for third-party claims and (iii) the Service Commencement Date condition precedent requiring receipt of a closing agreement or private letter ruling confirming the tax treatment under Puerto Rican law of amounts received by Operator and your shareholders and the corresponding termination right. In addition, certain changes were made to the provisions regarding the Operating Account, given LUMA Energy’s comments to the Contingency Reserve Account and your stated concern with respect to Operator’s ability to pay certain costs in excess of the applicable budget that could result from unforeseen, emergency circumstances. Finally, given that in the addendum submitted by LUMA Energy on December 20 it stated that LUMA Energy would “incur the costs of the top six ManagementCo employees seconded to ServCo out of the Fixed Fee” the Authority has included an annex to the O&M Agreement listing the costs to be paid for by ManagementCo from the Fixed Fee or otherwise absorbed or paid for by the shareholder(s) of ManagementCo. As indicated in the O&M Agreement, the Authority asks that LUMA Energy supplement the costs listed in this annex to reflect the full universe of costs that should be included therein.
2. *Responses to LUMA’s Requests for Clarification* – As discussed during the meeting in Puerto Rico on December 11 to discuss LUMA Energy’s markup of the O&M Agreement, the revised O&M Agreement includes “for the avoidance of doubt” language in certain provisions to address LUMA Energy’s request that the Authority’s responses to the requests for clarification submitted by LUMA Energy in the weeks leading up to the proposal submission deadline be formalized as part of the O&M Agreement. However, given that not all of the Authority’s responses are addressed with such language, the Authority has prepared a chart summarizing how it proposes addressing each of its responses to LUMA Energy in the final O&M Agreement. Please find the chart attached to the PowerAdvocate message with which this cover letter was delivered.