

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

NEPR Received: Jul 13, 2021 10:03 PM

IN RE:

REVIEW OF THE PUERTO RICO
ELECTRIC POWER AUTHORITY'S
SYSTEM REMEDIATION PLAN

CASE NO.: NEPR-MI-2020-0019

SUBJECT: Request for Clarifications or
Reconsideration of Portions of June 23rd
Resolution and Order Approving LUMA's
proposed SRP.

**REQUEST FOR CLARIFICATIONS OR RECONSIDERATION OF PORTIONS
OF JUNE 23rd RESOLUTION AND ORDER APPROVING LUMA'S SYSTEM
REMEDICATION PLAN**

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 ("Energy Bureau") a Request for Approval of the System Remediation Plan ("SRP Petition"), pursuant to LUMA's obligations under Section 4.1 (d) of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated as of June 22, 2020, executed by and among LUMA, the Puerto Rico Electric Power Authority ("PREPA") and the Puerto Rico Public-Private Partnerships Authority ("P3 Authority") ("OMA").

On April 6, 2021, this honorable Energy Bureau issued a Resolution and Order on "Completeness" of LUMA's System Remediation Plan ("SRP") ("April 6th SRP Order"). This honorable Energy Bureau stated that additional discussion on "key matters, supporting data, analysis, and assessments [is] necessary for the Energy Bureau[] [to conduct an] adequate evaluation [of the System Remediation Plan]." *See* April 6th SRP Order at page 2. In the April 6th

SRP Order this Energy Bureau directed LUMA to, within ten days on April 16, 2021, provide information and responses to the requests for information that were included in Attachment A (“Requests for Information”). *Id.* On April 16, 2021, LUMA submitted its responses to the seventeen Requests for Information that were included in Attachment A to the April 6th SRP Order. *See Exhibit 1 (“Responses to Requests for Information”).*

On April 23, 2021, this Energy Bureau issued a Resolution and Order that set a procedural calendar in this proceeding and included a technical conference held on May 14th and 17th, 2021 (“April 23rd Order”). Thereafter, on May 20, 2021, LUMA filed additional information and responses to requests for additional information, *see May 20th, 2021 Motion in Compliance with Order Submitting Additional Information and Supplemental Responses to Questions Posed in Technical Conference and Submitting Clarification*

On June 23, 2021, this honorable Energy Bureau issued a Resolution and Order approving LUMA’s proposed SRP (“June 23rd Order”). Among others, the Energy Bureau determined that “LUMA has developed a reasonable approach to identify and prioritize both, physical asset deficiencies and business process deficiencies, and has developed initiatives designed to remediate those systems.” June 23rd Order at page 37. The Energy Bureau included several reporting requirements. *Id.* at pages 37 and 38.

LUMA respectfully requests clarifications or reconsideration of some statements included in the June 23rd Order and portions of reporting determinations. With this Motion, LUMA seeks to highlight that the requirement to report on SRP spending every two months is not aligned with the reporting requirements that LUMA will undertake in connection with its approved budget for Fiscal Year 2022 in Case No. NEPR-MI-2021-0004. LUMA is proposing to align reporting on SRP spending with required reporting on approved budgets.

This honorable Energy Bureau did not state in the June 23rd Order the time frame to request clarifications or reconsideration. Given the distinct impact that the reporting and compliance requirements set in the June 23rd 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 June 23rd Order.¹

II. Discussion

A. Proposed Quarterly Reporting

In Section IV, paragraphs 1 through 3 of the June 23rd Order, this honorable Energy Bureau directed that starting on September 15, 2021, LUMA shall file reports every two months on implementation of the SRP that shall include:

1. Actual spending amounts, broken down by spending initiative/portfolio, and reflecting in detail any variances from the System Remediation Plan;
2. A detail[ed] timeline per portfolio with sufficient detail to allow the Energy Bureau to assess project status for System Remediation Plan capital expenditures and operational initiatives; and
3. Any capital expenditure or operational initiatives that are behind schedule, compared to the initial System Remediation Plan timeframe and a detail explanation as to the cause of the delay and the corrective actions implemented to prevent further delays, as applicable. *Id.*

¹ 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.)

LUMA respectfully requests that the Energy Bureau amend the reporting requirement set at every two months. LUMA proposes to file such reports every quarter to align with Initial Budgets reporting requirements and provide a more fulsome report.

Per the Energy Bureau's Resolution and Order approving LUMA's Initial Budgets, issued on May 31, 2021 in Case No. NEPR-MI-2021-0004, LUMA will file quarterly reports. *See* May 31st Resolution and Order, Case No. NEPR-MI-2021-0004 at pages 36-37. LUMA notes that there is significant overlap in information to be reported within the Initial Budgets reporting requirements and the SRP reporting requirements. The quarterly reporting requirements under Initial Budgets includes reporting the actual spending amounts reflecting in detail variances from the Initial Budgets filing. This would include reporting against the 69 programs included in the Initial Budgets filing, of which, 46 are part of the System Remediation Plan.

