

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

**IN RE: COORDINATION OF SYSTEM
PLANNING EFFORTS-FRONT END
TRANSITION OF T&D SYSTEM OPERATION
AND MAINTENANCE**

CASE NO.: NEPR-MI-2020-0008

**SUBJECT: Motion for Reconsideration of
Resolution and Order of February 17, 2021
on LUMA'S Monthly Reports on Cost and
Expenses.**

RESOLUTION AND ORDER

On February 17, 2021 the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order directing LUMA Energy, LLC ("LUMA") to file, within ten (10) days, information related to the additional costs and expenses incurred by LUMA in the course of providing the Front-End Transition Services ("FET Services") from the date FET Services commenced until the most recent Monthly Report and to prospectively, submit the aforementioned information as an attachment to all future FET Monthly Reports ("February 17 Resolution").

On March 1, 2021 LUMA filed before the Energy Bureau a document titled *Motion for Reconsideration of Regulation and Order of February 17, 2021 on LUMA'S Monthly Reports on Cost and Expenses* ("Motion for Reconsideration"). In the Motion for Reconsideration LUMA states, that since June 2020 they had filed before de Energy Bureau, the FET Monthly Reports that include a Financial Progress Report under Section 4.6(d) of the Operation and Maintenance Agreement ("OMA"), where LUMA informs the expenses incurred per department, including the FET Transition Period Hourly Costs (total) and the total sum of additional costs and expenses.¹ LUMA also states that, before the February 17 Resolution, the Energy Bureau had not raised concerns with the information submitted monthly by LUMA in the FET Monthly Reports on additional costs and expenses nor with the considered procedures set forth in Section 4.6 of the OMA by which LUMA submits and has submitted invoices and supporting documentation on FET Transition Period costs and expenses to the P3 Authority for review and approval.² LUMA also argued that under Act 29-2009,³ the Puerto Rico Public-Private Partnerships Authority ("PPPA") is designated as the only governmental entity authorized and responsible for implementing Act 29-2009 public

¹ See LUMA's *Motion for Reconsideration*, page 1-2

² *Id.*

³ Known as the *Puerto Rico Public-Private Partnerships Act*, as amended ("Act 29-2009").



policy, including supervision of the contract with the private contractor to operate PREPA's Transmission and Distribution System. Lastly, LUMA asked the Energy Bureau to take notice of their arguments, reconsider and set aside the February 17 Resolution.

The Energy Bureau is the only governmental entity with general jurisdiction over companies that carry out activities for which a certification issued by the Energy Bureau is needed.⁴ To that respect, on September 21, 2020, LUMA filed before the Energy Bureau a *Request for Certification as Electric Service Provider*. On November 4, 2020 the Energy Bureau certified LUMA as an Electric Service Company.⁵ Therefore, LUMA, as a certified electric service company, notwithstanding the provisions of the OMA, is under the general jurisdiction of the Energy Bureau.

The Energy Bureau has the mandate and obligation to oversee and ensure execution and implementation of the public policy on the electric power service in Puerto Rico.⁶ Also, the Energy Bureau may require any certified electric power service company to produce any information it deems necessary to discharge its duties and obligations.⁷ Moreover, pursuant to Article 10(d) of Act 29-2009 and Section 8(d) of Act 120-2018⁸, the Energy Bureau is empowered to assist in the oversight of the OMA⁹

Among the Energy Bureau's numerous duties and responsibilities is to formulate and implement strategies to permanently reduce and stabilize electrical costs and to control the volatility of such costs.¹⁰ Moreover, in addition to all the powers enumerated in Act 57-2014, the Energy Bureau will have all additional, implicit and incidental powers that are pertinent and necessary to enforce and carry out, perform, and exercise all its powers and the purposes of Act 57-2014.¹¹ To that effect, the Energy Bureau has the duty and responsibility to ensure

⁴ See Section 6.4 (b)(4) of Act 57-2014, known as *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

⁵ See Resolution and Order, Case No. NEPR-CT-2020-0008, November 4, 2020.

⁶ See Section 6.3(a) of Act 57-2014.

⁷ *Id.*, Section 6.3(s).

⁸ Known as the *Puerto Rico Electric Power System Transformation Act* ("Act 120-2008").

⁹ *The PPPA, with the assistance of the Partnering Government Entity and AAFAF, shall oversee the performance and compliance of the Contractor under the Partnership Contract.* Under Section 8(d) of Act 120-2018, the Energy Bureau is now an additional entity with the oversight powers over a Partnership Contract. We need not discuss herein the scope of the Energy Bureau's oversight powers over LUMA pursuant to the referenced provisions because we believe those provisions do not abridge the ample powers the Energy Bureau has, pursuant to Act 57-2014.

