

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

**IN RE: REVIEW OF LUMA'S INITIAL
BUDGETS**

CASE NO.: NEPR-MI-2021-0004

SUBJECT: Determination on completeness
and Preliminary Procedural Calendar.

RESOLUTION AND ORDER

I. Introduction

On February 24, 2021, LUMA Energy, LLC as ManagementCo, and LUMA Energy ServCo, LLC as ServCo (collectively, "LUMA") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *Petition for Approval of Initial Budgets and Related Terms of Service* ("February 24 Petition"). In the February 24 Petition, LUMA requested the Energy Bureau's review and approval of, (i) the Initial Budgets¹, and (ii) the Liability Waiver.²

On April 5, 2021, the Energy Bureau issued a Resolution and Order ("April 5 Resolution") whereby it ordered LUMA to submit specific supporting material that the Energy Bureau needed to conduct its evaluation of the proposed Initial Budgets. The Energy Bureau also ordered LUMA to submit an updated Generation Budget³ based on the information provided by the Puerto Rico Electric Power Authority ("PREPA").

On April 6, 2021 LUMA filed a document titled *Motion Submitting Clarification to Portions of LUMA's Initial Budgets* ("April 6 Motion"), which included two (2) exhibits with revisions to the Initial Budgets. In addition, on April 12, 2021, LUMA filed a document titled *Motion in Compliance with Resolution and Order of April 5, 2021 and Submitting Responses to Requests for Information* ("April 12 Compliance Motion"). In the April 12 Compliance Motion, LUMA includes the supporting material that was identified by the Energy Bureau as needed to adequately conduct its evaluation and proposes an alternative to address its inability to secure the Generation Budget from PREPA in a timely manner.

¹ *Initial Budgets: First 3 Year of Recovery & Transformation, February 23, 2021*, included as Exhibit 1 to the February 24 Petition ("Initial Budgets").

² *Request for Approval of Terms of Service and Memorandum of Law in Support Thereof*, included as Exhibit 2 of the February 24 Petition ("Liability Waiver").

³ As defined in Section 1.1 of the Operation and Maintenance Agreement entered by LUMA, PREPA, the Puerto Rico Public-Private Partnerships Authority.



II. Determination on Completeness

Neither the April 6 Motion nor the April 12 Compliance Motion include the Generation Budget required by the Energy Bureau. Instead, LUMA proposed an alternative that according to LUMA addresses its expressed inability to obtain the Generation Budget from PREPA and timely file it with the Energy Bureau.

Given LUMA's lack of compliance with the April 5 Resolution, the Energy Bureau **DETERMINES** that the February 24 Petition as clarified by the April 6 Motion and supplemented by the April 12 Compliance Motion is **incomplete** and as such, at this moment it is insufficient to commence its evaluation of the Initial Budgets.⁴

Notwithstanding the foregoing, the Energy Bureau deems appropriate at this moment to establish the following preliminary Procedural Calendar for the instant case:

Date	Phase
April 22, 2021	Filing of Generation Budget ⁵
April 26, 2021	Determination on the completeness of the February 24 Petition
April 28, 2021	Filing of a Summary of the the Proposed Initial Budget Petition in the Spanish Language to be Available to the Public
April 29, 2021	Filing of LUMA's Presentation for the Virtual Technical Conference
May 3-5, 2021	Virtual Technical Conference ⁶
May 7, 2021	Filing of Any Revised and/or Additional Information Required by the Energy Bureau
May 12-13, 2021	Virtual Public Hearing ⁷
May 24, 2021	Filing of Comments by General Public Due

⁴ Considering this determination, it is not necessary to rule at this time on LUMA's petition to approve the proposed allocation of the Generation Budget for the Fiscal Year 2022, in lieu of PREPA's Generation Budget. See April 12 Compliance Motion at p. 4.

⁵ All documents and supporting information shall be submitted in a searchable PDF, unless the filed document native nature does not support a PDF filing (e.g., Excel Files). All Excel files or files with similar format, shall be submitted in native form with formulae intact.

