

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

IN RE: IMPLEMENTATION OF THE PUERTO RICO ELECTRIC POWER AUTHORITY INTEGRATED RESOURCE PLAN AND MODIFIED ACTION PLAN

CASE NO.: NEPR-MI-2020-0012

SUBJECT: Resolution and Order regarding LUMA's *Urgent Motion Requesting Reconsideration of Energy Bureau's Resolution and Order of June 13, 2022 and Stay of all Directives Therein.*

RESOLUTION AND ORDER

I. Procedural Background

On February 2, 2022, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order authorizing the Puerto Rico Electric Power Authority ("PREPA") to finalize negotiations with eighteen (18) renewable energy projects as part of Tranche 1 of the renewable energy procurement contemplated in the Approved Integrated Resources Plan and Modified Action Plan.¹

Based on information provided by PREPA, the utility was waiting for the completion of certain technical studies by the transmission and distribution operator, LUMA², to proceed with the execution of the Power Purchase Agreements ("PPOAs") for the aforementioned projects.³

On April 27, 2022, the Energy Bureau issued a Resolution and Order ("April 27 Order") requiring: (i) LUMA to file a copy of the results of the Tranche 1 technical studies, on or before May 30, 2022, at 12:00 pm; and (ii) PREPA to file with the Energy Bureau execution copies (i.e., signed copies) of the PPOAs, on or before June 30, 2022, at 12:00 pm.⁴

On May 31, 2022, LUMA filed a document titled *Motion Submitting Final Technical Interconnection Studies for Eighteen Tranche 1 Projects Required Under Energy Bureau's Resolution and Order of April 27, 2022, and Request for Confidential Treatment* ("May 31 Motion"). According to LUMA, the Final Interconnection Study Report for each project includes an executive summary and these appendices: (a) Interconnection Studies Summary Report, (b) Facility Study POI Cost Estimates, (c) Facility Study Network Upgrade Cost Estimates, and (d) LUMA Interconnection Facility Works ("Technical Studies"). The executive summary presents an overview of the findings and a cost estimate for the improvements in the points of interconnection and network upgrades ("Final Interconnection Study Report"). LUMA also provided a "System Impact & Facility Study Results" report that includes a summary and analytical detail for a system "cluster study" that estimates network system upgrade needs and is used to inform the Final Interconnection Study Report for each project.

¹ Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan, In re: Review of the Integrated Resource Plan of the Puerto Rico Electric Power Authority, Case No. CEPR-AP-2018-0001, August 24, 2020 ("IRP Order").

² LUMA Energy, LLC and LUMA ServCo, LLC (collectively, "LUMA").

³ See Informative Motion Regarding Status of BESS Proposal Evaluations, VPP Proposal Negotiations and Interconnection Study Timeline, In re: Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan and Modified Action Plan, February 10, 2022, ¶¶ 7-8, pp. 3-4 ("February 10 Motion"). PREPA has requested confidential treatment to the February 10 Motion alleging that the deliberative process for RFP-Tranche 1 has not been completed.

⁴ See Resolution and Order, In Re: Implementation Of The Puerto Rico Electric Power Authority Integrated Resource Plan And Modified Action Plan, Case No. NEPR-MI-2020-0012, April 27, 2022.



Further, as part of its filing, LUMA requested that the Technical Interconnection Study Reports for the Approved Projects in Exhibit 1, which are part of the ongoing Tranche 1 procurement process be kept under seal of confidentiality.⁵ LUMA maintained that the Technical Interconnection Study Reports in Exhibit 1 should be maintained confidential to protect the competitive nature and fairness of the Tranche 1 procurement process.⁶ In addition, LUMA indicated that said documents contained Owner Confidential Information that must be maintained confidential pursuant to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement of June 20, 2020 (“T&D OMA”).⁷

On June 10, 2022, LUMA filed before the Energy Bureau a document titled *Memorandum of Law in Support of Confidential Treatment of Interconnection Studies Submitted by LUMA on May 31, 2022*, through which it submitted the Memorandum of Law in support of its request for confidentiality of Exhibit 1 of the May 31 Motion.