¹⁰ *Id.*, Section 6.3(f).

¹¹ *Id.*, Section 6.3(rr).



that all PREPA spendings are prudent, reasonable, and fall within the spending directives issued by the Energy Bureau¹².

The Energy Bureau recognizes that, during the Front-End Transition, the OMA allows LUMA to recover from PREPA's ratepayers a fixed fee and certain pass-through costs and expenses. In its Motion for Reconsideration, LUMA states that the PPPA has exercised its oversight, verification, and approval role of LUMA's invoices in accordance with Act 29-2009 and Act 120-2018.¹³ LUMA also stated that, all validation reports can be found at the PPPA's website.¹⁴

Upon review of LUMA's Motion for Reconsideration and based on the Energy Bureau's duties and responsibilities set forth before, the Energy Bureau **DENIES** LUMA's request to reconsider the February 17 Resolution. The Energy Bureau **ORDERS** LUMA to, within three (3) days of the notification date of this Resolution and Order, submit the documents required in the February 17 Resolution. Notwithstanding the foregoing, upon review of LUMA's submission of the required information, the Energy Bureau will make a final determination regarding whether LUMA shall submit any additional information as part of the upcoming Front-End Transition Reports.

The Energy Bureau **WARNS** LUMA that noncompliance with the Energy Bureau orders is sufficient cause for imposing fines of up to twenty-five thousand dollars (\$25,000.00) per day, per violation, and other administrative fines and penalties, under the provisions of Act 57-2014 and any applicable regulation.

Be it notified and published.


Edison Aviles Deniz
Chairman


Lillian Mateo Santos
Associate Commissioner


Ferdinand A. Ramos Soegaard
Associate Commissioner


Sylvia B. Ugarte Araujo
Associate Commissioner

¹² See, in general, Final Resolution and Order dated January 10, 2017 and Final Resolution dated March 8, 2017, *In re: Puerto Rico Electric Power Authority Rate Review*, Case No.: CEPR-AP-2015-0001.

¹³ Motion for Reconsideration, p. 5, ¶ 11.

¹⁴ *Id.*



CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on March 17, 2021. Associate Commissioner Ángel R. Rivera de la Cruz concurred in part and dissented in part with a written opinion. I also certify that on this date a copy of this Resolution and Order was notified by electronic mail to: kbolanos@diazvaz.law, mvazquez@diazvaz.law, and margarita.mercado@us.dlapiper.com. I also certify that today, March 17, 2021, I have proceeded with filing the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today March 17, 2021.



Sonia Soda Gaztambide
Clerk



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**SUBJECT: Motion for Reconsideration of
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Expenses.**

**Associate Commissioner Ángel R. Rivera de la Cruz concurring in part and dissenting
in part.**

Today, the majority of the Puerto Rico Energy Bureau ("Energy Bureau") denied LUMA's *Motion for Reconsideration of Regulation and Order of February 17, 2021 on LUMA'S Monthly Reports on Cost and Expenses* ("Motion for Reconsideration"), ordered LUMA to submit the documents required in the February 17, 2021 Resolution and Order in the instant case ("February 17 Resolution"), and stated that, upon review of LUMA's submission, the Energy Bureau will make a final determination regarding the additional information that LUMA shall submit as part of the upcoming Front-End Transition Reports ("FET Monthly Reports"). Although I concur with the determination to deny LUMA's Motion for Reconsideration and the order to submit the referenced documents, I disagree with the basis upon which the Energy Bureau issued its determination. As such, for the reasons I express herein, I concur in part and dissent in part.

* * *

As stated in today's Resolution and Order, on September 21, 2020, LUMA filed before the Energy Bureau a document titled *Request for Certification as Electric Service Providers*. On November 4, 2020 the Energy Bureau certified LUMA as an Electric Service Company.¹ Therefore, as a certified electric service company, LUMA is under the general jurisdiction of the Energy Bureau.

I agree with the majority of the Energy Bureau in that we have the duty and obligation to oversee and ensure the execution and implementation of the public policy on the electric

¹ See Resolution and Order, Case No. NEPR-CT-2020-0008, November 4, 2020.



power service in Puerto Rico.² Moreover, the Energy Bureau may require **any** certified electric power service company to produce **any** information it deems necessary to discharge its duties and obligations.³

As the Energy Bureau stated, its numerous duties and responsibilities include the duty to formulate and implement strategies to permanently reduce and stabilize electrical costs and to control the volatility of such costs.⁴ Moreover, in addition to all the powers enumerated in Act 57-2014, the Energy Bureau have all additional, implicit and incidental powers that are pertinent and necessary to enforce and carry out, perform, and exercise all its powers and the purposes of Act 57-2014.⁵ To that effect, the Energy Bureau has the duty and responsibility to ensure that all PREPA spending are prudent and reasonable.

