

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

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CASE NO.: NEPR-MI-2021-0004

IN RE: REVIEW OF LUMA’S INITIAL
BUDGETS

SUBJECT: Motion to Inform Compliance
with the April 11 Order

MOTION TO INFORM COMPLIANCE WITH THE APRIL 11 ORDER

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority (PREPA), through its counsel of record, and respectfully submits and prays as follows:

I. INTRODUCTION

1. On January 10, 2017, the Energy Bureau of the Public Service Regulatory Board (the “Energy Bureau”) entered 2017 Rate Order¹ establishing the revenue requirement and allocated the revenues in rates for Fiscal Year 2018, and also, established a procedure for updating those rates for the years thereafter.

2. The 2017 Rate Order further stated that “[t]o ensure that PREPA’s rates do not exceed its *reasonable* costs, the [Energy Bureau] will review PREPA’s budgets and spending *annually*, using two different procedures.” 2017 Rate Order at p. 149, ¶ 439 (emphasis added). One procedure is the “three-year rate case” and the other procedure is “one year budget examinations” that occur between each three-year rate case. *Id.*

3. On June 22, 2020, PREPA, together with the Puerto Rico Public-Private Partnerships Authority (“P3A”), LUMA Energy, LLC and LUMA Energy ServCo,² LLC signed the *Puerto Rico*

¹ *Final Resolution and Order* entered in case no. CEPR-AP-2015-0001, *In Re: Puerto Rico Electric Power Authority Rate Review* (Jan 10, 2017) (the “2017 Rate Order”).

² LUMA Energy, LLC and LUMA Energy ServCo are herein after referred to as LUMA.

Transmission and Distribution System Operation and Maintenance Agreement (OMA) by which LUMA is tasked with operating the transmission and distribution system (T&D System). The T&D System is defined in the OMA as PREPA’s “transmission and distribution system and related facilities, equipment and other assets related to the transmission and distribution system in which PREPA has an ownership or leasehold interest.” OMA at p. 1, Recitals.

4. On February 24, 2021, LUMA filed before the Energy Bureau a document titled *Petition for Approval of Initial Budgets and Related Terms of Service* (“LUMA Initial Budget Petition”). In the LUMA Initial Budget Petition, LUMA requested the Energy Bureau’s review and approve its initial budget (“LUMA Initial Budget”) pursuant to Section 4.2 of the OMA. On April 22, 2021, LUMA filed a document titled *Motion submitting PREPA’s Generation Budget in Compliance with Order* (“April 22 Motion”). Through the April 22 Motion, LUMA submitted the fiscal year 2021-2022 (FY 2022) Generation Budget prepared by PREPA. After several procedural events, on May 31, 2021, the Energy Bureau entered a *Resolution and Order* by which it, *inter alia*, conditionally approved LUMA Initial Budget (the “May 31 Order”), which included the proposed FY 2022 Generation Budget allocation. The Energy Bureau further stated that it had “reviewed PREPA’s proposed generation budget and [found] that the corresponding allocations [were] reasonable.” May 31 Order at p. 21.

5. The May 31 Order also provided that LUMA had to submit, no later than October 31, 2021, the fiscal year 2022-2023 (FY 2023) proposed budgets following the annual budget examination process delineated in the 2017 Rate Order. On June 8, 2021, LUMA requested the Energy Bureau to amend the May 31 Order to be permitted to file its proposed budget for FY 2023 on May 16, 2022,

instead of October 31, 2021,³ and, on July 16, 2021, the Energy Bureau amended the May 31 Order and directed LUMA to submit the FY 2023 proposed budget by April 1, 2022.⁴

6. Ahead of the April 1, 2022's filing deadline, PREPA, LUMA and the P3A held multiple meetings and discussions regarding FY 2023 budgeting matters, after which PREPA submitted to LUMA its FY 2023 proposed generation budget, for purposes of LUMA's consolidation with LUMA's transmission and distribution (T&D) budget and submission to the Energy Bureau.

7. On April 1, 2022, PREPA submitted its FY 2023 Generation Budget to LUMA for consolidation with the LUMA proposed budget.

8. On April 2, 2022, LUMA presented to the Energy Bureau a document titled *Submission of Annual Budgets for Fiscal Years 2023 Through 2025* (the "LUMA FY23 Budget Submission"). The LUMA FY23 Budget Submission includes the FY 2023 LUMA budget and an allocation for the PREPA Generation Budget based on LUMA's view of the revenue allocation, which is lower than the PREPA proposed FY 2023 Generation Budget submitted by PREPA to LUMA on April 1, 2022. The PREPA proposed FY 2023 Generation Budget was included by LUMA in its filing on the second to last page of their filing. LUMA Budget Submission, Exhibit 1 at Appendix D (pdf page 467). LUMA informed the Energy Bureau that it expects that the P3A will "align the Generation Budget" with LUMA's proposed revenue allocation for Generation. LUMA FY23 Budget Submission at p. 16.

