

**COMMONWEALTH 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: Requests for Clarifications and/or Reconsideration of May 31st Resolution and Order Approving LUMA’s Initial Budgets.

REQUEST FOR CLARIFICATIONS AND/OR RECONSIDERATION OF MAY 31ST RESOLUTION AND ORDER APPROVING LUMA’S INITIAL BUDGETS

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC (“ManagementCo”), and **LUMA Energy ServCo, LLC** (“ServCo”), (jointly referred to as “LUMA”), and respectfully state and request the following:

I. Introduction

On February 24, 2021, LUMA filed before this Honorable Puerto Rico Energy Bureau (“Bureau”) a Petition for Approval of Initial Budgets and Related Terms of Service (“Initial Budgets Petition”), pursuant to Act 57-2014, as amended by Act 17-2019, to the Rate Case proceeding conducted by this Bureau in Case No. CEPR-AP-2015-0001 (“2017 Rate Case”), and per LUMA’s obligations under Section 4.2 (e) of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated as of June 22, 2020, by and among the (“Puerto Rico Electric Power Authority (“PREPA”), the Puerto Rico Public-Private Partnerships Authority (“P3 Authority”) (“OMA”). Exhibit 1 to LUMA’s Initial Budgets Petition included LUMA’s proposed Initial Budgets (“Initial Budgets”).

Pursuant to the procedural calendar set by this honorable Bureau in a Resolution and Order dated April 20, 2021 (“April 20th Resolution and Order”), the Bureau conducted a three-day

technical conference from May 3rd to May 5th, 2021, where LUMA representatives offered testimonies in support of the Initial Budgets Petition and answered questions from Commissioners and Bureau consultants. Thereafter, on May 7, 2021, LUMA filed additional information and responses to requests for additional information, *see* May 7th, 2021 *Motion in Compliance with Order Submitting Additional Information and Supplemental Responses to Questions Posed in Technical Conference and Submitting Clarifications*. The Bureau also held a virtual-public hearing on May 12th and 13th, 2021 as scheduled in the April 20th Resolution and Order.

On May 31st, 2021, this honorable Bureau issued and published a Resolution and Order approving LUMA’s Initial Budgets (“May 31st Initial Budgets Resolution and Order”). In a considered Resolution and Order, among others, the Bureau issued the following findings:

- a. LUMA’s three-phased approach to identify needs, develop and prioritize the programs necessary to achieve system remediation and transformation, and subsequent bottoms up approach to develop its Initial Budgets is reasonable and appropriate, *see* May 31st Resolution and Order at page 14;
- b. The budget allocations for activities, including vegetation management, personal protective equipment and worker’s safety, and emergency preparedness and response are reasonable, *id.* at pages 14-18;
- c. LUMA’s Initial Budgets appropriately identify, prioritize, and sequence capital and operational expenditures to improve reliability and resiliency of the Puerto Rico power system, *id.* at pages 18-20;
- d. LUMA’s Initial Budgets do not increase the overall revenue requirements and, therefore, no change is required to the existing base rates or the current rate structure approved in the 2017 Rate Order, *id.* at page 25;
- e. LUMA’s Initial Budgets comply with the 2017 Rate Order, *id.* at page 35;
- f. The proposed plan for activities that LUMA intends to fund with federal Public Assistance (“PA”) is reasonable on a short term-basis, *id.* at page 29;
- g. The proposed budget allocations for activities that will bring the electric system in compliance with national codes and standards and the corresponding

allocations are reasonable and take effective advantage of the new dispositions of Section 428 of the Stafford Act resulting from the Bipartisan Budget Act of 2028, PL 115-123 (115th Congress). *id.* at page 30;

- h. The Initial Budgets are appropriate to accomplish the goals of providing effective remediation and transformation of Puerto Rico's electric system, *id.* at page 35; and
- i. LUMA's Initial Budgets appropriately address the ongoing Title III procedures, *id.*, at page 35.

