

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

NEPR

Received:

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IN RE: REVIEW OF LUMA'S
INITIAL BUDGETS

CASE NO. NEPR-MI-2021-0004

**SUBJECT: Motion to Inform Status of
Negotiations Relating to Generation Budget
and in Compliance with Order of June 15,
2022**

**MOTION TO INFORM STATUS OF NEGOTIATIONS
RELATING TO GENERATION BUDGET AND IN COMPLIANCE WITH ORDER OF
JUNE 15, 2022**

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:

1. On April 2, 2022 at 12:15am LUMA filed the Annual Budgets with the Energy Bureau in compliance with the July 16, 2021 Resolution & Order and submitted the budgets to the P3A in compliance with the *Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement* (“T&D OMA”). The budgets included LUMA’s allocation of total spending limits to remain compliant with the 2017 Rate Order among the budgets and included a Generation Budget as provided by PREPA to LUMA on April 1, 2022. LUMA fully complied with the PREB’s requirements by submitting the consolidated Fiscal Year 2023 to Fiscal Year 2025 Annual Budgets on April 2, 2022.

2. On May 11, 2022 the Puerto Rico Public-Private Partnerships Authority or (“P3A”) notified LUMA that it had reviewed the proposed Annual Budgets and concluded that LUMA’s Fiscal Year 2023 Budget is compliant with the 2017 Rate Order.

3. On May 19, 2022, this Puerto Rico Energy Bureau (“Energy Bureau”) issued a Resolution and Order (“May 19 Order”) whereby it summarized the procedural history of the present matter; set forth its proceeding on the Annual Budgets for fiscal years 2023 through 2025 (“Annual Budgets 2023-2025”) submitted by LUMA; issued certain requirements for information and established a procedural schedule in this proceeding.

4. In what is pertinent here, this honorable Energy Bureau scheduled a Virtual Technical Conference for June 10, 2022 and ordered LUMA to file the presentation to be used during said conference on or before June 7, 2022.

5. This Energy Bureau stated that “[d]uring the Virtual Technical Conference, LUMA shall present and discuss thoroughly the proposed FY2023 Budgets. LUMA representatives and their consultants must be prepared to answer questions under oath from the Energy Bureau, its staff, and consultants, regarding its presentation and all aspects of the proposed FY2023 Annual Budgets.” *See*, May 19 Order at page 8.

6. In compliance with the May 19 Order, through separate filings dated May 26, June 3 and 7, 2022, LUMA and PREPA submitted their responses to the Energy Bureau’s Requirements for Information.¹

7. On June 7, 2022, this honorable Energy Bureau entered a Resolution and Order whereby it set the Agenda for the Virtual Technical Conference. On the same date, LUMA filed its presentation for the Virtual Technical Conference as per the May 19 Order.

8. Since filing its application, LUMA has been preparing for the Virtual Technical Conference in compliance with this honorable Bureau’s directive to be prepared to “present and

¹ The ROIs totaled 116 requirements, including subparts. LUMA responded to all of them, except for Requirements nos. A7, A8, A9, F1, F2, F3(A)-(C), F4, F5(A)-(E), F6(A)-(E), F7, F8, F9(A), F10(A)-(D) which were responded by PREPA.

discuss thoroughly the proposed FY2023 Budgets” and have its “representatives and consultants...prepared to answer questions under oath from the Energy Bureau...regarding its presentation and all aspects of the proposed FY2023 Budgets.”

9. LUMA’s preparation as per the May 19 Order required the input of LUMA employees and consultants. In addition, twenty-nine LUMA employees and consultants appeared at the June 10 Virtual Technical Conference to offer testimony and were prepared, as instructed by this Energy Bureau, to answer the honorable Bureau’s questions regarding the Annual Budgets for the period of 2023-2025.

10. On June 10, 2022, at the outset of the Virtual Technical Conference, the Energy Bureau issued a bench order postponing the conference to allow LUMA and PREPA the week to develop a budget proposal within the 2017 Rate Order or preparing for a rate amendment. The Energy Bureau provided that the Technical Conference would continue on June 17, 2022.

11. LUMA moved for reconsideration of the bench order and it was denied. This Energy Bureau soon thereafter closed the record and ended the proceedings. The parties were directed to file motions with any arguments or requests that they may have.

