

**GOVERNMENT OF PUERTO RICO
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: Request to Align the Filing of the Quarterly Report for the Fourth Quarter of Each Fiscal Year ("Q4 Report") with Year-End Reporting Under the T&D OMA and to File the Q4 Report on October 28, 2022, filed by LUMA and Modification of Procedural Calendar and Response to Resolution and Order of August 12, 2022.

RESOLUTION AND ORDER

I. Procedural Background

On February 24, 2021, LUMA¹ 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"), under Act 57-2014,² as amended by Act 17-2019,³ 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"), through which it conditionally approved LUMA's Initial Budgets, corresponding to the budget for Fiscal Year 2022 ("FY22"). The Energy Bureau also directed LUMA to comply with several conditions and filing requirements.

On November 15, 2021, LUMA filed a document titled *Motion to Submit Quarterly Report* ("FY 2022 Q1 Report"), in which LUMA provided its first Quarterly Report of the 2022 Fiscal Year, for the quarter ending September 30, 2021, in compliance with the May 31 Resolution. Among other things, this requirement has the purpose of monitoring the prudent spending of monies and ensuring that such spending guarantees timely compliance with public policy.⁴

On February 15, 2022, LUMA filed with the Energy Bureau, a document titled *Motion to Submit Quarterly Report* ("FY 2022 Q2 Report"), in which LUMA provided its second Quarterly Report of Fiscal Year 2022, for the quarter ending December 31, 2021, in compliance with the May 31 Resolution.

On April 2, 2022, LUMA filed a document titled *Submission of Annual Budgets for Fiscal Years 2023 through 2025* ("Annual Budget Request") through which it filed with the Energy Bureau for its review and approval LUMA's Fiscal Year 2023 Annual Budget including the Operating Budget, the Capital Budget, and LUMA's allocation of the Generation Budget.

¹ LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively, "LUMA").

² Known as *The Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014").

³ Known as *The Puerto Rico Energy Public Policy Act* ("Act 17-2019").

⁴ Final Resolution and Order, *In Re: Puerto Rico Electric Power Authority Rate Review*, Case number CEPR-AP-2015-0001, January 10, 2017, p. 34, ¶53. It is important to note that this requirement does not apply to LUMA alone. The Energy Bureau sees the budget of all components of the electric systems as a whole and monitors LUMA's and PREPA's compliance with the same.



On May 16, 2022, LUMA filed a document titled *Motion to Submit Quarterly Report* ("FY 2022 Q3 Report"), in which LUMA provided its third Quarterly Report of Fiscal Year 2022, for the quarter ending March 31, 2022, in compliance with the May 31 Resolution.

On May 19, 2022, the Energy Bureau issued a Resolution and Order ("May 19 Resolution") through which it issued Requirements of Information to LUMA and established a Procedural Schedule in the instant proceeding.

On May 26, 2022, LUMA filed a document titled *Motion Submitting Response to Specific Request for Information in Compliance with Resolution and Order dated May 19, 2022* ("May 26 Motion"), in which LUMA responded to the Requirements of Information in the Energy Bureau's May 19 Resolution.

On June 22, 2022, the Energy Bureau issued a Resolution and Order ("June 22 Resolution"), through which it stated that LUMA had not provided the independent assessment of the revised energy forecast it relied upon in its Modification Request as ordered on January 21 and May 19, 2022. Consequently, through the June 22 Resolution, the Energy Bureau ordered LUMA to, on or before June 27, 2022, remedy this deficiency by responding to the request for information and by submitting the independent assessment of the revised energy forecast, and to inform the Energy Bureau of the results and basis of that determination.

On July 6, 2022, LUMA filed a document titled, *Motion Submitting Responses in Compliance with Resolution and Order of June 22, 2022* ("July 6 Motion").

On July 13, 2022, LUMA filed a document titled *Motion Submitting Fiscal Year 2023 Annual Budget as Approved and Certified by the Financial Oversight and Management Board for Puerto Rico* ("July 13 Petition"). Along with the July 13 Petition, LUMA included a Resolution from the Financial Oversight and Management Board for Puerto Rico ("FOMB") certifying the PREPA budget for fiscal year 2023 ("FY23 Certified Budget"). The July 13 Petition also included LUMA's proposed annual budget for FY23, which purportedly was based on the FY23 Certified Budget ("LUMA's FY23 Budget").³ LUMA requested that the Energy Bureau take notice of FY23 Certified Budget.

On July 16, 2022, the Energy Bureau issued a Resolution and Order ("July 16 Resolution"), through which it identified additional information which it directed LUMA to provide as part of this review process and to facilitate the public's easy review of the budget information. In addition, the Energy Bureau directed LUMA to provide an executive summary in Spanish of the July 13 Petition.