At pages 36 and 37 of the May 31st Initial Budgets Resolution and Order, this Bureau approved the proposed Initial Budgets for Fiscal Year 2022 and included several reporting requirements.¹ LUMA respectfully requests clarifications or reconsideration of some of the Energy Bureau's reporting determinations. The main purpose of this Motion is to obtain clarity and request revision of several of the requirements set by the Energy Bureau that apply distinctively to LUMA and impose regulatory compliance duties that are not otherwise set in Act 57-2014, Act 14-2019, or other written regulations, directives or memorandums of the Energy Bureau.

With this Motion, LUMA also seeks to highlight that several of the reporting and regulatory requirements included in the May 31st Initial Budgets Order are not consistent with the processes for budget planning, approval, implementation and revisions that already apply to PREPA and/or LUMA pursuant to the OMA and as a certified Electric Power Service Company. These processes originate from separate proceedings before this Energy Bureau, as well as reporting and compliance requirements under the jurisdiction of the Financial Oversight and Management Board of Puerto Rico ("FOMB") and of the P3 Authority as Administrator under the OMA. In requesting

¹ On June 14, 2021, in response to a request by LUMA, the Energy Bureau issued a Resolution and Order on LUMA's spending for the month of June 2021.

clarifications or reconsideration, LUMA also aspires to underscore its distinct role *vis à vis* PREPA and other governmental actors in connection with the statutorily-mandated Integrated Resource Plan (“IRP”), as well as the duties borne by PREPA and other governmental entities regarding compliance with the Renewable Portfolio Standard (“RPS”), per Act 82-2010 and Act 17-2019.

It is respectfully submitted that the May 31st Resolution and Order includes several orders, directives and reporting requirements that impact LUMA individually and its duties and obligations under the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (“OMA”). This honorable Energy Bureau did not state in the May 31st Resolution and Order, the time frame to request clarifications or reconsideration. Given the distinct impact that the reporting and compliance requirements set in the May 31st Initial Budgets Resolution and Order have on LUMA, LUMA respectfully requests that the Energy Bureau consider and adjudicate this request for clarification and reconsideration that is being filed expediently, within twenty-days of issuance of the May 31st Resolution and Order.²

II. Discussion

A. Schedule to Submit FY 2023 Proposed Budget

In Section IV, paragraph 5 of the May 31st Initial Budgets Resolution and Order, this honorable Energy Bureau directed that: “[n]ot later than October 31, 2021, LUMA shall submit to the Energy Bureau the Fiscal Year 2023 proposed budgets following the annual budget

² Reference is made for guidance to Section 11.01 of Bureau Regulation 8543, Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings, pursuant to which a party has twenty days to request reconsideration (providing that “Any party dissatisfied with the Commission’s final decision may file a motion for reconsideration before the Commission, which shall state in detail the grounds supporting the petition and the remedy that, according to petitioner, the Commission should have granted,” and adding that this request shall be filed and served in accordance with the terms and provisions of the Puerto Rico Uniform Administrative Procedure Act, Act 170 of August 12, 1988, which was repealed and substituted by Act 38-2017. Act 38-2017, on Section 3.15, 3 P.R. Laws Ann. § 9655, and allows a party adversely affected by a partial or final resolution or order to request reconsideration within 20 days of the notification of the resolution or order.)

examination process delineated in the 2017 Rate Order.” LUMA respectfully posits that said October 2021 filing requirement is not properly suited to attain the goal of allowing this Energy Bureau to review and approve a workable and reasonable budget that would begin to apply eight months later, starting July 1, 2022.

It is respectfully submitted that if required to file a proposed annual budget on October 31, 2021, LUMA would not be able to meaningfully review financial and spending data of Fiscal Year 2022. The budgeting process for an electric utility takes several months and LUMA would not even have completed the first quarter of the first fiscal year of operations before beginning the budgeting process for Fiscal Year 2023. As a result, LUMA would be forced to submit at best an updated adjustment of the same estimated budget that was filed in the February 24, 2021 Initial Budgets Petition. This update would not have the benefit of material performance and conditions observed during the first six months of LUMA operations.

In addition, the Energy Bureau’s proposed schedule for submission of a budget ten months before the start of the budget year would require the budget to be ready in twelve and create inherent contradictions with the budget timing already required under the OMA.

