

**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:** Evaluation of LUMA's September 17, 2021 Motion in Compliance.

**RESOLUTION AND ORDER**

**I. Introduction**

On February 24, 2021, LUMA<sup>1</sup> 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>2</sup> under Act 57-2014,<sup>3</sup> as amended by Act 17-2019,<sup>4</sup> and pursuant to 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.

On May 31, 2021, the Energy Bureau issued a Resolution and Order ("May 31 Resolution"),<sup>5</sup> through which it approved LUMA's Initial Budgets Petition, corresponding to the budget for Fiscal Year 2022 ("FY22"). 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").<sup>6</sup> In the Amendment Request, LUMA asked the Energy Bureau to amend the May 31 Resolution to include approval of LUMA's proposed budget for June 2021 ("June 2021 Budget"), as submitted by LUMA in the Initial Budgets Petition.<sup>7</sup>

On June 14, 2021, the Energy Bureau issued a Resolution and Order ("June 14 Resolution"),<sup>8</sup> 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 that LUMA spend all remaining monies for FY 2021 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.<sup>9</sup>

<sup>1</sup> LUMA Energy, LLC ("ManagementCo") and LUMA Energy ServCo, LLC. ("ServCo"), (jointly referred as "LUMA").

<sup>2</sup> See *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, February 24, 2021.

<sup>3</sup> Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

<sup>4</sup> Known as the *Puerto Rico Energy Public Policy Act*.

<sup>5</sup> See *Resolution and Order*, In Re: Review of LUMA's Initial Budgets, Case No. NEPR-MI-2021-0004, May 31, 2021.

<sup>6</sup> See *Request for Clarification or Amendment of May 31<sup>st</sup> Resolution and Order Approving LUMA's Initial Budgets*, In re: Review of LUMA's Initial Budgets, Case No. NEPR-MI-2021-0004, June 8, 2021.

<sup>7</sup> Amendment Request, p. 4, ¶ 10.

<sup>8</sup> See *Resolution and Order*, In re: Review of LUMA's Initial Budgets, Case No. NEPR-MI-2021-0004, June 14, 2021.

<sup>9</sup> See June 14 Resolution, p. 2.



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On June 21, 2021, LUMA filed with 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").<sup>10</sup> In the Reconsideration Request, LUMA requested the Energy Bureau to amend the May 31 Resolution to clarify or reconsider some of the Energy Bureau's reporting requirements. LUMA also asserted that certain reporting requirements were not consistent with procedures applicable to PREPA or LUMA in the OMA and with other reporting and compliance requirements.<sup>11</sup> On July 16, 2021, the Energy Bureau issued a Resolution and Order ("July 16 Resolution"),<sup>12</sup> through which it approved in part and denied in part, LUMA's Reconsideration Request.

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On July 16, 2021, LUMA filed with the Energy Bureau, a document titled *Request for Modification of Approved Budget for Fiscal Year 2022* ("Modification Request").<sup>13</sup> The Modification Request includes an Exhibit A titled *Modification of Approved Fiscal year 2022, Initial Budgets* ("Exhibit A Modification"). In the Modification Request, LUMA asserts the need to revise the Fiscal Year 2022 Approved Budget to conform it to the FOMB<sup>14</sup> amended PREPA Budget for Fiscal Year 2022, as certified by the FOMB on July 1, 2021.<sup>15</sup> LUMA stresses that the resulting impacts do not result in the increased rates.<sup>16</sup> LUMA requests that the Energy Bureau approve a revised FY 2022 Budget under the revisions identified and explained in the Modification Request.<sup>17</sup>

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On September 9, 2021, the Energy Bureau issued a Resolution and Order ("September 9 Order") in which it determined that the Modification Request was incomplete.<sup>18</sup> The Energy Bureau found that the Modification Request lacked an in-depth discussion of key matters, supporting data, analysis, and assessments for the Energy Bureau to make an adequate evaluation.<sup>19</sup> The Energy Bureau ordered LUMA to, on or before September 17, 2021, (i) provide the information identified in Attachment A of the September 9 Order; (ii) modify the Modification Request; and (iii) supplement its answers if additional information becomes available or if submitted information changes.<sup>20</sup>