⁶ Note that in order to prevent the spread of Covid-19, the foregoing Virtual Technical Conference will be held remotely via the *Microsoft Teams* platform from 9:00 am to 5:30 pm.

⁷ Note that in order to prevent the spread of Covid-19, the foregoing Virtual Public Hearing will be held remotely via the *Microsoft Teams* platform from 9:00 am to 5:30 pm.



During the Virtual Technical Conference, LUMA shall present and discuss thoroughly the proposed Initial Budgets. Furthermore, LUMA representatives and their consultants must be prepared to answer questions from the Energy Bureau, its staff, and consultants, regarding its presentation and all aspects of the proposed Initial Budgets. The Energy Bureau will timely provide additional information, via its website, regarding the Virtual Technical Conference format, the applicable rules of conduct, and the order of the proceedings.

The general public will have the opportunity to present their comments and suggestions about the proposed Initial Budgets during the Virtual Public Hearing. Since the Virtual Public Hearing is designed to obtain comments from the general public, LUMA or its employees, associates, witnesses or legal representation, and any other party to this proceeding will not be allowed to participate in the Virtual Public Hearing. Any person interested in presenting oral comments during the Virtual Public Hearing shall, **on or before Friday May 7, 2021 at 3:00 p.m.**, contact the Energy Bureau's Clerk at (787) 523-6262 or via email to secretaria@jrsp.pr.gov to request a turn and to obtain instructions and a link to access the Virtual Public Hearing. The Virtual Public Hearing will be streamed live via the Energy Bureau's YouTube Channel.⁸ The Energy Bureau will timely provide additional information, via its website, regarding the Virtual Public Hearing format, the applicable rules of conduct, and the order of the proceedings.

The public may also submit written comments and suggestions to the Energy Bureau regarding the proposed Initial Budgets ("Written Public Comments"). The Written Public Comments to be filed with the Energy Bureau shall: (i) include in their title the following: "Public Comments on LUMA's Initial Budget Request - Case No. NEPR-MI-2021-0004"; (ii) be addressed to the attention of Edison Avilés Deliz, Chairman; and (iii) be filed by electronic mail at: comentarios@jrsp.pr.gov; through the Energy Bureau's electronic filing tool at: <https://radicacion.energia.pr.gov/>; by postal mail addressed to the Puerto Rico Energy Bureau's Clerk's Office at World Plaza Building, 268 Muñoz Rivera Ave., Plaza Level Suite 202, San Juan, PR 00918-1925; or in person at the Energy Bureau's Clerk's Office, at the referenced address. The hours of operations of the Clerk's office are Monday through Friday from 8:30 a.m. to 5:30 p.m., excluding holidays.

The Energy Bureau may modify the foregoing Procedural Calendar at its discretion.

III. Conclusion

The Energy Bureau **ORDERS** LUMA to file the required Generation Budget and corresponding supporting documentation **on or before April 22, 2020.**⁹ The Energy Bureau

⁸ The Energy Bureau's YouTube channel may be accessed through the following link: <https://www.youtube.com/channel/UCxZYn-qt1k0Lu9TX37-11oA>.

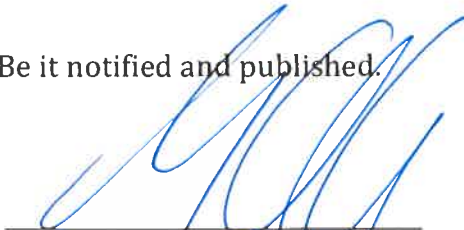
⁹ According to public documents issued by the Financial Oversight and Management Board ("FOMB"), PREPA must submit to the FOMB its Budget for Fiscal Year 2022 on or before April 20, 2021. See letter dated April 14,



ORDERS PREPA to (i) **immediately** facilitate LUMA the required Generation Budget and corresponding supporting documentation and to make available to LUMA the relevant personnel to clarify any questions LUMA may have regarding the Generation Budget and the supporting documentation; and (ii) ensure that the relevant PREPA personnel and/or consultants to appear during the Technical Conference in case the Energy Bureau, its staff, and consultants, have any questions regarding the Generation Budget.