12. LUMA is committed to complying with this honorable Energy Bureau’s orders and to that end have had extensive meetings and discussions with PREPA, the P3A and the Financial Oversight and Management Board for Puerto Rico (“FOMB”) to develop a consolidated budget compliant with the 2017 Rate Order. Activities included meetings on Friday, June 10, 2022 between the parties and coordinating for a June 13, 2022 meeting for which representatives from LUMA met in person with representatives from the P3A, the FOMB and PREPA to discuss the consolidation and to develop a schedule for the week, which included having a follow up meeting

among the same participants in the evening on June 14, 2022 and working sessions throughout June 15, 2022.

13. In the evening of June 14, 2022, PREPA cancelled its attendance 15 minutes prior to the start of the meeting, however the other parties met and one PREPA member joined the call to reschedule it for June 15, 2022 in the evening.

14. On June 15, 2022, three separate meetings were held among the parties to review the PREPA Holding Company Fiscal Year 2023 Budget, the PREPA Generation Fiscal Year 2023 Budget, and for the rescheduling of the June 14, 2022 meeting.

15. On June 15, 2022, this Energy Bureau entered a Resolution and Order (the “June 15 Order”) whereby it required LUMA to *certify* the following information in anticipation of the Virtual Technical Conference:

- a. LUMA has concluded all the actions required by the Parties of the OMA to obtain a consolidated budget, including, but not limited to any budget dispute resolution available to the Parties.
- b. LUMA assures that the FY2023 consolidated Budget takes into consideration all savings LUMA has been able to achieve for such budget and such savings are made available to both the T&D Budget and the Generation Budget, which along with other measures, assures that a rate increase is not required.
- c. LUMA will use such consolidated budget, in full compliance and according to the OMA, during the June 17 Technical Conference.

16. LUMA respectfully takes issue with the June 15 Order insofar as it requires a certification that is not contemplated by the laws and regulations applicable to the approval of the proposed Annual Budgets nor by the T&D OMA.

17. LUMA has completed the actions required by the T&D OMA and the teams continue working collaboratively on the budgets, but at this time the parties are unable to file a consolidated budget in compliance with the 2017 Rate Order with the Energy Bureau. Section 7.3(f) of the T&D

OMA defines a Budget Dispute as a dispute between Operator, Owner *and* Administrator. At this time, LUMA can confirm that it submitted the proposed Annual Budget to P3A, in compliance with Section 7.3(a) of the T&D OMA and the P3A has informed that LUMA's proposed Annual Budgets are compliant with the applicable Rate Order through a letter dated May 11, 2022. *See*, Copy of P3A's letter included as *Exhibit I*. Therefore, there is no dispute involving LUMA and the Administrator and, as such, no Budget Dispute to be resolved pursuant to Section 7.3(f) of the T&D OMA. The teams continue working collaboratively on the budgets, but at this time the parties are unable to file a consolidated budget in compliance with the 2017 Rate Order with the Energy Bureau.

18. As this honorable Energy Bureau knows, LUMA has prepared and submitted for approval the proposed Annual Budgets 2023-2025 comprised of an Operating Budget and Capital Budgets which includes a Capital Budget -Federally Funded and Non-Federally Funded- and a Generation Budget. Specifically, a discrepancy related to the Generation Budget and the allocation of rates was identified between LUMA's and PREPA's proposed budgets. In response to Item *a* of the June 15 Order, LUMA respectfully informs the efforts undertaken to try to reach an agreement with PREPA as to the Generation Budget and the allocation of rates.

19. Thus, LUMA cannot, at this time, revise the Annual Budgets 2023-2025 submitted on April 2, 2022, nor submit the consolidated budget requested by this Energy Bureau.²

WHEREFORE, LUMA respectfully requests that the honorable Bureau **take notice** of the aforementioned for all purposes and **deem** that LUMA complied with the bench order of June

² LUMA understands that where the June 15 Order refers to a consolidated budget and directs LUMA to issue certifications regarding the consolidated budget, this Energy Bureau refers to a revised filing for Annual Budgets 2023-2025 with revisions to the Generation Budget to settle the discrepancies between LUMA's proposed allocation of the Generation Budget and PREPA's Generation Budget request.

10, 2022 and the June 15 Order by informing that parties are unable to provide revision to the 2023-2025 Annual Budgets.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 16th day of June, 2022.