On September 17, 2021, LUMA filed a document titled *Motion in Compliance with September 9<sup>th</sup> Order Submitting Revised Request for Modification of Approved Budget for Fiscal Year 2022 and Responses to Requests for Information* ("Motion in Compliance").<sup>21</sup> In the Motion in Compliance, LUMA refers to the FOMB certified FY 2022 Budget and provides additional information in response to the requests in Attachment A of the September 9 Order. LUMA asserts that it is not in a position to provide much of the information requested in the

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<sup>10</sup> See Request for Clarification and/or Reconsideration of May 31<sup>st</sup> Resolution and Order Approving LUMA's Initial Budgets, In re: Review of LUMA's Initial Budgets, Case No. NEPR-MI-2021-0004, June 21, 2021.

<sup>11</sup> See Reconsideration Request, p. 3.

<sup>12</sup> See Resolution and Order, In re: Review of LUMA's Initial Budgets, Case No. NEPR-MI-2021-0004, July 16, 2021.

<sup>13</sup> See Request for Modification of Approved Budget for Fiscal Year 2022, In re: Review of LUMA's Initial Budgets, Case No. NEPR-MI-2021-0004, July 16, 2021.

<sup>14</sup> Financial Oversight and Management Board for Puerto Rico ("FOMB").

<sup>15</sup> See Modification Request, p. 3, ¶ 7.

<sup>16</sup> *Id.*

<sup>17</sup> See Modification Request, p. 4.

<sup>18</sup> See September 9 Resolution, Section IV, p. 5.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*, Section V, p.5.

<sup>21</sup> See in general terms, Motion in Compliance with September 9<sup>th</sup> Order Submitting Revised Request for Modification of Approved Budget for Fiscal Year 2022 and Responses to Requests for Information, In re: Review of LUMA's Initial Budgets, Case No. NEPR-MI-2021-0004, September 17, 2021.



September 9 Order and that such information could be more appropriately obtained elsewhere.<sup>22</sup>

## II. LUMA's Motion in Compliance

In the Exhibit A of the Motion in Compliance, LUMA provides a revised version of the Modification Request ("Exhibit A Revised Modification"), in which it highlights the changes from the Exhibit A Modification in the Modification Request. The Motion in Compliance also provides, as Exhibit B, the responses to the Requests for Information identified in Attachment A of the September 9 Order.<sup>23</sup> The responses are summarized herein as Attachment 1.

LUMA asserts that its responses include information in its possession, custody, and control. LUMA states it is not in a position to provide information on PREPA GenCo and HoldCo forecasts or the energy demand update, as the analysis and data was developed by PREPA and pertains solely to the competence of PREPA. LUMA states it provided notice to PREPA of the information requested in Attachment A of the September 9 Order and the inquiry should be directed to PREPA.<sup>24</sup>

LUMA similarly states it is not in a position to provide further information on PREPA's exit from Title III of the Puerto Rico Oversight, Management, and Economic Stability Act. LUMA states that inquiry on that subject should be directed to PREPA and/or the FOMB. LUMA states it informed the FOMB of the requests for information in Attachment A of the September 9 Order. Other responses by LUMA are addressed below. LUMA affirms that it will supplement the Responses to Attachment A of the September 9<sup>th</sup> Order if additional information becomes available or if the submitted information changes.<sup>25</sup>

## III. Discussion and Analysis

The Energy Bureau approved the Initial Budgets submitted by LUMA in accordance with the OMA, considering the information and documents provided by LUMA, both in its initial filing and in subsequent submissions. LUMA now seeks modification of the approved Initial Budget. However, LUMA has not submitted adequate supporting documents and information to justify the modification request. Instead, LUMA points to PREPA, FOMB and others to provide the requested information. The Energy Bureau cannot adequately review and approve the modification request given its lack of information.

As stated before, Attachment 1 to this Resolution and Order summarizes the information that the Energy Bureau requested in the September 9 Order and LUMA's responses. The Energy Bureau highlights here the areas of concern arising from LUMA's responses to specific information requests. The Energy Bureau emphasizes that all requirements of information must be satisfied to enable the Energy Bureau to effectively evaluate LUMA's Modification Request.