Per Section 7.3 of the OMA, for each Contract Year³, LUMA shall “no later than ninety (90) days prior to the commencement of such Contract Year, submit to [the P3 Authority] the proposed Budgets for such Contract Year; [save when] . . . any proposed Budget requires a rate adjustment to be approved by PREB [in which case LUMA] . . . shall have the right, at its sole discretion, to submit the proposed Budgets for such Contract Year directly to PREB rather than to

³ “Contract Year” means the period from July 1 through June 30 for each year during that portion of the Term commencing on the Service Commencement Date; provided, however, that (i) the initial Contract Year shall commence on the Service Commencement Date and (ii) the final Contract Year shall end on the fifteenth (15th) anniversary of the Service Commencement Date. Any computation made on the basis of a Contract Year shall be adjusted on a Pro Rata basis to take into account any Contract Year of less than 365/366 days.” OMA at page 9.

Administrator”. See OMA Section 7.3(a). Moreover, the P3 Authority has forty-five days to review the proposed budgets and “notify [LUMA] whether the proposed Budgets are compliant with the applicable Rate Order and [OMA] Section 7.4 [Budget Policy]⁴ . . . , and shall request, acting reasonably, any changes or modifications to the proposed Budgets to conform the proposed Budgets with the applicable Rate Order and Section 7.4 (Budget Policy).” *Id.* Thus, application of an October 31st deadline by the Energy Bureau would mean that LUMA would have to submit a proposed budget to the P3 Authority on or before September 16, 2021. This, in turn, would require LUMA to dedicate the months of June and July 2021, to prepare the proposed budget for Fiscal Year 2023, obtain internal approvals in August 2021 and then file a proposed budget with the P3 Authority who has authority pursuant to Section 6.2(a)(i) of the OMA to review and approve budgets and modifications thereto, to ensure compliance with the Rate Order.

Respectfully, it is not workable nor beneficial to the public interest or the interests of customers, to require LUMA to file a proposed annual budget some five months after commencement, with financial data that could only cover the first month of operations (June 2021) and almost six months before the required submission of a draft fiscal plan to the FOMB. An October 31st deadline to file a proposed budget may be suited for filings that involve the start of a

⁴In pertinent part, OMA Section 7.4 provides that:

The Budgets and the related ServCo staffing levels for each Contract Year shall be designed to be adequate in both scope and amounts to reasonably assure that Operator is able to carry out the related O&M Services in accordance with the Contract Standards and have a reasonable opportunity to earn the Incentive Fee for achieving the Performance Metrics. The Parties further acknowledge and agree that, from time to time, it may be necessary or appropriate to amend or otherwise adjust the Performance Metrics or the Budgets as a result of (i) Force Majeure Events, (ii) Owner Fault, (iii) Outage Events or (iv) additional requirements imposed by Owner, Administrator or any other Governmental Body after approval of the Budgets, in the case of each of clauses (i) to (iv), which (A) have resulted (or are reasonably likely to result) in schedule delays or increased work scope or costs and (B) are not be attributable to Operator’s gross negligence or willful misconduct.

calendar year (January), but LUMA respectfully submits that it is not suited to filing a proposed budget that involves the start of a fiscal year (July).

The October 31st deadline to file the proposed budget for Fiscal Year 2023 does not properly consider that in the months of May or June 2022, the FOMB will certify a fiscal plan for PREPA and that would require LUMA to begin the process of updating its forecasted budget starting in January 2022 and continue through Spring 2022. This year the budget for PREPA's 2022 Fiscal Year was submitted to FOMB at the end of April 2021 and the process kicked off in January. A three-month process is likely the minimum necessary to meet the requirements and complexity of a PREPA annual budget, with a draft budget completed for submission to the FOMB in late April. Thus, it is reasonable to assume that the proposed budget filed on October 2021, would be subject to material revisions in the spring of 2022 when LUMA will review its financial and spending data, projections and assumptions for Fiscal Year 2023.

Given the aforementioned, LUMA respectfully requests that the Energy Bureau revise or reconsider that portion of the May 31st Initial Budgets Resolution and Order that requires LUMA to file a proposed budget for Fiscal Year 2023 on or before October 31, 2021. Instead, LUMA proposes to submit the proposed budget for Fiscal Year 2023 on May 16, 2022; two months prior to the start of Fiscal Year 2022 when the proposed budget is to apply. This will allow LUMA to meet the timeline set forth in OMA Section 7.3 to submit the Budget to the P3 Authority and then incorporate any recommendations from the P3 Authority prior to filing the proposed Budget with the Energy Bureau.