On June 13, 2022, the Energy Bureau issued a Resolution and Order regarding the funding for Transmission System Network Upgrades required to incorporate the Tranche 1 selected resources to the T&D System (“June 13 Order”). In the June 13 Order, the Energy Bureau ordered LUMA to file a plan, within forty-five (45) days, laying out a roadmap for seeking and obtaining federal funding for the transmission system network upgrades identified in the “System Impact & Facility Study Results” report, and outlining the steps required in that process including expected timelines.⁸

Further, the Energy Bureau directed LUMA, while federal funding is being sought, to proceed with the transmission system network upgrade projects needed to support the Tranche 1 selected resource, and to fund these projects from the Non-Federally Funded Capital Budget as needed employing the procurement processes that allow federal procurement guidelines, with such expenditures to be offset by federal funds as soon as such funds become available.⁹

On June 22, 2022, LUMA filed a document titled *Urgent Motion Requesting Reconsideration of Energy Bureau’s Resolution and Order of June 13, 2022 and Stay of All Directives Therein* (“June 22 Motion”). In the June 22 Motion, LUMA requested the Energy Bureau to reconsider the June 13 Order and issue a stay of all directives in such order, including the directive to have PREPA file for final approval the execution copies of the 18 PPOA’s for the Approved Projects by June 30, 2022, until the issues raised in its June 22 Motion are duly considered through a conference and resolved after a celebration of a conference to that end¹⁰

On July 13, 2022, LUMA filed a document titled *Informative Motion Relating Energy Bureau’s Approval of Nine Tranche 1 BESS Projects* (“July 13 Motion”). In the July 13 Motion, LUMA informed the Energy Bureau that the interconnection studies for the six (6) additional approved BESS projects are at a very early stage and the preparation of the interconnection studies will take approximately twenty (20) weeks to complete¹¹ (“Updated System Impact & Facility Study”). LUMA states that the addition of the six BESS Projects that were not previously contemplated for the initial System Impact & Facility Study will have the effect of substantially affecting the costs of the network upgrades estimated originally.

II. June 22 Motion

In the June 22 Motion, LUMA advances several arguments. More specifically, LUMA stated that, based on preliminary consultation with its subject matter experts, there is substantial

⁵ See May 31 Motion, pp. 3 – 4.

⁶ *Id.* p. 4.

⁷ *Id.*

⁸ See June 13 Order, p. 2.

⁹ *Id.*

¹⁰ See June 22 Motion, pp. 11 – 12.

¹¹ See July 13 Motion, pp. 5 – 6.



risk that the proposed network upgrade projects will not qualify for FEMA funds under the Bipartisan Budget Act or Section 406 of the Stafford Act.¹²

LUMA also argued that the process requirements for seeking federal funding would likely delay the Approved Projects, and create further uncertainty and costs for developers, which runs contrary to the Energy Bureau's interest in expediting said projects.¹³

According to LUMA, the commencement of works for a project for which federal funding is being requested before approval could place the determination of eligibility at risk by limiting the choice of alternatives to be considered when FEMA reviews the project¹⁴ and that receiving federal funding for network upgrades has potential for "limiting funding for, or excluding, other projects that are more critically needed to repair and restore the T&D System from damages caused by Hurricane Maria."¹⁵

LUMA also stated that utilizing funds from its existing budget under the Operation and Maintenance Agreement ("OMA") "may also have serious adverse effects on its ability to pursue and implement other important or critical System Remediation Plan ("SRP")¹⁶ projects to repair, restore and modernize the T&D system."¹⁷ LUMA alleges that utilizing funds from the Non-Federal Capital Improvements Budget to pay for network upgrades will result in deviating funding from projects prioritized and that implement the SRP and Initial Budgets, as approved by the Energy Bureau.¹⁸

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LUMA indicated that the estimated cost of network upgrades approaches the total Capital Budget Non-Federally Funded that LUMA has submitted for approval for Fiscal Year 2023.¹⁹ According to LUMA, compliance with the June 13 Order directive to use funds from the Non-Federal Capital Improvements Budget to pay for the Network Upgrades in question will result in a need to revise customer rates to assure implementation of all required projects, including projects that are more critical to the resilience and reliability of the Puerto Rico electrical system than the Network Upgrades required for interconnection of certain specific generation projects for which private operators will secure long term contracts and could also secure Network Upgrade financing.²⁰

LUMA also stated that while PREPA remains in Title III bankruptcy, it does not have access to debt financing and all capital expenditures must be fully expensed in the period in which they are invested.²¹ LUMA contrasted this with Tranche 1 project sponsors which are more likely to finance network upgrade costs and to amortize/depreciate those costs over a 20-year PPOA period.²² LUMA argued that incorporating the costs of network upgrades in the base rate "in order to enable private developer projects would not be prudent."²³

¹² See June 22 Motion, p. 7.

¹³ *Id.*

¹⁴ *Id.* pp. 7 – 8.

¹⁵ *Id.* p. 7.

¹⁶ See In re: System Remediation Plan, Case. No. NEPR-MI-2020-0019.

¹⁷ See June 22 Motion, p. 8.

¹⁸ *Id.* p. 9.