LUMA proposes to align the timeline for the SRP spending reporting requirement with the quarterly reports that are to be submitted in connection with budgetary spending in Case No. NEPR-MI-2021-0004. LUMA respectfully understands that this proposal will be efficient both for LUMA and the Energy Bureau, will avoid duplication of efforts and will allow for consistent and clear reporting across multiple proceedings. The quarterly reports will include the information for each quarter per SRP Portfolio and Program as well as a summary of year to date spending per SRP Portfolio and Program.

LUMA respectfully requests that the Energy Bureau set the date for filing the quarterly reports 45 days after each quarter closes. This allows for typical quarter end activities and checks to be completed and for alignment with financial statements. This timeframe will allow LUMA to avoid providing preliminary data to the Energy Bureau in order to meet alternative and more accelerated timelines.

B. Reporting on Modifications

At page 38 of the June 23rd Order, the Energy Bureau directed that LUMA shall submit “for [the] Energy Bureau's review and approval, any future proposed modifications (e.g., decrease, abandonment and/or expansions of initiatives) to the conditionally approved System Remediation Plan, prior to the implementation of such modifications. Such proposal shall include the rationale and justification for the proposed change, a detailed explanation and analysis of the impact of such modifications to other initiatives and the overall System Remediation Plan goals.” LUMA respectfully understands this requirement should not apply to initiatives, as LUMA designed its SRP pursuant to Spending Portfolios. It is respectfully submitted that, in compliance with this order, LUMA will request approval by the Energy Bureau when the need arises for modifications that involve increases in the approved budgets for SRP Portfolios.

C. Clarification of Statements

In the June 23rd Order, the Energy Bureau issued several statements with references to information filed by LUMA in this proceeding. LUMA hereby requests that the Energy Bureau clarify or reconsider the following statements:

1. At page 10, the Energy Bureau included the following statement: “LUMA stated that its inspection work allowed it to verify and supplement findings contained in the other reports that were examined and contributed to the development of asset remediation *initiatives* included in the System Remediation Plan.” (emphasis added). The Energy Bureau cited for support page 31 of LUMA’s SRP. *See* footnote 39. It is respectfully submitted that this statement does not accurately reflect the content of the SRP. At page 31 of the SRP, LUMA explained that the information gathered in inspections contributed to developing initiatives generally; not just SRP initiatives. As further explained in the SRP, LUMA’s assessment

during the second phase of the Front-End Transition Plan lead to the development of 600 initiatives. *See* SRP at page 23. However, not all of those initiatives were included in SRP programs. *Id.* Rather, the initiatives developed were bundled into programs of similar, interdependent initiatives and additional risk analysis was made to determine programs that comprise the SRP that was approved by this Energy Bureau. *Id.*; *see also* TC-RFI-LUMA-MI-21-0019-210514-PREB-004, filed on May 19, 2021 (“LUMA screened Improvement Programs for inclusion in the SRP and **did not screen Initiatives specifically**[,]”; “certain activities are categorized as SRP and certain activities are not categorized as SRP but, due to their interdependent nature, are included together within specific Improvement Programs or Initiatives.”). LUMA respectfully requests that the Energy Bureau correct the statement at page 10 to properly reflect the process that LUMA followed in developing the SRP Portfolios and Programs that were approved on June 23rd and clarify that not all of the initiatives identified with the benefit of, among others, inspections conducted during the Front End Transition Period, were included in the SRP approved by the Energy Bureau.

2. Relatedly, at page 12 of the June 23rd Order, the Energy Bureau stated that LUMA identified “600 programs.” LUMA identified 600 initiatives and then aggregated those 600 initiatives into 69 SRP programs. It is respectfully requested that this honorable Energy Bureau correct this statement.
3. It is respectfully submitted that the correct reference at footnote 40 at page 11 of the June 23rd Order is slide 10 to LUMA’s Presentation for the Technical Conference, filed on May 10, 2021.

WHEREFORE, LUMA respectfully requests that the Bureau **take notice** of the aforementioned and **reconsider or clarify** the June 23rd Order as requested in this Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 13th day of July 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.



DLA Piper (Puerto Rico) LLC
500 Calle de la Tanca, Suite 401
San Juan, PR 00901-1969
Tel. 787-945-9107
Fax 939-697-6147

/s/ Margarita Mercado Echegaray
Margarita Mercado Echegaray
RUA NÚM. 16,266
margarita.mercado@us.dlapiper.com