

**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:** Request for Clarification or Amendment of May 31<sup>st</sup> Resolution and Order.

**RESOLUTION AND ORDER**

On February 24, 2021, LUMA filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a Petition for Approval of Initial Budgets and Related Terms of Service ("Initial Budgets Petition")<sup>1</sup>, pursuant to Act 57-2014, as amended by Act 17-2019, per the obligations of Luma Energy, LLC as Management Co., and Luma Energy Servco, LLC as ServCo (collectively, "LUMA") under Section 4.2 (e) of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated as of June 22, 2020 ("OMA"), executed by and among the Puerto Rico Electric Power Authority ("PREPA"), the Puerto Rico Public-Private Partnerships Authority.

Upon analyzing the information contained in the administrative record of the instant case, on May 31, 2021, the Energy Bureau issued a Resolution and Order ("May 31 Resolution") approving LUMA's Initial Budgets Petition corresponding to the budget for fiscal year 2022 ("FY22").

On June 8, 2021, LUMA filed with the Energy Bureau a document titled *Request for Clarification or Amendment of May 31st Resolution and Order Approving Luma's Initial Budgets* ("Amendment Request"). In the Amendment Request, LUMA requests the Energy Bureau to amend the May 31 Resolution to include approval of LUMA's proposed budget for June 2021 ("June 2021 Budget"). LUMA requests that the Energy Bureau approve the June 2021 Budget as proposed by LUMA in the Initial Budgets Petition.<sup>2</sup> According to LUMA, its proposal, complies with the 2020 Fiscal Plan certified by the Financial, Oversight and Management Board for Puerto Rico ("FOMB") for PREPA, and that it does not increase the overall revenue requirements and, therefore, no change is required to the existing base rates

<sup>1</sup> See In. Re: Review of LUMA's Initial Budgets, Case. No. NEPR-MI-2021-0004, Petition for Approval of Initial Budgets and Related Terms of Service, February 24, 2021.

<sup>2</sup> See Amendment Request, p. 4.



or the existing rate structure that the Energy Bureau approved by the 2017 Rate Order.<sup>3</sup> LUMA states that the June 2021 Budget is based on the 2020 Fiscal Plan budget certified by the FOMB for PREPA and equivalent to one pro-rated month of PREPA's certified budget for Fiscal Year 2021 (1/12 of the annual budget certified in the 2020 Fiscal Plan).<sup>4</sup>

Contrary to the budget proposed for FY22, LUMA did not present supporting information and/or presented testimony during the Technical Conferences held by the Energy Bureau May 3 to 5, 2021, substantiating the methodology used for its preparation or the appropriateness of the June 2021 budget. Nor did LUMA state that the remaining budget would not fund the last month of operations during this fiscal year. As such, the Energy Bureau did not issue a determination regarding the same. PREPA's FY2021 budget was certified by the FOMB and it is in effect until June 30, 2021. Therefore, LUMA must conform its spending to said budget for the month of June 2021.

There are certain line items within PREPA's FY2021 budget based on dated projections of energy sales and fuel prices as well as inaccurate costs for subsidies. The Energy Bureau notes that, based on recent determinations, certain expenses pertaining to pass-thru expenditures for June 2021 would likely deviate from the amounts budgeted for June 2021. Nevertheless, the actual fuel and purchased power costs for June 2021 will be reconciled against actual collected revenues on the next quarterly reconciliation (*i.e.*, September 2021) and the cost of subsidies for June 2021 will be reconciled on the next yearly reconciliation (*i.e.*, June 2022). As such, the foregoing does not have an adverse effect on the June 2021 budget.

For the above reasons, the Energy Bureau **ORDERS** LUMA to conform its spending, during the month of June 2021, to the remaining balance of PREPA's certified budget for Fiscal Year 2021. The foregoing shall not be interpreted, deemed, or construed as authorization for LUMA and/or PREPA<sup>5</sup> to spend all remaining monies. To the contrary, LUMA and PREPA shall spend the remaining monies for FY2021 prudently. Finally, with this determination the Energy Bureau does not, explicitly, or implicitly, yield its jurisdiction and regulatory powers over the LUMA and PREPA budgets.