On July 29, 2022, LUMA filed a document titled *Motion in Compliance with July 16th, 2022 Resolution and Order* ("July 29 Motion"). In the July 29 Motion, LUMA submitted as Exhibit 1, LUMA's response to the request of information issued by the Energy Bureau and an updated Spanish translation of the Executive Summary of the July 13 submission and as Exhibit 2, additional information provided by PREPA.

On July 29, 2022, the Energy Bureau issued a Resolution and Order ("July 29 Resolution") through which, among other things, it scheduled a Virtual Technical Conference to take place on August 17, 2022 ("August 17 Technical Conference") and established a Procedural Calendar in this proceeding. In accordance with the Procedural Calendar, LUMA's presentation for the Virtual Technical Conference was due on August 12, 2022; the filing of any revised or additional information required by the Energy Bureau during the Virtual Technical Conference would have been due on August 22, 2022, and the Virtual Public Hearing and filing of comments by the General Public was scheduled for August 24, 2022.

On August 8, 2022, LUMA submitted a document titled *Motion Requesting Modification of Procedural Calendar and Issuance of Agenda for Virtual Technical Hearing* ("August 8 Motion"). Through the August 8 Motion, LUMA requested that, to ensure that the LUMA staff attending the August 17 Technical Conference was best prepared to address any potential Energy Bureau questions or concerns, the Energy Bureau confirm the agenda as presented in the Resolution and Order issued June 7, 2022, as Attachment A.

Furthermore, LUMA requested that the Energy Bureau modify the Procedural Calendar to extend the term provided for the filing of additional information currently set for August 22, 2022 for an additional nine (9) days, that is, until August 31, 2022, to afford the parties in this proceeding at least fourteen (14) days from the date of the August 17 Technical Conference to gather and submit any additional or modified information requested by the Energy Bureau during the Virtual Technical Conference. LUMA also proposed that the Energy Bureau postpone by a concomitant term, the Public Hearing, and the Filing of Comments by the General Public to provide availability of LUMA's additional information prior to such events.

On August 9, 2022, Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico ("ICSE", by its Spanish acronym)⁵ filed a document titled *Motion Requesting Amendment of Procedural Calendar* ("ICSE Motion").⁶ Through said motion, ICSE requested the Energy Bureau to grant a ten (10) day timeframe between the date for the filing of revised and/or additional information required by the Energy Bureau and the date for the Virtual Public Hearing and filing of comments by the General Public. According to ICSE, two (2) days was insufficient time for the public to prepare for the Public Hearing and react to the last filings.

On August 12, 2022, the Energy Bureau issued a Resolution and Order ("August 12 Resolution")⁷ through which, among other things, it issued a Requirement of Information and established a Procedural Calendar and Agenda in this proceeding.

On August 15, 2022, LUMA submitted a document titled *Request to Align the Filing of Quarterly Report for Fourth Quarter of Each Fiscal Year ("Q4 Report") with Year-End Reporting Under the T&D OMA and to File Q4 Report on October 28, 2022* ("August 15 Request"), through which LUMA requested that, pursuant to the OMA, it be authorized to align FY22 reporting requirements with the annual year-end financial report due 120 days after Fiscal Year end, or on October 28 of each year and be relieved of the requirement to file the FY22 Q4 Report. LUMA noted that, in accordance with Energy Bureau requirements, it filed Quarterly Reports within 45 days of the end of each of the initial three (3) FY22 quarters. LUMA stated that because June 30, 2022 is the close of a fiscal year, year-end results will only be available 120 days after the end of the fiscal year and that the activities to produce year-end financial results require additional time as compared with quarter-end results. LUMA also stated that financial results were unavailable until the financial close.⁸

LUMA also noted that pursuant to the T&D OMA, Annex I, Section VI(B) paragraph (4) it is required to file the year-end financial report within 120 days of the end of FY22, on or before October 28, 2022. LUMA cited "well established practice of reporting entities" in support of "producing year end results once available and with no quarter-end report made in addition to a year-end financial report."⁹

On August 19, 2022, LUMA filed a document titled *Request for Modification of Procedural Calendar in Response to Resolution and Order Date August 12, 2022* ("August 19 Request").

⁵ ICSE is not a party in this proceeding or an intervenor since this is not an adjudicative proceeding. The Energy Bureau considers ICSE August 9 Motion as comments.

⁶ The ICSE August 9 Motion does not certify that ICSE notified the same to LUMA and PREPA. Upon review, the Energy Bureau **DETERMINES** that the ICSE Motion does not warrant a response or filing from LUMA or PREPA and **ORDERS** the Clerk to forward a copy of the ICSE Motion to LUMA and PREPA. The Energy Bureau **REMINDS** ICSE that, in compliance with the Energy Bureau Regulations, motions contain the corresponding notification certification.