B. Annual Reports on Implementation of Improved Efficiencies and Quantification of Resulting Savings.

LUMA respectfully requests that the Energy Bureau reconsider that portion of the May 31st Initial Budgets Resolution and Order that requires LUMA to provide annual reports on the

implementation of improved efficiencies and quantification of resulting savings. *See* May 31st Initial Budgets Resolution and Order at page 37. It is respectfully submitted that LUMA will endeavor to achieve efficiencies in implementing the spending through the improvement programs and operational costs that the Energy Bureau approved in connection with the Initial Budgets. As part of annual reporting LUMA will describe the resulting efficiencies as a result of the improvements made. However, quantifying resulting savings requires a hypothetical counterfactual with respect to the results of PREPA's spending had PREPA continued operations. Further, given that LUMA's budget was developed from a bottoms-up approach, LUMA does not have baselines that may serve as reference points to quantify savings, nor does PREPA's historical spending represent the same activities as LUMA's planned activities. Thus, it is respectfully submitted that come end of Fiscal Year 2022, LUMA will not have the data or tools to prepare a quantitative report on resulting savings.

Further, improvement programs described as part of the Initial Budgets are intended to provide benefits to the customer, as described in Sections 1.4, and 4.0 of the Initial Budgets filings and in Section 2.5 in each of the improvement programs presented in Appendix D. Many of these improvement programs require multiple years of continuous effort and spending and so any savings in one year would result in accelerating some activities from the next year to encourage advancement of the earlier compliance with public policy, and increase benefits for the public interest, among others.

To be sure, LUMA will track program spending, compare actual to budgeted spending, and report on the progress of the improvement programs that were approved by this honorable Energy Bureau.

LUMA respectfully requests that the Energy Bureau reconsider the portion of the May 31st Initial Budgets Resolution and Order that requires an annual report on the implementation of improved efficiencies and quantification of resulting savings.

C. Long-Range Plan on IRP and RPS Goals

At page 26 of the May 31st Initial Budgets Resolution and Order, the Energy Bureau stated that to ensure compliance with the goals and milestones of the IRP, it will require annual reports from LUMA on its progress. The Energy Bureau further stated that, “[w]ith the first annual report, [it] . . . will require a long-range plan setting forth LUMA’s plan for meeting these goals.” May 31st Initial Budgets Resolution and Order at page 26. In Section IV of the May 31st Initial Budgets Resolution and Order the Energy Bureau did not include a directive to file a long-range plan for compliance with IRP and RPS goals, nor does the May 31st Initial Budgets Resolution and Order explain what the long-range plan shall contain. LUMA respectfully submits that such a reporting requirement should not be imposed in this proceeding and would be duplicative of the long-range planning process within the IRP process and other ongoing and related efforts and proceedings such as the Distribution Planning Proceeding NEPR-MI-2019-0011, and the Optimization Proceeding of Minigrd Transmission and Distribution Investments, NEPR-MI-2020-0016.

Upon implementing energy transformation programs, LUMA will continue to align its activities and spending with the goals and objectives of the IRP and will work collaboratively with other governmental actors towards compliance with the RPS goals set in Act 82-2019 and Act 17-2019. However, as the Energy Bureau aptly recognized in the May 31st Initial Budgets Resolution and Order, and as the approved IRP and Modified Action Plan show, meeting IRP and RPS goals involves responsibilities of other actors such as PREPA, P3 Authority, the FOMB and collaborations and actions by other governmental entities. *See* Case No. NEPR-2018-AP-0001

(IRP proceeding) and Case No. NEPR-MI-2020-0012 (involving PREPA's Renewables Procurement Plan).