We hereby certify that this motion was filed using the electronic filing system of this Energy Bureau. We also certify that copy of this motion will be notified to the Puerto Rico Electric Power Authority, through its attorneys of record: jmarrero@diazvaz.law and 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/ Ana Margarita Rodríguez Rivera
Ana Margarita Rodríguez Rivera
RUA Núm. 16,195
ana.rodriguezrivera@us.dlapiper.com

Exhibit I

Letter from the P3A dated May 11, 2022

May 11, 2022

LUMA Energy, LLC

644 Fernández Juncos Ave., Suite 301
San Juan, PR 00907
Email: P3 Authority@lumamc.com

with copy to:

LUMA Energy, LLC

644 Fernández Juncos Ave., Suite 301
San Juan, PR 00907
Attention: Ashley Engbloom
Email: ashley.engbloom@lumapr.com

Ladies and Gentlemen:

Reference is made to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated as of June 22, 2020 “O&M Agreement” among (a) the Puerto Rico Electric Power Authority (“PREPA”), a public corporation and governmental instrumentality of the Commonwealth of Puerto Rico, created by Act No. 83 of the Legislative Assembly of Puerto Rico, enacted on May 2, 1941, (b) the Puerto Rico Public-Private Partnerships Authority (“P3 Authority”), a public corporation of the Commonwealth of Puerto Rico, created by Act No. 29 of the Legislative Assembly of Puerto Rico, enacted on June 8, 2009, (c) LUMA Energy, LLC (“ManagementCo”), a limited liability company organized under the laws of Puerto Rico and (d) LUMA Energy ServCo, LLC (“ServCo” and, together with ManagementCo, “LUMA”), a limited liability company organized under the laws of Puerto Rico.

Pursuant to Section 7.3 (a) of the O&M Agreement, for any Contract Year, LUMA shall submit to the P3 Authority the proposed Budget for such Contract Year. Within forty-five (45) days, the P3 Authority, shall review such proposed Budgets to ensure compliance with the applicable Rate Order and Section 7.4 of the O&M Agreement

and shall request, acting reasonably, any changes or modifications to the proposed Budgets to conform them with the applicable Rate Order and Section 7.4 of the O&M Agreement.

The P3 Authority has finalized its review of the proposed Fiscal Year 2023 Budgets (“FY23”) submitted by LUMA to the P3 Authority on April 2, 2022. Although the proposed FY23 Budgets are compliant with the applicable Rate Order, the following additional information is key for our analysis of the FY23 O&M and capital budget and comparison to Fiscal Year 2022 (“FY22”) as well as the reviews of Fiscal Year 2024 (“FY24”) and Fiscal Year 2025 (“FY25”) and comparisons to FY23,;

- a. Additional financial detail supporting the fiscal year budgets and improvement programs, including explanations of year-over-year variances, descriptions of major line items within the O&M budgets, explanations of specific spending and workplans for capital programs and projects;
- b. FY22 actual, proforma forecast and budget data;
- c. Detailed descriptions of what specific items and initiatives make up the scope for several cost programs and projects;
- d. Allocation of shared services costs to Generation for FY22-FY24 or allocation of future efficiencies to the corresponding T&D cost categories in FY23 and FY24 as part of the PREB Budget filings made last year;
- e. Allocation of future efficiencies to the requisite T&D O&M cost categories in this year’s PREB FY23-FY25 Budget submittal.


The additional information mentioned above will allow the P3 Authority to perform detailed financial and variance analyses from the FY22-FY24 Budget filing to forecasted FY22 actuals and then to the current FY23-FY25 filing. This information will be needed for the P3 Authority to perform its day-to-day oversight obligations during the upcoming fiscal year (such as the timely approval of Material System Contract Requests) as agreed to in the O&M Agreement.

In accordance with Sections 6.2 and 7.3 of the O&M Agreement, to facilitate efficient, thorough, and meaningful reviews by the P3 Authority of future year budget filings with the Puerto Rico Energy Bureau (“PREB”), the P3 Authority is attaching a list of its requirements for next year’s LUMA Budget filing as **Attachment A**. Section 6.2 of O&M Agreement provides the P3 Authority the rights to specify to LUMA how financial information contained in required reports is prepared to allow for its adequate review and approval.

The P3 Authority believes implementation of the changes suggested above and attached will result in a more transparent, expeditious and thorough budget review process going forward.

If you have any questions, we are happy to discuss at your convenience. Feel free to contact me at administrator@p3.pr.gov or at (787) 722-2525 ext. 15330.