9. On April 8, 2022, PREPA filed a document titled *Notice of Intent to File Detailed Explanation of the Generation Budget* whereby PREPA wished to inform the Energy Bureau that it would make a filing in the captioned case with more detailed information in support of the proposed

³ LUMA, *Request for Clarification or Amendment of May 31st Resolution and Order Approving LUMA's Initial Budgets* (June 8, 2021).

⁴ Resolution and Order (July 16, 2021).

FY 2023 Generation Budget that was consolidated and presented by LUMA as part of the LUMA FY23 Budget Submission, for consideration of and comments by the Energy Bureau (the “Notice”). The purpose of this, and related filings, was to keep the Energy Bureau timely and well informed about PREPA’s generation budgeting efforts, as part of the overall coordination and works with LUMA and the P3A.

10. In response, on April 11, 2022, the Energy Bureau entered a *Resolution and Order* (“April 11 Order”) addressing the Notice and ordered PREPA to:

1. Submit immediately to LUMA any supporting materials, work papers used in the development of the PREPA Generation Budget as well as any presentations and or information and documents to be used in any appearance during hearings and/or technical conferences before the Energy Bureau, for their filing before the Energy Bureau by LUMA;
2. Work together with LUMA and make the appropriate coordination efforts to ensure the timely and appropriate filing of all documentation necessary for the Energy Bureau’s review and evaluation; and
3. Ensure that all relevant PREPA personnel and/or consultants involved in the development of the Generation Budget is available for any Technical Conference(s) that the Energy Bureau may schedule under the instant case and duly prepared to answer any questions the Energy Bureau may have regarding the foregoing.

PREPA hereby informs the Energy Bureau that it has submitted to LUMA and the P3A the supporting materials and work papers used in the development of the PREPA FY 2023 Generation Budget, in compliance with the April 11 Order. PREPA further states unequivocally for the record that PREPA is cognizant of the material increases in fuel costs and resulting adjustments to customers’ electricity bills. Therefore, and based on an equitable Revenue Allocation methodology, the budget requested by PREPA for the Generation Directorate falls within the limits of the 2017 Rate Order and does not require a base rate increase.

II. DISCUSSION

11. In the April 11 Order, the Energy Bureau states that: “[a]s per section 7.3(a) of the OMA, LUMA has the obligation to file a proposed consolidated budget before the Energy Bureau that shall include the Generation Budget which is provided by PREPA.” (citation omitted). Respectfully, PREPA does not agree with this interpretation of the OMA, and the resulting limit on PREPA’s ability to appear before PREB to defend and present its Generation Budget.

12. First and foremost, Section 7.3(a) states

For any Contract Year (other than the initial Contract Year, for which the procedures for the Initial Budgets set forth in Section 4.2(e) (*ManagementCo Responsibilities – Initial Budgets*) shall apply, or a year in which a rate adjustment approved by PREB enters into effect, in which case the Budgets used in connection with obtaining such rate adjustment shall be used), [LUMA] shall, no later than ninety (90) days prior to the commencement of such Contract Year, submit to [P3A] the proposed Budgets for such Contract Year; provided that if any proposed Budget requires a rate adjustment to be approved by PREB, [LUMA] shall have the right, at its sole discretion, to submit the proposed Budgets for such Contract Year directly to PREB rather than to [P3A]. As promptly as practicable in any Contract Year, and sufficiently in advance to allow [LUMA] to comply with the ninety (90) day period set forth above, [PREPA] shall prepare and deliver to [LUMA] the Generation Budget *for consolidation* with the Operating Budget and the Capital Budgets submitted to [P3A]. Administrator shall, acting reasonably, review such proposed Budgets to ensure compliance with the applicable Rate Order and Section 7.4 (*Budget Policy*). Within forty-five (45) days following its receipt of such Budgets, [P3A] shall notify [LUMA] whether the proposed Budgets are compliant with the applicable Rate Order and Section 7.4 (*Budget Policy*), 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*). [P3A] and [LUMA] shall collaborate in good faith to resolve any differences with respect to such proposed Budgets as promptly as practicable.⁵

13. It is evident from Section 7.3(a) copied above, that the budgeting process envisioned therein is solely designed to have LUMA consolidate (not pass judgement over or modifying of) the generation budget with the LUMA proposed budget for submission to the P3A. The P3A is then called to identify whether the proposed budget complies or not with the applicable Rate Order.

⁵ Capitalized terms in this paragraph shall be ascribed the meaning provided in the OMA.