LUMA respectfully posits that requiring additional annual reports on IRP and RPS goals would be duplicative of ongoing reporting requirements and efforts in several proceedings that the Energy Bureau has opened to implement different provisions of the IRP and reach RPS targets and where LUMA has had active participation even prior to Service Commencement, including the Optimization Proceeding of MiniGrid Transmission and Distribution Investments, NEPR-MI-2020-0016; the Demand Response proceeding NEPR-MI-2021-0006; the Regulation for Energy Efficiency NEPR-MI-2021-0005; the Puerto Rico Test for Demand Response and Energy Efficiency, NEPR-MI-2021-0009; the Distribution Planning proceeding, NEPR-MI-2019-0011, and the Interconnection Process Reports of the Puerto Rico Electric Power Authority, NEPR-MI-2019-0016.

The aforementioned shows not only that LUMA is not solely responsible for ensuring that IRP and RPS goals are met, but also that there are several ongoing proceedings separate from this proceeding on Initial Budgets, to meet the goals of the IRP and to work towards reaching the statutory goals on RPS. LUMA respectfully requests that the Energy Bureau reconsider the suggestion that it will require an annual report with long-range plans to be filed by LUMA in connection with LUMA's Initial and prospective budgets. In the alternative, LUMA requests that the Energy Bureau clarify what it means by a long-range plan and explain the relationship and differences between said long-range plan, and the duties that LUMA bears in the aforementioned proceedings and in connection with preparing for the next IRP cycle.

D. Monthly Reporting on Capital Programs

At paragraph 3 of the May 31st Initial Budgets Resolution and Order, the Energy Bureau stated that LUMA "shall submit to the Energy Bureau, on a monthly basis, summary reports

outlining Federal Funding activity.” The May 31st Initial Budgets Resolution and Order then includes a recitation of requirements for said reports.⁵ LUMA respectfully requests clarification and guidance on how this reporting requirement will square with the reporting requirements that are already established by the Energy Bureau in the ongoing proceeding on PREPA’s 10 Year Infrastructure Plan, Case No. NEPR-MI-2021-0002.

As LUMA explained in a Motion in Compliance with Order filed on June 15, 2021 in Case No. NEPR-MI-2021-0002, LUMA respectfully suggests that a technical workshop be scheduled to discuss matters related to federal funding, the intricacies, requirements logistics and applicable timelines for submissions and approvals of capital projects that require approvals by the Puerto Rico Central Office for Recovery, Reconstruction and Resiliency (“COR-3”) and the Federal Emergency Management Agency (“FEMA”). This will allow for implementation of efficient and streamlined processes for LUMA to meet federal funding requirements and at the same time be able to report to the Energy Bureau on spending initiatives that involve federal funding without duplication and avoiding undue burdens that could delay efforts to obtain approvals and execute projects. Collaborative discussions will ensure that in the short, medium, and long terms, LUMA is able to progress work to meet its goals “to maximize the potential realization of the Federal Funding anticipated or received and ensure such funding is administered in accordance with all

⁵ Per the May 31st Initial Budgets Resolution and Order:

The summary reports shall include aggregated information showing the cumulative amount of federal funding applied for by LUMA and/or PREPA, broken out by the source of such funding, the incremental amount of federal funding applied for in the reporting month, and both the cumulative and monthly amount of federal funding received. The monthly reports should also include a list of Project Worksheets (PWs) currently under review by federal agencies, a list of new PWs submitted in the reporting month, and for each reported PW, a status report describing its stage of review by FEMA and other federal government agencies. The PWs shall also be summarized by spending category (substation, distribution, transmission, etc.).

such requirements,” (Section 5.9 (a) of the Puerto Rico Transmission and Distribution System Operation and Management Agreement), to carry out the Recovery and Transformation of the electric system, and achieve compliance with energy public policy.

WHEREFORE, LUMA respectfully requests that the Bureau **take notice** of the aforementioned, **reconsider and clarify** the May 31st Initial Budgets Resolution and Order as requested in this Motion and **schedule** a technical workshop to discuss reporting requirements on capital investments that involve federal funding.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 21st day of June 2021.

I hereby certify that I filed this motion using the electronic filing system of this Energy Bureau and that I will send an electronic copy of this motion to the attorneys for PREPA, Joannely Marrero-Cruz, jmarrero@diazvaz.law; and Katuska Bolaños-Lugo, kbolanos@diazvaz.law.



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