- **RFI-LUMA-MI-2021-0004-210909-PREB-001**

In its response, LUMA explains that it did not perform an independent assessment of the revised energy forecast but used the updated load forecast developed by PREPA and certified by the FOMB. The Energy Bureau has not received the methodology or supporting material demonstrating how the load forecast was developed and is unable to assess and make any determination relative to the technical soundness of these forecasts. In accordance with the OMA, Section 5.13 Generation-Related Services, among LUMA's responsibilities as System Operator, is the responsibility to

<sup>22</sup> *Id.*, pp. 2 – 3, ¶ 4-6.

<sup>23</sup> *Id.*, p. 13.

<sup>24</sup> *Id.*, pp. 2 – 3.

<sup>25</sup> *Id.*, p. 3.



develop load and energy forecasts. LUMA explained in its Initial Budgets Petition that the load forecast it relied on for developing the Initial Budgets was provided by PREPA and reviewed by LUMA.<sup>26</sup> This is a system operator core function and as such, LUMA, having assumed responsibility as System Operator on June 1, 2021, should be the entity developing load projections for the utility, and in this instance, justifying and supporting modifications to the original load forecast.

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- **RFI-LUMA-MI-2021-0004-210909-PREB-002**

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LUMA asserts that PREPA must respond to sections (a), (b)(1), and (d) of this inquiry. Regarding the sections of this inquiry responded to by LUMA, additional response is required. LUMA's response to section (c), referencing discussions between PREPA, LUMA, and the P3A, does not provide the rationale for changes to the scope of shared services. In addition, although LUMA did not respond directly to the question posed relative to potential reduction in shared services costs, it appears from Attachment 1, referenced in section (c), that LUMA shared services costs are reduced by \$21,854,998 excluding the 2% contingency. This must be clarified.

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- **RFI-LUMA-MI-2021-0004-210909-PREB-003**

LUMA asserts that PREPA must respond to this inquiry.

*DM*

- **RFI-LUMA-MI-2021-0004-210909-PREB-004**

LUMA asserts that PREPA must respond to this inquiry.

*DM*

- **RFI-LUMA-MI-2021-0004-210909-PREB-005**

LUMA asserts that PREPA or the FOMB are in a better position to explain PREPA's expected exit from Title III. It is important, for financial planning purposes, that PREPA identify a realistic date for Title III exit. Under the supplementary terms period LUMA's fixed fee stays at \$115 MM/yr. until PREPA exits from Title III. In its original Initial Budgets filing, LUMA used a projected date for exiting Title III of December 31, 2021. The Initial Budgets approved by the Energy Bureau did not contemplate supplementary period fixed fees past December 31, 2021. This date has been extended for six months in LUMA's Modification Request, without support for that determination.

- **RFI-LUMA-MI-2021-0004-210909-PREB-006**

LUMA asserts that it is unable to respond regarding FOMB Advisor's fees as they are estimated by FOMB and allocated to PREPA. PREPA must provide this information.

- **RFI-LUMA-MI-2021-0004-210909-PREB-007**

LUMA asserts that PREPA must respond to this inquiry.

- **RFI-LUMA-MI-2021-0004-210909-PREB-008**

LUMA explains that an error caused the apparent significant change in Load reduction Due to Efficiencies. LUMA explains the correct calculation and specifies where referenced in the FOMB Certified Budget.

#### IV. Conclusion

Upon review of the Motion in Compliance, the Energy Bureau found that it lacked an in-depth discussion of key matters, supporting data, analysis, and assessments needed by the Energy Bureau to make an adequate evaluation with respect to LUMA's Modification Request. Therefore, the Energy Bureau **DETERMINES** that the Motion in Compliance is **INCOMPLETE**.

<sup>26</sup> Initial Budgets Petition, Exhibit I, p. 34.



Further, the Energy Bureau **ORDERS** PREPA to respond on or before February 18, 2022, to the information requests in Attachment A of the September 9 Order where LUMA, as its agent, indicates that the response must be provided by PREPA and as further set forth herein. This excludes the responses to Request of Information 001(c), 002(b)(2), and 008, to which LUMA substantively responded and to Request of Information 001(a) and (b) to which LUMA is directed to respond.