The Energy Bureau **WARNS** LUMA and PREPA that, noncompliance with any provision of this Resolution and Order, may result in the imposition of fines pursuant to Act 57-2014¹³ and applicable Energy Bureau's regulations and/or any other appropriate administrative sanctions, as deemed appropriate by the Energy Bureau.

Be it notified and published.


Edison Avilés Deliz
Chairman


Lillian Mateo Santos
Associate Commissioner


Ferdinand A. Ramos Soegaard
Associate Commissioner


Sylvia B. Ugarte Araujo
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on April 20, 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 April 20, 2021 a copy of this Resolution and Order was notified by electronic mail to the following: kbolanos@diazvaz.law, jmarrero@diazvaz.law, margarita.mercado@us.dlapiper.com, astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, legal@lumamc.com, wayne.stensby@lumamc.com, mario.hurtado@lumamc.com, Ashley.engbloom@lumamc.com, jgob@aepr.com. A copy was also sent to: elias.sostre@aes.com; jesus.bolinaga@aes.com; cfl@mcvpr.com; ivc@mcvpr.com; notices@sonnedix.com; leslie@sonnedix.com; victorluisgonzalez@yahoo.com; tax@sunnova.com; jcmendez@reichardescalera.com; r.martinez@fonroche.fr; gonzalo.rodriguez@gestampren.com; kevin.devlin@patternenergy.com;

2021 sent by the FOMB to the Governor of Puerto Rico, the Speaker of the Puerto Rico House of Representatives and the President of the Puerto Rico Senate.



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tracy.deguise@everstreamcapital.com; agraitfe@agraitlawpr.com;
h.bobea@fonrochepr.com; ramonluisnieves@rlnlegal.com; hriviera@oipc.pr.gov;
info@sesapr.org; yan.oquendo@ddec.pr.gov; acarbo@edf.org; pjcleanenergy@gmail.com;
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secretarias@seguros multiples.com.

I also certify that today, April 20, 2021, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today April 20, 2021.


Sonia Seda Gaztambide
Clerk



**GOVERNMENT OF PUERTO RICO
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**Associate Commissioner Ángel R. Rivera de la Cruz, concurring in part and dissenting
in part**

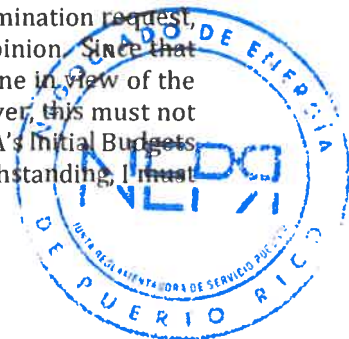
Today, the majority of the Puerto Rico Energy Bureau ("Energy Bureau") issued a Resolution and Order through which it determined that LUMA's¹ *Petition for Approval of Initial Budgets and Related Terms of Service* ("February 24 Petition"), as clarified by the *Motion Submitting Clarification to Portions of LUMA's Initial Budgets* ("April 6 Motion") and supplemented by the *Motion in Compliance with Resolution and Order of April 5, 2021 and Submitting Responses to Requests for Information* ("April 12 Compliance Motion"), is incomplete and thus, insufficient to commence the Energy Bureau's evaluation of LUMA's Initial Budgets. The majority of the Energy Bureau also established a provisional procedural calendar for the evaluation of the February 24 Petition. For the reasons expressed herein, I concur in part and dissent in part.

* * *

I concur with the majority of the Energy Bureau's determination that the February 24 Petition, as clarified by the April 6 Motion and supplemented by the April 12 Compliance Motion, is incomplete and insufficient to commence the evaluation of the Initial Budgets proposed by LUMA. As I expressed in my dissenting opinion of April 5, 2021 in the instant case, the uncertainty regarding the generation budget makes it impossible to issue a determination of reasonableness with respect to the Initial Budgets.² As a result, until LUMA provides the Generation Budget, the Energy Bureau should maintain that LUMA's filing is

¹ LUMA Energy, LLC as ManagementCo, and LUMA Energy Servco, LLC as ServCo, collectively, "LUMA".