Kind Regards,


Fermín Fontanes (May 11, 2022 15:45 EDT)

Fermín E. Fontanés Gómez
Executive Director
Puerto Rico Public-Private Partnerships Authority

Attachment A

Information Requirements for LUMA's FY23 Budget Filings

	Topic	Deficiency	P3 Authority Information Requirement from LUMA
1	Current YTD actuals (\$) and forecast to year-end	No current Fiscal Year ("FY") actuals (\$) nor forecast to end of year with comparison to current FY budget provided. This doesn't allow assessment of LUMA's performance YTD, expected YE, and/or impacts and considerations related to the current budget.	Provide YTD \$ actuals and a projection of the forecast to YE for the current year compared to the budget as approved by P3 Authority and PREB. For programs ahead or behind schedule, indicate the impact to projects/ programs in the next budget.
2	Future Efficiencies	LUMA's FY21 filing did not allocate future efficiencies to T&D line-item categories. LUMA's FY22 filing does not allocate future efficiencies for FY23.	Include and clearly specify which areas and quantities the cost efficiencies are expected to be achieved in (versus a one line deduct from the total budget) to allow for significantly better financial and variance analysis.
3	Current FY spending forecast to First Year PREB Budget	There is no financial trace from current year projected year-end spending to bridge to the first year of the new budget filing and the following two years (after allocation of the efficiencies by line item).	Provide the analysis of how the current year spending forecast bridges to the next FY budget by line item and by specific capital projects with full explanations of the variances and all major changes.
4	Budget Variance Causal Factors	In the case(s) where actuals/ forecast differ from the budget, no clear explanation of cause(s) have been provided.	Provide a detailed variance analysis, explaining the causes for variances between actuals-to-budget and budget-to-forecast by line item and specific project, including any measures or plans to overcome the differences.
5	Budget Changes by Program or Category	When budget items change from prior budget submittals, there is no explanation provided to explain what drove the change (e.g., scope, costs, schedule).	Provide details of all changes and reclassification of scope and budget for all programs compared to the prior year's budgets for better tracking.
6	Labor details	No details were provided for the number of LUMA personnel, subcontractors and headcount, hours,	Provide reasons/drivers for the changes. Provide details of all labor-related aspects in the budget submittal as well as in the actuals reporting, at both program and project levels.

	Topic	Deficiency	P3 Authority Information Requirement from LUMA
		FTEs, rates, overtime, productivity, etc. in the budget submittal.	
7	Current YTD actuals (work completed) and forecast to year-end	No current FY actuals (i.e., work scope completed) nor forecast to end of year for comparison to current FY plan.	Provide YTD actuals (work completed) for the current FY and the forecast to current FY end compared to the workplan in the approved budget. For programs ahead/behind schedule, indicate how this affects program status and the new budget.
8	Detailed Program Scope	For most programs LUMA has elected to not provide scope details and quantities of scope of work as planned work and associated budget line items. Examples: Substation Rebuilds, Substation Reliability, Vegetation Management, Facilities, etc.	Provide details of scope, milestone targets to be achieved and timelines for the various projects and programs within the budget line items. (Example: for Vegetation Management, LUMA has added several activities post-commencement to the scope of this program which are classified as reactive, corrective or maintenance; provide details by mileage, acreage or appropriate metric to show work plan, progress, remainder to be completed).
9	KPIs for Progress / Status of Programs	Many of LUMA's programs and specific projects lack quantification of assets, assets requiring remediation and progress to date and during current and budgeted periods. Detailed condition assessments and justification for the work plan selected are not provided.	Provide KPI report (dashboard, tables, graphics) to show specific details by portfolio, program and project of equipment/assets/work scope, including the total count and condition, the number items completed to date, number targeted to be addressed within the FY, by budget program/project line items (e.g., pole count, tower count, substation transformer counts, miles distribution, miles transmission).
10	Mapping of 6-Dimensional Budgeting View	LUMA provides various budget data by (1) seven Improvement Portfolios (2) four Commodity Categories (3) SRP / non-SRP (4) Federally Funded / non-Federally Funded (5) OpEx / Capex, and (6) Sixty Improvement Programs; without complete and clearly connected mapping to resolve budget analyses.	Provide a clear mapping of the different budget views and all data lines in order to identify which programs and portfolios fall within the various budget views in order to better track the actuals, both in terms of physical work completed and \$ spent.