

**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 and/or  
Reconsideration of May 31 Resolution and  
Order Approving LUMA's Initial Budgets,  
Filed by LUMA on June 21, 2021**

**RESOLUTION AND ORDER**

On February 24, 2021, LUMA Energy, LLC as Management Co., 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* ("Initial Budgets Petition")<sup>1</sup>, pursuant to Act 57-2014<sup>2</sup>, as amended by Act 17-2019<sup>3</sup>; and per LUMA's obligations under Section 4.2 (e) of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("OMA"), dated June 22, 2020, executed by and among the Puerto Rico Electric Power Authority ("PREPA"), the Puerto Rico Public-Private Partnerships Authority ("P3 Authority") and LUMA.

Based upon 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") through which it approved LUMA's Initial Budgets Petition, corresponding to the budget for Fiscal Year 2021-2022 ("FY 2022"). The Energy Bureau also directed LUMA to comply with several reporting requirements.

On June 8, 2021, LUMA filed with the Energy Bureau a document titled *Request for Clarification or Amendment of May 31<sup>st</sup> Resolution and Order Approving LUMA's Initial Budgets* ("Amendment Request"). In the Amendment Request, LUMA asks the Energy Bureau to amend the May 31 Resolution to include approval of LUMA's proposed budget for June 2021 ("June 2021 Budget"), as proposed by LUMA in the Initial Budgets Petition.<sup>4</sup>

<sup>1</sup> See In Re: Review of LUMA's Initial Budgets, Case No. NEPR-MI-2021-0004, February 24, 2021.

<sup>2</sup> Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

<sup>3</sup> Known as the *Puerto Rico Energy Public Policy Act*.

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



On June 14, 2021, the Energy Bureau issued a Resolution and Order (“June 14 Resolution”) through which it directed 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 Energy Bureau directed LUMA to spend the remaining monies for FY2021 prudently and emphasized that with this determination, the Energy Bureau did not, explicitly or implicitly, yield its jurisdiction and regulatory powers over the LUMA and PREPA budgets.

On June 21, 2021, LUMA filed before the Energy Bureau a document titled *Request for Clarification and/or Reconsideration of May 31<sup>st</sup> Resolution and Order Approving LUMA’s Initial Budgets* (“Reconsideration Request”). In the Reconsideration Request, LUMA asks the Energy Bureau to amend the May 31 Resolution to clarify or reconsider some of the Energy Bureau’s reporting requirements. LUMA also asserts that certain reporting requirements are not consistent with procedures applicable to PREPA or LUMA as set forth in the OMA and with other reporting and compliance requirements.<sup>5</sup>

LUMA requests clarification and/or reconsideration of four specific reporting requirements included in the May 31 Resolution. We will discuss each request separately.

1. *Schedule to Submit FY 2023 Proposed Budget*

LUMA requests to be permitted to file its proposed budget for FY 2023 on May 16, 2022, instead of October 31, 2021. LUMA asserts that if required to file by October 31, 2021, it would be unable to meaningfully review the spending of FY 2022 and that the resulting budget proposal would be little more than a restatement of its Initial Budgets proposal. LUMA also states that the timing of the requirement conflicts with Sections 7.3 and 7.4 of the OMA. LUMA also contends that the requirement does not coordinate with LUMA’s submission to the Financial Oversight and Management Board for Puerto Rico (“FOMB”) of the proposed budget for review and certification in May or June 2022.<sup>6</sup>

In accordance with Section 20.17 of the OMA, “no provision of this Agreement shall be interpreted, construed or deemed to limit, restrict, supersede, supplant or otherwise affect, in each case in any way, the rights, responsibilities or authority granted to PREB under Applicable Law with respect to the T&D System, Owner or Operator.” Moreover, no obligation and/or duty may be imposed to the Energy Bureau under the OMA.<sup>7</sup> To that effect, Article 6.22(a)(8) of Act 57-2014 states that every electric power service company, such as LUMA, shall submit to the Energy Bureau, among others, any specific information, data,

<sup>5</sup> See Reconsideration Request, p. 3.

<sup>6</sup> *Id.*, pp. 5-7.

<sup>7</sup> See Resolution and Order, In Re: Certificate of Energy Compliance, Case No. NEPR-AP-2020-0002, June 17, 2020, p. 9.



document, or report that the Energy Bureau may deem necessary in the exercise of its duties, as applicable to the electric power company.