Be it notified and published.



<sup>3</sup> See In Re.: Puerto Rico Electric Power Authority Rate Review, Case No. CEPR-AP-2015-0001, Final Resolution and Order, January 10, 2017 ("2017 Rate Order"), as amended by Final Resolution, March 2, 2017.

<sup>4</sup> See Amendment Request, p. 2; Initial Budgets Petition, Exhibit 1, pp. 42-43; Initial Budgets Petition, Exhibit 1, Executive Summary, p. 3.

<sup>5</sup> It is important to note that the consolidated budget has monies for, among other things, the operation of the generation fleet by PREPA.

  
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 June 14, 2021. Associate Commissioner Ángel R. Rivera de la Cruz dissented with a written opinion. I also certify that on June 14, 2021 a copy of this Resolution and Order was notified by electronic mail to the following: margarita.mercado@us.dlapiper.com, kbolanos@diazvaz.law and jmarrero@diazvaz.law. I also certify that today, June 14, 2021, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today June 14, 2021.

  
Sonia Seda Gaztambide  
Clerk



**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: Request for Clarification or  
Amendment of May 31<sup>st</sup> Resolution and  
Order.**

**Associate Commissioner Ángel R. Rivera de la Cruz, dissenting**

Today, the majority of the Puerto Rico Energy Bureau ("Energy Bureau") issued a Resolution and Order with respect to the *Request for Clarification or Amendment of May 31<sup>st</sup> Resolution and Order Approving LUMA's Initial Budgets*, filed by LUMA<sup>1</sup> on June 8, 2021 ("June 8 Motion"). In today's Resolution and Order, the majority of the Energy Bureau ordered LUMA to conform its spending during the month of June 2021 to the remaining balance of the PREPA FY2021 FOMB certified budget. For the reasons expressed herein, I dissent.

\* \* \*

As LUMA correctly stated in the June 8 Motion, the Energy Bureau did not mention or approve the proposed budget for the month of June 2021.<sup>2</sup> Through the May 31 Order<sup>3</sup> in the instant case, the Energy Bureau approved the Initial Budgets for FY2022,<sup>4</sup> which runs from July 1, 2021 until June 30, 2022. As such, LUMA is currently operating the T&D System without an approved budget.<sup>5</sup>

<sup>1</sup> LUMA Energy, LLC as ManagementCo, and LUMA Energy Servco, LLC as ServCo, collectively, "LUMA".

<sup>2</sup> June 8 Motion, p. 3, ¶ 8.

<sup>3</sup> *Resolution and Order, In Re: Review of LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, May 31, 2021 ("May 31 Order").

<sup>4</sup> I must point out that, as expressed in my April 5, 2021 and May 31, 2021 dissenting opinions in the instant case, 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. 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. 13; May 31 Order, Associate Commissioner Ángel R. Rivera de la Cruz dissenting, p. 1. However, through the May 31 Order, the Energy Bureau approved LUMA's Initial Budgets, conditioned to the compliance with several reporting requirements and other items, as detailed therein. As an Associate Commissioner of the Energy Bureau, I am bound by such determination and must enforce it. As such, the analysis contained herein is based upon the Energy Bureau's determinations, as established in the May 31 Order.

<sup>5</sup> It is important to note that the Energy Bureau did not approve a budget for the Puerto Rico Electric Power Authority ("PREPA") for FY2021. Today's determination by the majority of the Energy Bureau lacks specific guidance for LUMA to operate. Determining that LUMA should conform its spending to the remainder of the PREPA FY2021 certified budget, without clear visibility of the actual spending for FY2021, may place LUMA in