As such, the Energy Bureau has the duty and responsibility to protect PREPA's ratepayers against wasteful spending.

Like the majority of the Energy Bureau, I also recognize that, during the Front-End Transition, the Operation and Maintenance Agreement ("OMA") allows LUMA to recover from PREPA's ratepayers a fixed fee and certain pass-through costs and expenses. In its Motion for Reconsideration, LUMA states that the P3 Authority has exercised its oversight, verification and approval role of LUMA's invoices in accordance with Act 29-2009⁶ and Act 120-2018.⁷ LUMA also stated that, all validation reports can be found at the P3 Authority's website.⁸

However, according to the referenced validation reports, the invoice validation approach the Administrator (*i.e.*, the P3 Authority) uses consists of five areas: (1) format, (2) administrative documents, (3) fees, (4) supporting documents and (5) compliance with the OMA.⁹ The validation process has an accounting nature, in which the invoices are evaluated against the documentation submitted by LUMA. As such, **the validation reports do not contain a prudence or reasonableness analysis with respect to the actual spending.**

² See Section 6.3(a) of Act 57-2014, as amended, known as *The Puerto Rico Energy Transformation and RELIEF Act*.

³ *Id.*, Section 6.3(s).

⁴ *Id.*, Section 6.3(f).

⁵ *Id.*, Section 6.3(rr).

⁶ *The Puerto Rico Public-Private Partnerships Act*, as amended.

⁷ Motion for Reconsideration, p. 5, ¶ 11.

⁸ *Id.*

⁹ See, for example, P3 REPORT: December 2020 LUMA Invoice Validation, dated January 27, 2021, p. 5/15. Available at <https://aafaf.pr.gov/p3/wp-content/uploads/2021/02/12-20-P3-Monthly-Report.pdf>.



Ultimately, PREPA's ratepayers will carry the burden the LUMA expenses represent. As such, it is imperative that they are evaluated, not only from an accounting perspective, but also for prudence and reasonableness. From a review of the validation reports, it is clear the P3 Authority is doing the former. However, the validation reports lack the latter. Therefore, PREPA's ratepayers are not being protected against wasteful spending. As described above, the Energy Bureau is the entity responsible to provide such protection. That is the reason why it is imperative to review not only the validation reports, but the supporting documents upon which LUMA bases its invoices.

To that effect, the validation reports do not contain the information the Energy Bureau requested in the February 17 Resolution. In the February 17 Resolution the Energy Bureau ordered LUMA to provide the following documents regarding its FET Monthly Reports: (i) a break-down, by type, of the costs identified as "Additional Costs & Expenses" included in the FET Monthly Reports; (ii) any supporting documentation to explain said costs, such as receipts and invoices; and (iii) all workpapers, in native form with formulae intact, used to calculate all Additional Costs & Expenses, as reported. The validation reports only contain a list of the documents the P3 Authority reviewed in the validation process for any given month.¹⁰ The actual documents are not part of the validation report nor are they available to the public.¹¹

In addition, the workpapers used to calculate all Additional Costs & Expenses are also missing from the P3 Authority's website. As a result, in order for the Energy Bureau to discharge its duties and responsibilities as set forth before, it must deny LUMA's Motion for Reconsideration and reiterate the orders issued in the February 17 Resolution.

Therefore, I concur with the Energy Bureau's determination to deny LUMA's Motion for Reconsideration and with ordering LUMA to submit the documents required in the February 17 Resolution, which include, but are not limited to, (i) a break-down, by type, of the costs identified as "Additional Costs & Expenses" included in the FET Monthly Reports; (ii) any supporting documentation to explain said costs, such as receipts and invoices; and (iii) all workpapers, in native form with formulae intact, used to calculate all Additional Costs & Expenses, as reported.

I also concur with ordering LUMA to provide such documents within three (3) days. However, I would have reiterated the order issued in the February 17 Resolution for LUMA to submit the aforementioned information as an attachment to **all future FET Monthly Reports**.

¹⁰ See, for example, *id.*, pp. 8/15 – 9/15.

¹¹ *Id.*



For all of the above, I concur in part and dissent in part.



Ángel R. Rivera de la Cruz
Associate Commissioner

In San Juan, Puerto Rico, on March 17, 2021.