In accordance with the January 10, 2017, Final Resolution and Order<sup>8</sup> and the March 8, 2017, Final Resolution on Reconsideration<sup>9</sup> in Case No. CEPR-AP-2015-0001 (jointly, "Final Rate Order"), PREPA, and now LUMA as its agent, are required to submit annual budgets or three-year rate proposals to the Energy Bureau for review and approval. LUMA's budget proposals for FY 2023 must provide the Energy Bureau adequate time for review prior to the start of the next fiscal year and provide LUMA with an appropriate opportunity to reflect meaningful financial and operational data.

In the Reconsideration Request, LUMA proposes May 16, 2022, as the deadline to submit its proposed budgets to the Energy Bureau.<sup>10</sup> According to LUMA, this date is two months prior to the start of FY 2023.<sup>11</sup>

LUMA's fiscal year commences on July 1 of each year. Therefore, May 16, 2022, is not two months prior to the start of FY 2023, but rather a little under six weeks. Based on prior experience, the Energy Bureau will require at least double that time to review LUMA's proposed budgets.

After careful consideration of LUMA's arguments, the Energy Bureau **DETERMINES** that a date closer to the end of the current fiscal year is more appropriate for LUMA to gather all necessary information in order to submit a meaningful budget proposal. However, as stated before, the proposed May 16, 2022, deadline is not adequate. Therefore, the Energy Bureau **REJECTS** LUMA's proposal and **ORDERS** LUMA to submit its proposed FY 2023 budget **on or before April 1, 2022**.

It is important to note that this modification is made exclusively for the purposes of the Fiscal Year 2023 budget. All other provisions of the Final Rate Order remain in effect.

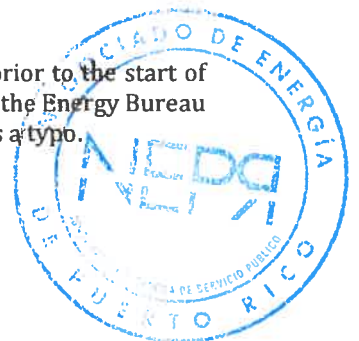
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<sup>8</sup> See *In Re: Puerto Rico Electric Power Authority Rate Review*, Case No. CEPR-AP-2015-0001, Final Resolution and Order, January 10, 2017., p. 149.

<sup>9</sup> See *In Re: Puerto Rico Electric Power Authority Rate Review*, Case No. CEPR-AP-2015-0001, Final Resolution, March 8, 2017.

<sup>10</sup> See Reconsideration Request, p. 7.

<sup>11</sup> *Id.* In the Reconsideration Request, LUMA stated that May 16, 2022, was two months prior to the start of Fiscal Year 2022. Notwithstanding, all preceding discussion referenced FY 2023, therefore, the Energy Bureau will interpret LUMA's statement as it pertains to FY 2023 and take the FY 2022 reference as a typo.



2. *Annual Reports on the Implementation of Improved Efficiencies and Quantification of Resulting Savings.*<sup>12</sup>

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LUMA asserts, that although it will endeavor to achieve efficiencies in spending and will describe the efficiencies that will result from the improvements it makes, it will be unable to quantify its cost savings and efficiencies in FY 2022.<sup>13</sup> In support of its argument, LUMA indicates that such quantification would require it to compare its operation to PREPA's spending, had PREPA continued its operations.<sup>14</sup> LUMA also points to the absence of a baseline with which to compare resulting efficiencies and the difference between historic PREPA spending and LUMA's planned activities, because its Initial Budgets were developed using a bottoms-up approach.<sup>15</sup> LUMA states that improvement programs may require multiple years of effort and savings in one year may accelerate savings in the next. LUMA also states that at the end of FY 2022, it will not have the data or tools to prepare a quantitative report on resulting savings. LUMA asserts that it will track program spending, compare actual to budgeted spending and report on the progress of the improvement programs approved by the Energy Bureau.<sup>16</sup>

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As the Energy Bureau stated on the May 31 Resolution, one of the persuasive components of LUMA's proposal, when it was selected as Operator of the T&D system, was the efficiencies, resulting on savings, that LUMA was expected to implement.<sup>17</sup> It is appropriate to expect that LUMA can demonstrate results. As such, LUMA should be able to quantify savings attributable to these asserted efficiencies.

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Monitoring these efficiencies and the quantification of the resulting savings will allow LUMA to measure the level of success and/or determine there is need for revision. Therefore, the Energy Bureau **MAINTAINS** the requirement for annual reports on the implementation of improved efficiencies and quantification of resulting savings. The Energy Bureau **CLARIFIES** that the reports for FY 2022 may reflect the evolving nature of the efficiency efforts.

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<sup>12</sup> See Reconsideration Request, p. 7.

<sup>13</sup> See Reconsideration Request, p. 8.

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

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*, p. 8.

<sup>17</sup> See May 31 Resolution, p. 31.