⁷ See, Resolution and Order, In re: Review of LUMA's Initial Budget, Case No. NEPR-MI-2021-0004, August 12, 2022 ("August 12 Resolution").

⁸ August 15 Request, p. 2.

⁹ *Id.*



Through the August 19 Request, among other things¹⁰, LUMA expressed that, as anticipated in its August 15 Request, the year-end financial information for FY22 would not be available until 120 days after the close of the fiscal year which precludes the comparison of the allocations included in the FY23 Certified Budget with the actual expenditures for the full FY22 as requested by the Energy Bureau through the August 12 Resolution.¹¹ Thus, LUMA requested that the Energy Bureau proceed with the Procedural Calendar without the year-end financial information for FY22.¹²

II. Discussion

The goal of the Energy Bureau in approving the Puerto Rico electric system annual budget (in this case identified as FY23 Certified Budget) is to determine as accurately as possible, utility revenues, operating expenses, and conditions that will exist in the period for which the budget will apply, utilizing historical data including actual results, in conjunction with operations and cost changes that are expected to occur. To this end, access to the most recent available actual budget data for the preceding year is a **critical component** of the evaluation process.

It may be instructive to clarify the expectations the Energy Bureau has for the Q4 Report as compared with the Year End Report. The Q4 Report should parallel the information provided in the Q1 through Q3 Reports and may be unaudited. The Year End Report is expected to fulfill the additional informational requirements as set forth in the Order Approving Initial Budgets¹³ and Requirements of Information set forth in the August 12 Resolution.¹⁴ A Year End Report provided 120 days after the end of the Fiscal Year would be expected to be comprised of audited information and include a detailed reconciliation of all post Fiscal Year End adjustments.

The Energy Bureau notes needless resistance from LUMA to reasonable and necessary requests. Asserting that because June 30 is the close of the fiscal year does not explain the unavailability of a **preliminary year-end report** until 120 days after the end of the fiscal year. The Energy Bureau understands that the referenced activities to produce year-end financial results and the time to produce than quarterly results run parallel and do not prevent that the FY22 Q4 Report is available 45 days after the end Q4. LUMA has not provided supporting documentation that demonstrates why it's more time consuming to produce FY22 Q4 Report than the prior three quarterly reports. The Energy Bureau notes that the referenced "financial close" occurs at the end of the fiscal year. The Energy Bureau **REMINDS** LUMA that the Energy Bureau's authority to establish requirements to ensure compliance with public policy is neither determined nor restricted by the OMA¹⁵ and **WARNS** LUMA of its disapproval of LUMA having waited until August 15, 2022 to file this Request, the day the Q4 Report was due to be filed with the Energy Bureau.

In addition, the "well established practice of reporting entities" cited by LUMA is not persuasive. The content of the Securities and Exchange Commission's ("SEC") required 10-K form is not the same as that required of LUMA in its end of year budget filing. The year-end filing essentially requires LUMA to identify and compare actual expenditures for the Fiscal Year with Projected figures and to provide related information. It is also important to note that the 10-K form is required to be filed within 60-90 days after the end of the reporting

¹⁰ The delays to which LUMA refers are in part due to the lack of (i) consensus between LUMA and PREPA on the budget; and (ii) clarity and detail of the information provided, which forced the Energy Bureau to request additional and/or more detailed information.

¹¹ August 19 Request, pp. 10 – 11.

¹² *Id.*, p. 11.

¹³ May 31 Resolution, p. 36.

¹⁴ August 12 Resolution, pp. 2–3.

¹⁵ See, Section 20.17 of the OMA. The referenced Section states that no provision of the OMA shall be interpreted, construed, or deemed to limit, restrict, supersede, supplant, or otherwise affect, in each case in any way, the rights, responsibilities or authority granted to the Energy Bureau under Applicable Law with respect to the T&D System, Owner, or Operator.



period, depending on the nature of the filer, rather than 120 days thereafter as proposed by LUMA.