To correct this deficiency, through the June 8 Motion, LUMA requests the Energy Bureau to amend the May 31 Order to include approval of LUMA's proposed budget for the month of June 2021 ("Proposed June 2021 Budget"), as requested by LUMA in the February 24 Petition<sup>6,7</sup> Through the February 24 Petition, LUMA proposed a \$266,000,000 budget for the month of June 2021.<sup>8</sup> This was a consolidated budget that included the costs associated with Fuel, Purchased Power, Contribution in Lieu of Taxes ("CILT"), Subsidies, T&D (which includes Operating Expenditures and Non-Federally Funded Capital), Generation and Other Expenses (which includes Bad Debts, Bankruptcy and Advisor Costs, and Operator Service Fee).<sup>9</sup> LUMA based its proposed June 2021 budget on the Fiscal and Oversight Management Board ("FOMB") Certified 2020 Fiscal Plan.<sup>10</sup>

The Proposed June 2021 Budget is not based on the most current cost and revenue forecast. As such, I cannot approve the Proposed June 2021 Budget, as presented. Moreover, as the majority of the Energy Bureau correctly point out, LUMA did not present supporting information nor did it offer testimony during the Technical Conference held on May 3 - 5, 2021, to substantiate the methodology used for the preparation of the June 2021 proposed budget.<sup>11</sup> LUMA also failed to support its claim that the proposed June 2021 budget was reasonable.

Notwithstanding the above, in the most recent review of the Fuel and Purchased Power Adjustment Clause Factors, the Energy Bureau determined that the estimated Fuel cost for the month of June 2021, is \$139,426,069.44.<sup>12</sup> Similarly, the estimated Purchased

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\_\_\_\_\_ a position of not having sufficient funds to operate. The Energy Bureau, at a minimum, should have requested LUMA to provide information regarding PREPA's spending during FY2021 and should have determined if the remaining amount is sufficient for the safe and reliable operation of the system, before issuing such blind order. Moreover, without a specific budget amount, the majority of the Energy Bureau leave to LUMA's discretion to determine its June 2021 budget, without reviewing it or establishing it is appropriate. LUMA's regulator should strive to avoid this type of uncertainties.

<sup>6</sup> *Petition for Approval of Initial Budgets and Related Terms of Service, In Re: Review of LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, Exhibit 1: Initial Budgets: First 3 Years of Recovery and Transformation, February 24, 2021 ("February 24 Petition").

<sup>7</sup> June 8 Motion, p. 4.

<sup>8</sup> February 24 Petition, p. 43.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*, p. 42. See also June 8 Motion, pp. 3 - 4, ¶ 9.

<sup>11</sup> *Resolution and Order, In Re: Review of LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, p. 2, June 04, 2021.

<sup>12</sup> *Resolución y Orden, In Re: Tarifa Permanente de la Autoridad de Energía Eléctrica de Puerto Rico*, March 31, 2021, p. 26.





Power cost for the month of June 2021 is \$41,328,481.59.<sup>13</sup> The Energy Bureau also determined that the projected sales for the month of June 2021 are 1,411,561,662 kWh.<sup>14</sup>

Furthermore, in the June 28, 2020 Resolution and Order in Case No. NEPR-MI-2020-0001, the Energy Bureau established the factors for the CILT, SUBA-HH<sup>15</sup> and SUBA-NHH<sup>16</sup> Adjustment Clauses that will be in effect from July 1, 2020 until June 30, 2021. Such factors are \$0.004094/kWh, \$0.008991/kWh and \$0.001357/kWh, respectively.<sup>17</sup> Therefore, based on the 1,411,561,662 kWh expected sales, the estimated revenues corresponding to CILT, SUBA-HH and SUBA-NHH for the month of June are \$5,779,623.29,<sup>18</sup> \$12,691,350.90<sup>19</sup> and \$1,915,489.18,<sup>20</sup> respectively.

In the Initial Budgets proposal, LUMA determined its base expenditures limit by first calculating a \$/kWh “Base Rate”, using the FY-2017 revenue requirement (*i.e.* \$1,287,998,000) and dividing it by the FY-2017 expected sales (*i.e.* 17,268,325,180 kWh).<sup>21</sup> This resulted in a \$0.0746/kWh “Base Rate”.<sup>22</sup> On April 6, 2021, LUMA filed an updated version of Schedule 5.6 of its February 24 Petition, which contains a revision of the aforementioned calculation.<sup>23</sup> The revised “Base Rate”, in \$/kWh, is \$0.0747/kWh.<sup>24</sup> LUMA applied this “Base Rate” to the expected FY2022 sales (*i.e.* 15,584,767,581 kWh), to calculate a base expenditures limit of approximately \$1,184,321,000 for FY2022.<sup>25</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Help to Humans Subsidies

<sup>16</sup> Other Subsidies.