14. The only instance in which the Energy Bureau is mentioned in Section 7.3(a) is to address a scenario that requires a rate adjustment (which is not the case at hand). There is no other provision in Section 7.3(a) or within the OMA that precludes PREPA in any way from appearing before PREB to support and defend the FY 2023 Generation Budget request.

15. As additional context, Section 5.6(a) of the OMA provides for the instances in which LUMA may act as agent of PREPA and these are: (i) represent PREPA before the Energy Bureau with respect to any matter related *to the performance* of any of the *O&M Services*⁶ provided by LUMA under the OMA, (ii) prepare all *related* filings and other submissions before PREB and (iii) represent PREPA before any Governmental Body and any other similar industry or regulatory institutions or organizations having regulatory jurisdiction. Clearly, LUMA's representation as PREPA's agent before PREB does not include generation related matters which are outside the scope of the performance of O&M Services, as defined in the OMA.

16. In light the above, PREPA respectfully submits that

- a. Nothing in the OMA requires PREPA to exclusively use LUMA to file on its behalf filings pertaining to the generation budget;
- b. The OMA does not limit PREPA's right to appear before PREB to defend and sustain its proposed Generation Budget and/or the applicable revenue allocation;
- c. PREPA, as owner of the PREPA assets, has standing to present to the Energy Bureau any documentation in support of the FY 2023 Generation Budget; and
- d. PREPA is currently the proper and only party with the standing to explain and argue to support the FY 2023 Generation Budget.

⁶ The OMA scope of services is detailed in Annex A of the OMA.

17. Moreover, as is evident from a plain reading of the May 31 Order, the requirement for LUMA to submit the FY 2023 budget to the Energy Bureau stems from said order, *not* from Section 7.3(a) of the OMA. In the May 31 Order, the Energy Bureau adopted the “one year budget examinations” process of the 2017 Rate Order and ordered LUMA to submit the FY 2023 budget to the Energy Bureau.⁷

III. CONCLUSION

18. As required by Section 7.3(a) of the OMA, PREPA complied with the only requirement such Section 7.3(a) imposes to PREPA: PREPA prepared and delivered to LUMA the FY 2023 Generation Budget for *consolidation* with the LUMA budget and subsequent submittal to P3A on April 1, 2022.⁸

19. Although PREPA has the right to submit the FY 2023 Budget support workbooks directly before this Honorable Bureau, in compliance with the April 11 Order, PREPA hereby informs the Energy Bureau that today it has submitted to LUMA and the P3A the FY 2023 Generation Budget support workpapers, which it was intending to file directly before this Honorable Bureau. The documents were submitted immediately after they were completed. PREPA expects that LUMA will submit these materials, as produced by PREPA, to the Energy Bureau immediately. PREPA advances that it does not assert any confidentiality claim over those materials and the materials should be made available to the public as soon as possible.

20. Regarding April 11 Order’s requirement of working “together with LUMA and make the appropriate coordination efforts to ensure the timely and appropriate filing of all documentation

⁷ May 31 Order at p. 37, ¶ 5 (“Not later than October 31, 2021, LUMA shall submit to the Energy Bureau the Fiscal Year 2023 proposed budgets following the annual budget examination process delineated in the 2017 Rate Order.”) The deadline to present the proposed budgets was later changed to April 1, 2022. *See supra* at ¶ 5.

⁸ Per Section 7.3(a), the only role that LUMA has in connection with the Generation Budget is to consolidate it with its Operational Budget and the Capital Budgets submitted to P3A.

necessary for the Energy Bureau’s review and evaluation”, as explained in item 6 of this Motion, ahead of the April 1, 2022’s filing deadline, PREPA, LUMA and the P3A held multiple meetings and discussions regarding FY 2023 budgeting matters. During these meetings, PREPA was available to discuss budget matters with LUMA and P3A and, in its commitment with the budget process, PREPA delivered the FY 2023 Generation Budget to LUMA on time for the April 1, 2022’s filing.

21. Lastly, PREPA hereby confirms that the relevant PREPA personnel and/or consultants involved in the development of the FY 2023 Generation Budget will be available for any technical conference that the Energy Bureau may schedule under the instant case.

WHEREFORE, it is respectfully requested that the Energy Bureau note PREPA’s compliance with the April 11 Order.

RESPECTFULLY SUBMITTED.

In San Juan Puerto Rico, this 14th day of April 2022.

s/ Katuska Bolaños-Lugo
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CERTIFICATE OF SERVICE

It is hereby certified that I have filed the foregoing with the Clerk of the Energy Bureau using the electronic filing system and also that I have served a copy upon to Margarita Mercado Echegaray, margarita.mercado@us.dlapiper.com.

In San Juan Puerto Rico, this 14th day of April 2022.

s/ Katuska Bolaños-Lugo
Katuska Bolaños-Lugo