² Resolution and Order, *In Re: Review of LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, April 5, 2021 ("April 5 Order"), Associate Commissioner Ángel R. Rivera de la Cruz dissenting, p. 10. It is important to note that, as expressed in my April 5, 2021 dissenting opinion, I would have initiated an adjudicative proceeding, similar to the one the Energy Bureau used to establish the current rates revenue requirement in Case No. CEPR-AP-2015-0001. As a result, I would have ordered LUMA to file a revenue requirement determination request, in accordance with the schedules listed in Regulation 8720, as described in the dissenting opinion. Since that was a minority opinion, all my analysis regarding today's Resolution and Order must be done in view of the provisions of the April 5 Order, as determined by the majority of the Energy Bureau. However, this must not be construed as a shift in my opinion. I still believe that the path forward is to determine LUMA's Initial Budgets in a rate case-like proceeding, where a new revenue requirement can be established. Notwithstanding, I must abide by the provisions of the April 5 Order.



incomplete and should not initiate its evaluation of the February 24 Petition. Therefore, establishing a preliminary procedural calendar is premature at time. As such, I dissent with the majority's determination to that effect.

To evaluate the \$1.183 billion budget proposed by LUMA, the majority of the Energy Bureau scheduled a **single** Technical Conference, to be held on May 3 – 5, 2021. The majority of the Energy Bureau scheduled a Public Hearing to be held on May 12 – 13, 2021.

The April 12 Compliance Motion was filed pursuant to the April 5 Order. It contains LUMA's answer to the initial Energy Bureau's request for information.³ LUMA provided its answers through an extensive and complex array of documents and Excel worksheets. However, LUMA failed to provide the Generation Budget as required in the April 5 Order. For that reason, the majority of the Energy Bureau ordered LUMA to file the Generation Budget and corresponding supporting documentation on or before April 22, 2020.⁴ I concur with such determination.

However, as of today, and based on the arguments presented in the April 12 Compliance Motion, it is uncertain that LUMA will be able to comply with the Energy Bureau's order regarding the Generation Budget. Moreover, even if the Puerto Rico Electric Power Authority ("PREPA") provides LUMA with a Generation Budget, the robustness and completeness of such budget and supporting documents is equally uncertain.

As demonstrated in every major case held before the Energy Bureau, filings like the April 12 Compliance Motion and the requested General Budget always generate clarification questions and additional requests of information and documents, before issuing a resolution on completeness. The April 12 Compliance Motion **is, for practical purposes, LUMA's initial partial filing** since LUMA didn't provide any supporting documents with the February 24 Petition, other than the single Excel file that contained high-level detail of its budget proposal. The filing of the Generation Budget is the complement of that **initial partial filing**. It is a future, uncertain event, scheduled for April 22, 2021.

Therefore, for all practical purposes, LUMA's **initial filing** will not contain all required documents until April 22, 2021, assuming LUMA files the Generation Budget on that date and that such filing is complete. Scheduling the **LONE** Technical Conference to start on May 3, 2021, a little under two weeks from the expected date of receiving the Generation Budget, makes it almost impossible to issue clarification questions or additional requests of information, and to receive answers thereto, in time to be used during the **LONE** May 3 – 5 Technical Conference.

³ April 5 Order, Attachment A.

⁴ Resolution and Order, In Re: Review of LUMA's Initial Budgets, Case No. NEPR-MI-2021-0004, April 16, 2021, p. 3. Citation omitted.



I don't remember any other instance or proceeding in which the Energy Bureau scheduled a Technical Conference of this magnitude, one that will be used to evaluate a \$1.183 billion T & D budget and an uncertain generation budget, in such short period of time and without conducting an in-depth discovery process. Based on the voluminous and complex nature of LUMA's April 12 Compliance Motion, the uncertainty with respect to the filing and content of the Generation Budget, and the proximity of the Technical Conference, it will be very unlikely that the Energy Bureau's personnel will be prepared to effectively examine LUMA's representatives on LUMA's Initial Budget proposal during the scheduled **LONE** Technical Conference.