The second reference provided by LUMA is no more persuasive. Although the FERC¹⁶ regulation on Quarterly Financial Reporting and Revisions to Annual Reports may contemplate the filing of annual reports four (4) months after the closing of the year, quarterly reports are required after each quarter. This does not support LUMA's contention that the fourth quarterly report is not needed if an annual report is filed. Looking at a more recently established practice, the FOMB requires quarterly and annual (year-end) financial reporting, as cited at Chapter 16, Post-Certification Reporting, of the *2022 Certified Fiscal Plan for the Puerto Rico Electric Power Authority*, as certified by the FOMB on June 28, 2022. Although the time frame for the annual report is 120 days after the end of the fiscal year, **no exception for Q4 reporting is set forth**. In fact, under the extension granted by FOMB to PREPA, the latter had **until August 22, 2022, to submit the FY22 Q4 Report**. Furthermore, aligned with what the Energy Bureau has required, the mentioned quarterly reports are submitted as both a comparison and to track each line item as over or under budget.¹⁷

The Energy Bureau notes that the examination of the proposed Annual Budgets it performs, differs from the budget the FOMB performs. Whereas the FOMB certifies the total budgets and major categories provided by PREPA and LUMA, the Energy Bureau has the additional responsibility to evaluate the individual components of the proposed budgets, in the interest of providing safe and adequate electric service at reasonable rates. To make such a determination, the most recent available actual results are required for evaluation.

The foregoing discussion is equally applicable to PREPA regarding the generation component of the budget. The Energy Bureau understands that the year-end financial information (*i.e.* actual FY22 expenditures) required in the August 12 Resolution could be preliminary or interim information (*i.e.* unaudited). Any amendment that impacts the financial information submitted to the Energy Bureau, shall be filed by the 120-day period (or October 29, 2022) with the pertinent explanation of the change. The Energy Bureau stresses that the year-end financial information for the Budgets to Actuals process corresponds to all the components of the annual 2022 budget to be financially supported by the approved rate structure, which includes the costs of Transmission, Distribution, Generation, and HoldCo costs, among other components.

III. Conclusion

The Energy Bureau **DENIES** LUMA's August 15 Request and **ORDERS** LUMA to file the FY22 Q4 Report **on or before Friday, September 2, 2022**. Additionally, the Energy Bureau **DENIES** the August 19 Request and **REAFFIRMS** its August 12 Resolution pertaining LUMA's Requirement of Information. Accordingly, the Energy Bureau **ORDERS** PREPA to **immediately** deliver to LUMA all the 2022 year-end unaudited financial information, so that LUMA also using its unaudited financial information can present it to the Energy Bureau **on or before Friday, September 2, 2022, at 12:00 p.m.**, in accordance with the August 12 Resolution and with the requirements included in this Resolution and Order. To be unequivocally clear, the Energy Bureau **ORDERS** PREPA and LUMA to collaborate, coordinate efforts and work together to ensure timely compliance with the Energy Bureau's orders.

The Energy Bureau further **DETERMINES** that within ten (10) days of the issuance date of this Resolution and Order, LUMA must **SHOW CAUSE** as to why the Energy Bureau shall not impose administrative fines, in accordance with Art. 6.36 of Act 57-2014, for filing the August 15 Request the day the Q4 Report was due to be filed with the Energy Bureau.

The Energy Bureau **WARNS** PREPA and LUMA that noncompliance with this Resolution and Order, regulations and/or applicable laws may carry the imposition of fines and administrative sanctions of up to twenty-five thousand dollars (\$25,000.00) per day.

¹⁶ Federal Energy Regulation Commission.

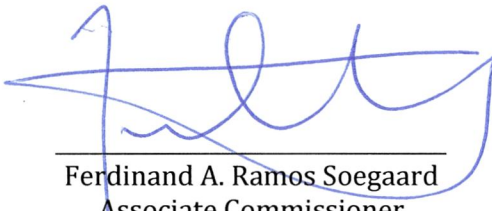
¹⁷ See, FOMB letter to Mr. Nelson Morales, PREPA's Chief Financial Officer, dated August 16, 2022.



The Energy Bureau **WARNS** LUMA and PREPA that any person who intentionally violates any provision of Act 57-2014, as amended, omits, disregards, or refuses to obey, observe, and comply with any rule or decision of the Energy Bureau shall be punished by a fine of not less than five hundred dollars (\$500) nor over five thousand dollars (\$5,000) at the discretion of the Energy Bureau and that if recurrence occurs, the established penalty shall increase to a fine of not less than ten thousand dollars (\$10,000) nor greater than twenty thousand dollars (\$20,000), at the discretion of the Energy Bureau.

Be it notified and published.


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 August 26, 2022. Chairman Edison Avilés Deliz did not intervene. I also certify that on August 26, 2022 a copy of this Resolution and Order was notified by electronic mail to the following: margarita.mercado@us.dlapiper.com, ana.rodriguezrivera@us.dlapiper.com; jmarrero@diazvaz.law, kbolanos@diazvaz.law, agraitfe@agraitlawpr.com. I also certify that today, August __, 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 August 26, 2022.


Sonia Seda Gaztambide
Clerk