¹⁹ *Id.* p. 6.

²⁰ *Id.* pp. 9 – 10.

²¹ *Id.* p. 10.

²² *Id.*

²³ *Id.*





Finally, LUMA expressed concern towards utilizing federal funding for network upgrade projects, as it may be “viewed as making private independent power producer projects viable or displacing privately available sources of fundings to use federal funds.”²⁴

III. Discussion

In its June 22 Motion, LUMA discusses criticality of SRP expenditures for resilience and reliability of the Puerto Rico power system. However, LUMA does not discuss the criticality of the timely interconnection of new renewable generation resources to the Puerto Rico power system to improve resource adequacy and minimize outages and blackouts that the island has endured over the last year, and which have caused both hardship and economic loss. Moreover, LUMA does not discuss the level of urgency that the system upgrades represent and the possible consequences of not building the upgrades prior to the renewable projects which cause the need for upgrades coming online.

Proactive transmission system planning, to be handled by LUMA under the OMA, must include repair and upgrade of the Transmission and Distribution (“T&D”) system, but must also include the planning of renewable resource integration. Before entering the OMA and assuming its role as the T&D operator LUMA was aware that the electric system in Puerto Rico was fragile and had a significant deficiency in its resource adequacy and the expectation is that LUMA is performing **proactive** transmission system planning for the **timely** integration of new dependable renewable generation sources as specified in the Energy Bureau’s IRP Order and consistent with current transmission planning reliability standards.

The safe and reliable integration of renewable energy resources paired with adequate duration energy storage provides the grid with dependable generation sources that increase the adequacy of supply moving the electric system towards compliance with transmission planning reliability standards. Addressing the shortfall in adequacy of supply, where a significant portion of the installed capacity cannot be considered dependable, will remedy a current system deficiency. This system deficiency, if not addressed, is likely to lead to additional rolling blackouts. The interconnection of dependable generating resources is a core component of the electric system rebuild efforts pursued to increase grid reliability and its resiliency, whose prioritization will yield prompt positive service impact across all customers.

In the June 22 Motion, LUMA requests reconsideration of the Energy Bureau’s order to LUMA to explore federal funding options for transmission network upgrade projects and, among other things, cites potential delays associated with that approach due to the administrative requirements of FEMA federal funding processes. While the Energy Bureau understands the points raised by LUMA in its June 22 Motion, it is critical to maximize the potential benefits that federal funds could bring to the Puerto Rico power system and its ratepayers.

The Energy Bureau’s intent has always been to interconnect the approved Tranche 1 projects as expeditiously as possible to ensure compliance with public policy, reduce Puerto Rico’s dependency on fossil fuels and provide resiliency to the electric system. These are the reasons why the Energy Bureau directed LUMA to undertake the network upgrade projects and not delay further the negotiations with Tranche 1 proponents. While the Energy Bureau recognizes the risks of proceeding with projects before seeking federal funding, and then subsequent reimbursement, the Energy Bureau anticipated that risk in its June 13 Order and directed LUMA to follow federal procurement guidelines to ensure compliance with FEMA processes. In addition, exploration of the potential for BBA²⁵ or Section 406 federal funding support will potentially benefit Tranche 2 and subsequent resource procurement proceedings, or other qualified initiatives that may be applicable to improve reliability and

²⁴ *Id.* p. 7.

²⁵ See Bipartisan Budget Act of 2018, Section 20181.



resiliency on the island. The Energy Bureau continues to require LUMA to file a plan outlining these options.

In the June 22 Motion, LUMA also states that utilizing funds from the Non-Federal Capital Improvements Budget to pay for network upgrades will cause it to forbear other planned capital expenditures in its SRP and in the approved Initial Budgets²⁶. The Energy Bureau notes that the bulk of capital expenditures planned to improve the T&D system fall under federal funding eligibility, and funding for those expenditures is being sought through FEMA processes. The Energy Bureau will evaluate the capital budgets during the examination of the Fiscal Year 2023 budgets²⁷ and determine the prudent prioritization of available funds taking into consideration the need to bring the electric system to current safety, reliability, and operational codes and standards, the current state of the grid to withstand the next disturbance event, and the need to prepare the grid for the **timely** integration of the new generation fleet as specified in the IRP and the public policy.

The Energy Bureau is cognizant that capital investments are needed in multiple areas to improve the reliability and resiliency of the island's power system. It is the Energy Bureau's expectation that T&D planning and development of annual budgets include analytic processes and assessments to allocate available funds to the most critical needs with higher priority, but that such processes and assessments include prioritization of projects based on available federal and non-federal funding and the optimization of the use of such funds. To the extent that revenue or funding shortfalls result from needed capital expenditures, based on current retail electric rates, the Energy Bureau expects that LUMA quantify and document such shortfalls. To the extent that additional revenue is needed to fund critical reliability projects, it is the Energy Bureau's expectation that those needs also be identified and documented during the examination of the proposed budgets.