Scheduling the **LONE** Technical Conference in this manner and so early in the process, is a large deviation from the way the Energy Bureau normally evaluate petitions like the one presented in the instant case. Until today, before scheduling a **final** Technical Conference or Evidentiary Hearing, the Energy Bureau has always ensured that it possesses **ALL** the required and necessary information to thoroughly evaluate the proposal. That is what the public interest requires.

To that effect, in this type of cases, the Energy Bureau establishes the procedural calendar once it determines the petition is complete. Traditionally, the Energy Bureau schedules an initial hearing for the proponent (normally PREPA, but in this case LUMA) to present its proposal. This initial conference is then followed by a discovery period in which the Energy Bureau, and the other parties to the proceeding, if any, submit questions and requests for information to the proponent. The final Evidentiary Hearing or Technical Conference is held once such discovery process concludes.

For this proceeding, the majority of the Energy Bureau established a preliminary procedural schedule before determining the petition is complete, omitted the initial technical hearing and the discovery process, and went straight to the **LONE** Technical Hearing, scheduled less than two weeks from the expected date for the filing of the Generation Budget. In my opinion, this process is inadequate to evaluate a petition of this magnitude, especially since the Energy Bureau is yet to issue a resolution regarding the completeness of the February 24 Petition.

The scheduled Public Hearing is equally inadequate. To this date, LUMA has filed almost all financial and accounting information under a request for confidential treatment. As such, almost all financial and accounting information, specially the one that serves as the basis for LUMA's Initial Budget proposal, is not accessible to the general public at this time. The Energy Bureau is yet to issue a determination regarding LUMA's request for confidential treatment, therefore the information is considered confidential until the Energy Bureau determines otherwise.

LUMA's actions regarding its request for confidential treatment is a sharp contrast to PREPA's filing in the most recent rate case.⁵ Although certain information contained in

⁵ See, for example, Verified Petition for Approval of (1) "Permanent" Rates and (2) Temporary Rates, In Re: Review of Rates of the Puerto Rico Electric Power Authority, Case No. CEPR-AP-2015-0001, May 27, 2016.



docket number CEPR-AP-2015-0001 (*i.e.* the rate case docket) was classified as confidential, the underlying information necessary to analyze the proposed PREPA rates was accessible to the general public from the date of the initial filing. As such, from the date of the filing of the rate proposal, the general public was able to study and analyze it in order to have ample participation in the evaluation of PREPA's proposed rates. That is not the case here.

As stated before, the Public Hearing is scheduled for May 12 - 13, 2021. At this time, it is uncertain whether or not the general public will have access to the financial and accounting information designated by LUMA as confidential. This may hinder the general public participation in this case. Moreover, this will also make it difficult for the Energy Bureau to have a meaningful discussion with LUMA during the **LONE** Technical Hearing since confidential information cannot be disclosed in a public forum.

Even if the Energy Bureau were to deny LUMA's request for confidential designation, either in part or in full, the information will not be publicly available before the **LONE** Technical Hearing and the Public Hearing. Moreover, the information will only be available a few days prior to the deadline to file public comments. According to the established procedures to evaluate confidential claims, if the Energy Bureau denies a confidential claim, "it will disclose such information **within thirty (30) days from the date its determination is notified**, unless the Producing Party request reconsideration, judicial review, or any other remedy it deems appropriate, which will interrupt the thirty (30) day term to disclose such information."⁶ Therefore, even if the Energy Bureau denies LUMA's request for confidential treatment today, either in part or in full, the earliest the information will be publicly available will be May 20, 2021, which is after the **LONE** Technical Hearing and the Public Hearing. It is also just a few days before the deadline to file public comments. As such, the approved schedule doesn't provide for ample and meaningful public participation.

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 April 20, 2021.



⁶ Resolution and Order, In Re: Policy on Management of Confidential Information in Procedures Before the Commission, Case No. CEPR-MI-2016-0009, August 31, 2016. Emphasis supplied.