3. RPS Goals Long-Range Investment Plan and IRP Milestones Budget Impacts

In the Reconsideration Request, LUMA asks the Energy Bureau to reconsider the requirement to provide annual reports regarding LUMA's progress in meeting the goals and milestones of the IRP and RPS, as well as the requirement to file a long-range plan for meeting the goals.<sup>18</sup> Alternatively, LUMA requests the Energy Bureau to clarify the requirement.<sup>19</sup>

In support of its request, LUMA asserts that the reporting requirement imposed by the Energy Bureau in its Order "would be duplicative of the long-range reporting process in the IRP and other ongoing and related efforts and proceedings such as the Distribution Planning Proceeding NEPR-MI-2019-0011, and the Optimization Proceeding of Minigrid Transmission and Distribution Investments NEPR-MI-2020-0016" and that 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.<sup>20</sup> LUMA states that, "[u]pon 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 entities towards compliance with RPS goals set forth in Act 82-2010 and Act 17-2019."<sup>21</sup>

The Energy Bureau is aware of the ongoing proceedings and that the goals and milestones may be developed in coordination with other entities or in other proceedings. The Energy Bureau **CLARIFIES** that the requirement for long range plans is to assure that LUMA complies with the Approved IRP and Modified Action Plan<sup>22</sup> ("Approved IRP") as stated in CEPR-AP-2018-0001 and all the proceedings established for the implementation of the Approved IRP. The Energy Bureau **ELIMINATES** the annual reports requirements to long-range plan on IRP and RPS goals as set forth on page 26 of the May 31 Resolution.

4. Monthly Reporting on Capital Programs

LUMA requests clarification on how the requirement of monthly reporting on Federal Funding activity will coordinate with the reporting requirements already established by the

<sup>18</sup> See Reconsideration Request, p. 9.

<sup>19</sup> *Id.*, p. 9.

<sup>20</sup> *Id.*, pp. 9-10.

<sup>21</sup> *Id.*, pp. 9 - 10.

<sup>22</sup> See *In Re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, Final Resolution and Order on the Puerto Rico Electric Authority's Integrated Resource Plan, August 24, 2020.





Energy Bureau in PREPA's 10-Year Infrastructure Plan, Case No. NEPR-MI-2021-0002.<sup>23</sup> LUMA suggests that a technical workshop be established relative to Capital Projects that require approvals of the Puerto Rico Central Office for Recovery, Reconstruction and Resiliency ("COR3") and the Federal Emergency Management Agency ("FEMA"). LUMA asserts this will facilitate implementation of a streamlined and efficient process to meet federal funding requirements and that collaborative discussions will maximize potential realization of Federal Funding. LUMA asserts this will enable it to effectively implement recovery and transformation of the electric system, in accordance with public policy.<sup>24</sup>

Effective procurement, project prioritization, and administration of Federal Funding is essential for the successful transformation of the Puerto Rico electric system. The proposed Initial Budgets reflected the ongoing nature of potential planning and utilization of federal funding. The Energy Bureau found this satisfactory in the short term but expressed concerns with regards to the funding procedures that LUMA will implement and about the transition of federal funding responsibility from PREPA to LUMA.<sup>25</sup> Because of the importance of effectively obtaining and utilizing federal funding, the Energy Bureau held a Technical Conference in Case No. NEPR-MI-2021-0002<sup>26</sup> on July 12, 2021, at 9:30 a.m. In order to avoid any potential duplicity of reporting with Case No. NEPR-MI-2021-0002, the Energy Bureau **MODIFIES** Section IV paragraph 3 of the May 31 Resolution to read as follows:

3. LUMA shall submit to the Energy Bureau, on a quarterly basis, summary reports outlining federal funding activity. These 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 quarter, and both the cumulative and quarterly amount of federal funding received.

The Energy Bureau **WARNS** PREPA and LUMA that, noncompliance with any provision of this Resolution and Order, may result in the imposition fines under Act 57-2014 and the applicable Energy Bureau's regulations and/or any other appropriate administrative sanctions, as deemed appropriate by the Energy Bureau.

Be it notified and published.

<sup>23</sup> *Id.*, pp. 10 - 11.

<sup>24</sup> *Id.*, pp. 10 - 12.

<sup>25</sup> May 31 Order, p. 28.

<sup>26</sup> *See In Re: Review PREPA's 10 Year Infrastructure Plan, Case No. NEPR-MI-2021-0002.*



  
Edison Avilés Deliz  
Chairman

  
Angel R. Rivera de la Cruz  
Associate Commissioner

  
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 July 16, 2021. I also certify that on July 16, 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, July 16, 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 July 16, 2021.

  
Sonia Seda Gaztambide  
Clerk