LUMA's efforts to obtain federal funding for system improvements shall not be limited to disaster related funding. Such efforts shall include all opportunities for funding, including but not limited to funding available under the Infrastructure Investment and Jobs Act, Public Law No. 117-58 and/or any other competitive federal grant programs.

In the July 13 Motion LUMA informed the Energy Bureau that a full cluster study of the eighteen (18) approved PV projects and nine (9) approved BESS projects could take 20 weeks to complete. The Energy Bureau will not permit the further dilation of the execution of the final Tranche 1 contracts, therefore cannot wait for an Updated System Impact & Facility Study ("Updated Study") to finalize negotiations. Whatever effect the Updated Study has on the original estimated system upgrade costs (*i.e.* increase or decrease) it will become LUMA's responsibility to fund and develop such upgrades.

LUMA's approach in the analysis of the need for system improvements seems to potentially have multiple limitations and/or flaws including, but not limited to: (i) certain assumptions of the BESS state of charge during the peak solar output interval; (ii) lack of possible scenarios that could prevent or temporarily defer the system upgrades projects through operational mitigation; (iii) lack of discussion of alternate or sequential system improvement scenarios with a focus on enabling the integration of the projects without passing the cost to the consumers via the cost of the kilowatt hour throughout the life of a PPOA; (iv) any potential differentiation, prioritization and/or criticality of the allegedly required system improvements or their need as *sine qua non* for the integration of the projects.

²⁶ In Re. Review LUMA's Initial Budget, Case No. NEPR-MI-2021-0004.

²⁷ *Id.*



IV. Conclusions

The Energy Bureau **DENIES** LUMA's June 22 Motion and considering the July 13 Motion **REAFFIRMS** its June 13 Order directing LUMA to proceed with the transmission system network upgrade projects needed to support the Tranche 1 selected resources once an Updated Study is available, and to fund said projects from the Non-Federally Funded Capital Budget, while federal funding is being sought.

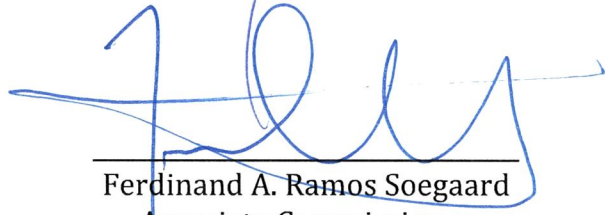
Finally, upon review of LUMA's arguments and pursuant to the applicable law²⁸, the Energy Bureau **GRANTS** confidential designation and treatment to Exhibit 1 attached to the May 31 Motion, as requested by LUMA.

The Energy Bureau **WARNS** PREPA and LUMA that, pursuant to Article 6.36 of Act-57-2014, noncompliance with the Energy Bureau's orders, regulations and/or applicable legal requirements may carry the imposition of administrative fines of up to twenty-five thousand dollars (\$25,000.00) per day, per violation and/or other sanctions that the Energy Bureau may deem appropriate.

Be it notified and published.


Edison Avilés Deliz
Chairman


Lillian Mateo Santos
Associate Commissioner

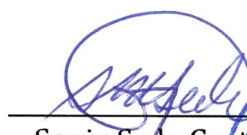

Ferdinand A. Ramos Soegaard
Associate Commissioner


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 20, 2022. I also certify that on July 20, 2022 a copy of this Resolution and Order was notified by electronic mail to the following: laura.rozas@us.dlapiper.com; ana.rodriguezrivera@us.dlapiper.com; kbolanos@diazvaz.law; and mvazquez@diazvaz.law and I have proceeded with the filing of the Resolution issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today July 20, 2022.


Sonia Seda Gaztambide
Clerk



²⁸ Act 57-2014, known as *Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014") establishes that any person having the obligation to submit information to the Energy Bureau, can request privilege or confidential treatment to any information that the party submitting understands deserves such protection. *See* Section 6.15 of Act 57-2014. Specifically, Act 57-2014 requires the Energy Bureau to treat as confidential the submitted information provided that "the Energy Bureau, after the appropriate evaluation, believes such information should be protected". *Id.* In such case, the Energy Bureau "shall grant such protection in a manner that least affects the public interest, transparency, and the rights of the parties involved in the administrative procedure in which the allegedly confidential document is submitted." *Id.* (Emphasis added).