Given that LUMA, as the System Operator, is responsible for the operation and planning of the electric grid, the Energy Bureau **DETERMINES** that not performing an independent assessment of the revised energy demand forecast is a fatal flaw. To rectify, the Energy Bureau **ORDERS** LUMA to undertake such evaluation and advise the Energy Bureau of the results and basis for its determination regarding the updated load forecast it utilizes in its Modification Request.

The Energy Bureau may propound follow-up or additional requirements of information, if necessary.

Be it notified and published.

  
Edison Avilés Deliz  
Chairman

  
Ángel 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 January 21, 2022. I also certify that on January 21, 2022 a copy of this Resolution and Order was notified by electronic mail to the following: [margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com); [jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law) and [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law). I also certify that today, January 21, 2022, 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 January 21, 2022.

  
Sonia Seda Gaztambide  
Clerk



## Attachment 1

### RFI-LUMA-MI-2021-0004-210909-PREB-001

In the Modification Request, LUMA presented an updated demand forecast for FY 2022 of 16,673 GWh as compared to the energy demand forecast in its Initial Budgets filing of 15,865 GWh. LUMA represented that it relied on energy demand forecasts prepared by PREPA and/or FOMB, using macro-economic assumptions developed by FOMB.

- a. LUMA was asked to describe the steps it took to assess and verify the revised energy demand forecast and provide associated workpapers

LUMA responded that it did not perform an independent assessment of the revised energy demand forecast as the updated load forecast was provided to LUMA when it was certified by the FOMB.

- b. LUMA was asked to describe its load forecasting methodology and compare any load forecast it developed to the proposed energy demand forecast.

LUMA responded that the December 2020 updated load forecast it used as a basis for Initial Budgets was developed using consistent macro-economic factors as the FOMB certified 2020 PREPA Fiscal Plan in effect. LUMA also asserted that the load forecasts developed by PREPA for the FOMB certified 2021 Fiscal Plan used the latest macro-economic factors as determined by the AAFAF and provided by FOMB to PREPA.

LUMA asserts that the Puerto Rico Fiscal Agency and Financial Advisory Authority (AAFAF) provides the macro-economic factors across Puerto Rico to ensure compliance and consistency with approved fiscal plans and certified budgets and that it is the legal body empowered by Act 2 on January 18, 2017, to oversee compliance with the certified budget and fiscal plan approved pursuant to the Puerto Rico Oversight, Management and Economic Stability Act of 2016 (PROMESA).

LUMA states that as it discussed in the Modification request, the differences of load forecasts as prepared by PREPA in December 2020 for the Initial Budgets and May 2021, for the FOMB certified 2021 PREPA Fiscal Plan result from an update of macro-economic assumptions due to higher overall economic growth, as well as updated actual load information available from December 2020 to May 2021.

- c. Provide actual PREPA/LUMA peak demand and energy consumption profiles for FY 2021.

LUMA referenced RFI-LUMA-MI-2021-0004-210909-PREB-001c Attachment 1, provided separately.

### RFI-LUMA-MI-2021-0004-210909-PREB-002

In the Modification Request, LUMA states that due to a proposed higher energy demand forecast, base rate revenue is \$60M higher than in its approved Initial Budgets, which is partially offset by increased expenditures of \$39M and concludes there is no need to change base rates. LUMA also states that the higher Generation Budget than in the approved Initial Budgets, is primarily due to "increased estimates of pension liabilities and increased employee benefits for PREPA Generation."

- a. LUMA was asked to explain why increased PREPA Legacy costs in the FOMB budget and incorporated into LUMA's requested changes to the Initial Budget do not result in lower shared Services costs assigned to LUMA.



LUMA responded that it cannot provide additional information on changes to GenCo and PREPA Legacy costs made by PREPA per section 7.3(e)(ii) of the OMA, that it was not consulted on the change and that PREPA must provide a response.

- b. LUMA was asked to provide the rationale for increased PREPA GenCo pension costs and whether the additional cost increases 401k contributions of active LUMA employees and if not, to describe how additional pension costs are allocated.

LUMA responded by referencing its response in (a) above and asserting that PREPA must provide a response. LUMA also stated that the changes proposed for PREPA GenCo pension costs do not affect LUMA's budgets.

- c. LUMA was asked to provide, regarding shared services, a detailed list of services provided by LUMA as compared with services provided by PREPA Legacy employees and reconcile the discrepancy between the FOMB budget and LUMA's proposed revised Initial Budgets.

