

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

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| NEPR Received: Sep 30, 2021 5:25 PM |
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IN RE:

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

CASE NO.: NEPR-MI-2020-0019

SUBJECT: Response to August 25th
Resolution and Order and Request for
Remedies Regarding Quarterly Reporting
Requirements.

**RESPONSE TO AUGUST 25TH RESOLUTION AND ORDER AND REQUEST FOR
REMEDIES REGARDING QUARTERLY REPORTING REQUIREMENTS**

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:

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”) (“T&D OMA”).

After several procedural steps, including requests for information and a technical conference to consider LUMA’s SRP, 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.

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 the 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[ed] explanation as to the cause of the delay and the corrective actions implemented to prevent further delays, as applicable.

Id.

On July 13, 2021, LUMA filed a *Request for Clarifications or Reconsideration of Portions of June 23rd Resolution and Order Approving LUMA’s System Remediation Plan* (“July 13th Motion”). Among others, LUMA requested a revision to the reporting requirements to file the reports quarterly and within forty five days (45) after each quarter closes. On August 25, 2021, the Energy Bureau issued a Resolution and Order addressing the July 13th Motion. In pertinent part, the Energy Bureau modified the bimonthly reporting requirement directing that LUMA should “file the reports specified in the June 23 Resolution on a quarterly basis. The due

date for such reports will be no later than thirty (30) days after the close of the reported quarter.”
See August 25th Resolution and Order at page 3.

LUMA respectfully requests that the Energy Bureau hear and consider LUMA’s concerns with the requirement to file quarterly reports within thirty (30) days after each quarter closes. Filing quarterly reports within thirty (30) days after each quarter closes is not operationally achievable. If said requirement is maintained, LUMA foresees it will constantly need to request extensions, thereby requiring the Energy Bureau to adjudicate individual requests for extensions and exposing LUMA to imposition of sanctions or administrative fines.

Filing of quarterly reports after the end of each quarter requires LUMA to undertake substantial internal administrative review, approval and coordination of LUMA operations. LUMA requires 45 days, at a minimum, to ensure accurate, quality, consistent and compliant information. The quarterly reporting cycle for LUMA includes requirements for reporting on the budget, operations, capital projects included in the FY2022 budget (as approved by the Energy Bureau in NEPR-MI-2021-0004), programs included in the System Remediation Plan as well as other improvement programs.

It is important to note that LUMA’s quarterly reporting will be submitted to this Energy Bureau, and will also be provided to the P3A in order to comply with reporting requirements under the T&D OMA and to the Financial Oversight and Management Board for Puerto Rico (“FOMB”). The requested time is required to provide a complete and fulsome review of financial information, preparation of variance explanations, and compilation of an overall report which encompasses the totality of LUMA operations.

Echoing Commissioner Ángel Rivera’s comments made in the context of the FCA and PPCA reconciliations in case No. NEPR-MI-2020-0001 on August 26, 2021, accuracy in

reporting and minimizing errors is key to effective and transparent regulatory oversight of LUMA. Forty-five (45) days is needed to complete, revise and file the quarterly reports required by the June 23rd Order. This a reasonable period of time in order to provide accurate information with useful discussion and to reduce the risk to file corrected reports.

It is respectfully submitted that LUMA has not been able to find an equivalent precedent for a thirty-day deadline for quarterly reporting such as the one that the Energy Bureau has directed LUMA should file. The Energy Bureau did not specify the basis for its 30 day requirement, nor does the record of this proceeding provide support for said requirement. For example, under the T&D OMA, LUMA's reporting and accounting operations and responsibilities include "year-end and interim unaudited financial statements for Operator within one hundred twenty (120) days after the end of each fiscal year **and forty-five (45) days after the end of each fiscal quarter.**" *See* T&D OMA, Annex I, Section VI, B(4) (emphasis added). Also, the Securities and Exchange Commission Form Q-10 quarterly reports required for publicly held companies in the United States pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) and Rule 13a-13 (17 CFR 240.13a-13) or Rule 15d-13 (17 CFR 240.15d-13), are filed forty or forty-five days after the end of each quarter, depending on whether the issuer of securities or registrant is an accelerated filer.¹ Furthermore,

¹The term accelerated filer is defined as:

[A]n issuer after it first meets the following conditions as of the end of its fiscal year:

- (i) The issuer had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of \$75 million or more, but less than \$700 million, as of the last business day of the issuer's most recently completed second fiscal quarter;
- (ii) The issuer has been subject to the requirements of section 13(a) or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) for a period of at least twelve calendar months; and
- (iii) The issuer has filed at least one annual report pursuant to section 13(a) or 15(d) of the Act;

as the public records of the Puerto Rico Fiscal Agency and Financial Advisory Authority indicate, the Puerto Rico Electric Power Authority (“PREPA”) has a practice of filing quarterly financial reports in 45 days after each quarter closes. *See e.g.*, PREPA Report of Q1 of FY 2021 dated November 11, 2020; PREPA Report of Q2 of FY 2021 dated February 2, 2021; PREPA Report of Q3 of FY 2021 dated May 17, 2021; and PREPA Report of Q4 of FY 2020 dated August 14, 2020, available at <https://www.aafaf.pr.gov/financial-documents/prepa-quarterly-budget-to-actual-reports/>. Also, as part of its O&M Services, LUMA provides accounting and reporting operations related to the T&D System.

It is submitted that a reporting requirement of forty-five (45) days is required due to the nature and extent of the reports required by this Energy Bureau in connection with LUMA’s SRP, Initial Budgets, and 10 Year Plan, which include reporting on actual spending and identification of variances from the approved fiscal year 2022 budget. 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, including reporting on LUMA’s approved Budget for FY 2022, Case No. NEPR-MI-2021-0004 and LUMA’s Federal Funded summary activity requirements within Case No. NEPR-MI-2021-0004.

LUMA respectfully requests that the Energy Bureau set a date for filing the quarterly reports at least forty-five (45) days after each quarter closes. This is aligned with finance

and

(iv) The issuer is not eligible to use the requirements for smaller reporting companies under the revenue test in paragraph (2) or (3)(iii)(B) of the “smaller reporting company” definition in this section, as applicable.

operational realities within LUMA, requirements with the OMA, and with similar reporting timelines such as SEC reporting requirements. It will also allow for typical quarter-end activities and checks to be completed and for alignment with financial statements. Given the interrelated and overlapping nature of the financial, operational, capital investment and SRP reports, a timeframe of less than 45 days after the quarter closes, would effectively require LUMA to complete substantially all of its quarterly reporting before the quarter actually closes to meet an earlier deadline. A timeframe of 45 days after closing will allow LUMA to avoid providing preliminary data and will minimize reporting inaccuracies and the duplication of effort. If LUMA is required to report on a preliminary basis, adjustments may have to be included in subsequent reports, creating a more complicated trail for tracking key quarterly data.

This request for a period of forty-five (45) days after each quarter closes, to file quarterly reports is made in good faith to ensure that LUMA is able to comply with the Energy Bureau's June 23rd Order and minimize a need to request extensions of time for quarterly filings.

WHEREFORE, LUMA respectfully requests that the Bureau **take notice** of the aforementioned and **rule** that LUMA may file the quarterly reports required by the June 23rd Order, within forty-five days after each quarter closes.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 30th day of September 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 Katiuska Bolaños-Lugo, kbolanos@diazvaz.law.



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