<sup>17</sup> *Resolución y Orden, In Re: Tarifa Permanente de la Autoridad de Energía Eléctrica de Puerto Rico*, June 28, 2020, p. 20.

<sup>18</sup> 1,411,561,662 kWh × \$0.004094/kWh = \$5,779,623.29.

<sup>19</sup> 1,411,561,662 kWh × \$0.008991/kWh = \$12,691,350.90.

<sup>20</sup> 1,411,561,662 kWh × \$0.001357/kWh = \$1,915,489.18.

<sup>21</sup> February 24 Petition, “Section 5\_Initial Budgets Schedules\_FINAL.xlsx”, Tab “5.6- Reconciliation to RR”, Cells E31 – E39.

<sup>22</sup> *Id.*, Cell E39.

<sup>23</sup> *Motion Submitting Clarification to Portions of LUMA’s Initial Budgets (“April 6 Motion”), Exhibit B, Revised* Schedule 5.6.

<sup>24</sup> *Id.*, Cell E35.

<sup>25</sup> *Id.*, Cell E11.



In the May 31 Order, the Energy Bureau established that LUMA’s approach “do not increase the overall revenue requirements thus no change be required to the existing base rates or the current rate structure approved by the 2017 Rate Order.”<sup>26</sup> Applying the same principle, the base expenditure limit for the month of June 2021, can be established by multiplying the \$0.0747/kWh “Base Rate” and the expected sales of 1,411,561,662 kWh. Therefore, using the same methodology as the FY2022 budget, the base expenditure limit for the month of June 2021, is 1,411,561,662 kWh × \$0.0747/kWh = \$105,374,510.64.

The consolidated budget for the month of June 2021, is calculated by adding the estimated Fuel and Purchased Power Costs and the estimated CILT and Subsidies revenues, and the base expenditure limit (*i.e.* expected Base Rate revenues). As a consequence, I would have approved a consolidated June 2021 Budget in the amount of \$139,426,069.44 + \$41,328,481.59 + \$5,779,623.29 + \$12,691,350.90 + \$1,915,489.18 + \$105,374,510.64 = \$306,515,525.04.

Moreover, the calculated base expenditure limit for the month of June 2021, can be reasonably allocated to the different functions of the electric system operation (*i.e.* T&D (which includes Operating Expenditures and Non-Federally Funded Capital), Generation and Other Expenses (which includes Bad Debts, Bankruptcy and Advisor Costs, and Operator Service Fee)) on a pro rata basis, using the approved FY-2022 Initial Budgets, as described in Schedule 5.3 and the revised Schedule 5.6 of the February 24 Petition. Table 1 shows the allocation of the June 2021 Budget among the operational functions.

**Table 1: June 2021 Base Budget Allocation**

	Approved Base FY2022 Initial Budget <sup>27</sup>	Pro Rata Factor	June 2021 Base Budget
T & D Operating Expenditures	\$ 514,501,639.49	43.48%	\$ 45,816,698.73
T & D Other	\$ 110,976,032.79	9.38%	\$ 9,882,486.41
Capital Budget - Non-Federally Funded	\$ 124,101,494.39	10.49%	\$ 11,051,317.13
Generation Budget	\$ 288,091,848.72	24.35%	\$ 25,654,762.64
Other	\$ 145,639,000.00	12.31%	\$ 12,969,245.72
<b>Total</b>	<b>\$ 1,183,310,015.38</b>		<b>\$ 105,374,510.64</b>

The budget associated with the components of the “Other” function can also be allocated in the same manner. Table 2 shows such allocation.

<sup>26</sup> May 31 Order, p. 35.