LUMA responded that through discussions between PREPA, LUMA and the P3A, the shared services scope evolved from the scope presented in LUMA's Initial Budgets to the final scope determined in May 2021. A revised forecast and budget of the corresponding shared services for FY 2022 costs were determined effective May 21, 2021 and incorporated in the Services Agreement dated June 1, 2021.

LUMA referenced RFI-LUMA-MI-2021-0004-210909-PREB-002c - Attachment 1, provided separately.

- d. LUMA was asked to clarify whether PREPA Legacy or LUMA will be providing physical security at PREPA generation facilities and to reconcile any discrepancy between the FOMB budget and LUMA's proposed revised Initial Budgets.

LUMA responded similarly to (a) above and that PREPA must provide a response.

#### **RFI-LUMA-MI-2021-0004-210909-PREB-003**

In the Modification Request, Exhibit A, p. 1, LUMA references PREPA Legacy and Generation and Additional Budget Expenditures.

- a. LUMA was asked to identify the components of each and quantify the Energy Bureau approved and proposed modified amounts and to cite where this corresponds to the FOMB certified budget.

LUMA responded by providing a table listing fees and variances and citing corresponding components of the FOMB Certified Budget. It additionally responded as per RFI-LUMA-MI-2021-0004-210909-PREB-002 (a) above and that PREPA must provide a response.

#### **RFI-LUMA-MI-2021-0004-210909-PREB-004**

In the Modification Request, LUMA presents revised component values of fuel and Purchased power that vary significantly from the PREB approved values.

- a. LUMA was asked to explain the significant variance between the revised and approved fuel and purchased power values.

LUMA responded that it cannot provide additional information on changes to fuel costs made by PREPA per section 7.3(e)(ii) of the OMA, that the revised forecast was made without consultation and review by LUMA and that PREPA must provide a response.



**RFI-LUMA-MI-2021-0004-210909-PREB-005**

In the Modification Request, LUMA stated that it moved the Title III exit date to June 30, 2022 once the FOMB Certified 2021 Fiscal Plan was made publicly available.

- a. LUMA was asked to explain how it identified the June 30, 2022 date as the appropriate date to utilize for the PREPA Title III exit.

LUMA responded that it could not respond on PREPA's expected exit of Title III and that PREPA or FOMB are in a better position to provide an explanation.

**RFI-LUMA-MI-2021-0004-210909-PREB-006**

In the Modification Request, LUMA presents revised FOMB Advisor costs and LUMA fees.

- a. LUMA was asked to provide the rationale for the updated FOMB advisor costs and for the variances identified for both updated FOMB advisor costs and LUMA fees.

LUMA responded that it is unable to respond regarding FOMB Advisor's fees as they are estimated by FOMB and allocated to PREPA.

LUMA states it is requesting an Interim Period Service Fee of \$115 M to reflect a full year before PREPA exits Title III rather than the originally approved \$57.5 which reflected half year Interim Service Fee based on the original expected exit date of December 31, 2021.

**RFI-LUMA-MI-2021-0004-210909-PREB-007**

In the Modification Request, LUMA cites \$16 M additional expenditures as mainly resulting from increased estimates of pension liabilities and increased employee benefits for PREPA Generation and these changes resulted from discussions between PREPA and FOMB, and elsewhere states that the Generation budget includes Shared Services, and the increase mainly consists of increased benefits for PREPA Generation.

- a. LUMA was asked to quantify pension liabilities increased employee benefits, shared services, and other components and to identify and quantify changes to each upon which the modification request is based and provide supporting documentation. LUMA was also asked to cite where referenced in the FOMB Certified Budget.

LUMA responded that it cannot provide additional information on changes to the GenCo costs made by PREPA per section 7.3(e)(ii) of the OMA, that the revised forecast was made without consultation and review by LUMA and that PREPA must provide a response.

**RFI-LUMA-MI-2021-0004-210909-PREB-008**

In the Modification Request, LUMA included a significant difference in the proposed versus approved Load Reduction Due to Efficiencies.

- a. LUMA was asked to explain the significant variance and where it was referenced in the FOMB certified budget.

LUMA responded that an error was made in the Modification Request regarding these numbers and provides additional information.