<sup>27</sup> April 6 Motion, Exhibit B, Revised Schedule 5.6.



**Table 2: June 2021 “Other” Budget Allocation**

	Approved Base FY2022 Initial Budget <sup>28</sup>	Pro Rata Factor	June 2021 Base Budget
Bad Debts	\$ 59,351,000.00	40.75%	\$ 5,285,244.36
PREPA Legacy	\$ 22,816,000.00	15.67%	\$ 2,031,779.33
Title III Costs	\$ 38,722,000.00	26.59%	\$ 3,448,218.77
FOMB Advisor Costs	\$ 20,000,000.00	13.73%	\$ 1,781,012.74
<b>Total</b>	<b>\$ 145,639,000.00</b>		<b>\$ 12,969,245.72</b>

As stated before, LUMA proposed a \$266,000,000 budget for the month of June 2021. Table 3 shows the difference between the proposed LUMA budget and the budget I would have approved.

**Table 3: Comparison Between the Proposed June 2021 Budget and the Calculated June 2021 Budget (\$ million)**

	Proposed June 2021 Budget <sup>29</sup>	Calculated June 2021 Budget	Difference
<b>Fuel and Purchased Power</b>	136	180.8	44.8
Fuel	70	139.4	69.4
Purchased Power	66	41.3	-24.7
<b>CILT &amp; Subsidies</b>	22	20.4	-1.6
<b>T&amp;D</b>	59	56.9	-2.1
Operating Expenditures	49	45.8	-3.2
Non-Federally Funded Capital	10	11.1	1.1
<b>Generation</b>	22	25.7	3.7
<b>Other</b>	27	22.9	-4.1
Bad Debts	6	5.3	-0.7
Bankruptcy and Advisor Costs	11	7.7	-3.3
Operator Service Fee	10	9.9	-0.1
<b>Total</b>	<b>266</b>	<b>306.5</b>	<b>40.5</b>

The approximately \$40.5 million difference between the two budgets is mainly due to the estimated Fuel and Purchased Power costs (~\$180.8 million in the calculated budget, versus ~\$136 in the proposed LUMA budget). Moreover, the base expenditure limit proposed by LUMA in the February 24 Petition, ~\$108 million,<sup>30</sup> is about \$2.5 million higher than the calculated one, (i.e. ~\$105.5 million<sup>31</sup>). This \$2.5 million difference is due to the

<sup>28</sup> February 24 Petition, Schedule 5.3.

<sup>29</sup> February 24 Petition, Table 3-3.

<sup>30</sup> Base expenditure limit is the sum of the T&D, Generation and Other budgets. For the proposed June 2021 Budget, that amount is equal to \$59 MM + \$22 MM + \$27 MM = \$108 million.

<sup>31</sup> The calculated base expenditure limit is equal to \$56.9 MM + \$25.7 MM + \$22.9 MM = \$105.5 million.

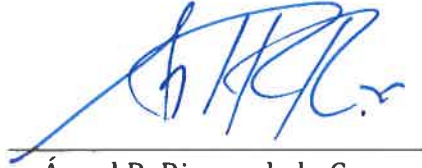




updated sales estimates for the month of June 2021, which is more accurate and current than the monthly pro rata methodology LUMA used.<sup>32</sup>

For all of the above, I would have approved a June 2021 Budget in the amount of \$306,515,525.04, which includes a base expenditure limit of \$105,374,510.64. Moreover, I would have allocated the \$306,515,525.04 budget as described on Tables 1 and 2 above.

Therefore, I dissent.



Ángel R. Rivera de la Cruz  
Associate Commissioner

In San Juan, Puerto Rico, on June 14, 2021.



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<sup>32</sup> June 8 Motion, p. 2, ¶ 5. LUMA expressed that the proposed June 2021 budget is “based on the 2020 Fiscal Plan budget certified by the FOMB for PREPA and equivalent to one pro-rated month of PREPA’s certified budget for Fiscal Year 2021 (1/12 of the annual budget certified in the 2020 Fiscal Plan).”