

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

NEPR Received: Aug 19, 2022 2:50 PM
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IN RE: REVIEW OF LUMA'S
INITIAL BUDGETS

CASE NO. NEPR-MI-2021-0004

**SUBJECT: Request for Modification of
Procedural Calendar in Response to
Resolution and Order dated August 12, 2022**

**REQUEST FOR MODIFICATION OF PROCEDURAL CALENDAR IN RESPONSE TO
RESOLUTION AND ORDER DATED AUGUST 12, 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 12:23am, LUMA submitted to this Honorable Puerto Rico Energy Bureau of the Public Service Regulatory Board, Annual Budgets for fiscal years 2023 through 2025 (“Annual Budgets”). The Annual 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 the Puerto Rico Electric Power Authority (“PREPA”) to LUMA on April 1, 2022.
2. In addition, LUMA submitted the Annual Budgets to the Puerto Rico Public-Private Partnerships Authority (“P3A”) in compliance with the *Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement* (“T&D OMA”).
3. On May 11, 2022, P3A notified LUMA that it had reviewed the proposed Annual Budgets and concluded that LUMA’s Fiscal Year 2023 Budget, including LUMA’s budget allocation is compliant with the 2017 Rate Order.

4. On May 19, 2022, this Puerto Rico Energy Bureau (“Energy Bureau”) issued a Resolution and Order (“May 19 Order”) whereby it 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. 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.

5. Through the May 19 Order, the Energy Bureau also issued 116 requirements for information and established a procedural schedule in this proceeding.

6. On May 23, 2022, LUMA filed a *Motion Requesting Agenda for Virtual Technical Conference Scheduled for June 10, 2022* whereby it requested the issuance of an Agenda to guide the Virtual Technical Conference so as to allow LUMA to prepare a responsive presentation addressing the Energy Bureau’s desired areas of discussion so as to insure a more effective hearing and avoid, to the extent possible, post-conference issues.

7. On May 25, 2022, the Energy Bureau entered a Resolution and Order in which, in its pertinent part, it directed LUMA to submit a Proposed Agenda for the Virtual Technical Conference.

8. On June 1, 2022, LUMA complied with the May 25th Order by submitting a Proposed Agenda.

9. 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

10. On June 7, 2022, this honorable Energy Bureau entered a Resolution and Order whereby it set the Agenda for the Virtual Technical Conference.

11. Upon filing its application, LUMA began preparing for the Virtual Technical Conference in compliance with this honorable Bureau's directive to be prepared to "present and 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." 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.

12. 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 with a Generation Budget within the 2017 Rate Order or prepare for a rate amendment. The Energy Bureau provided that the Technical Conference would continue on June 17, 2022.²

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.

² 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.

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

- (i) 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.
- (ii) 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.
- (iii) LUMA will use such consolidated budget, in full compliance and according to the OMA, during the June 17 Technical Conference.

14. The Energy Bureau further determined that “in the event that LUMA cannot provide such certification, **the June 17 Technical Conference and the June 24, 2022 Virtual Public Hearing are automatically postponed**, and as agreed by the Parties to the OMA, the Default Budget shall remain in effect until such time as the FY2023 consolidated Budget is submitted and approved by the Energy Bureau.” *See*, June 15 Order at page 2.

15. Immediately after the Energy Bureau’s Virtual Technical Conference was postponed, P3A coordinated a series of meetings and working sessions between LUMA, PREPA and the Financial Oversight and Management Board (“FOMB”) to discuss the path to a fully coordinated and compliant FY2023 Budget. In total, LUMA invested hundreds of hours during the weeks of June 13, 20 and 27, 2022 in collaborative and working sessions with the other actors involved to come to a certified FY2023 Budget.³

³These efforts were in addition to activities undertaken by PREPA, P3A and FOMB that LUMA is not aware of or directly involved. LUMA understands that there were additional efforts to those listed below performed by other parties.

16. From June 10, 2022 and thereafter, LUMA continued working with the P3A, the FOMB and PREPA on the consolidated budgets.

17. Concurrent with such efforts, the FOMB conducted its annual fiscal plan and budget processes under PROMESA, which began on February 9, 2022 and concluded on June 30, 2022. That process required significant support from LUMA.

18. On June 16, 2022, LUMA filed a *Motion to Inform Status of Negotiations Relating to Generation Budget and in Compliance with Order of June 15, 2022* whereby it objected the Energy Bureau's demand included in the June 15th Order for a certification not contemplated by the laws and regulations applicable to the approval of the proposed Annual Budgets nor by the T&D OMA. LUMA also informed the status of the efforts conducted with PREPA to reach an understanding with regards to the Generation Budget which, as of that date, had not resulted in an agreement as to the Generation Budget.

19. Consequently, the June 17th Technical Conference and the June 24th Public Hearing were automatically postponed.

20. As a result of the meetings and working sessions held by the FOMB, PREPA and LUMA and related efforts, on June 30, 2022, the FOMB issued a *Resolution Certifying the Fiscal Year 2023 Budget for PREPA* pursuant to Sections 202(c) of PROMESA (the "June 30th FOMB Resolution").

21. On July 13, 2022, LUMA filed a *Motion Submitting Fiscal Year 2023 Annual Budget as Approved by the Financial Oversight and Management Board for Puerto Rico* (the "Informative Motion") whereby it submitted to this Energy Bureau the Fiscal Year 2023 Budget as certified by the FOMB.

22. LUMA included the FY2023 Budget as certified by the FOMB (“Certified Budget”), an updated LUMA Annual Budgets report for FY2023 to FY2025 and its accompanying updated schedules with its Informative Motion.

23. LUMA also informed this Energy Bureau that the Certified Budget does not represent modifications to LUMA’s Proposed T&D Budget as originally submitted to this honorable Energy Bureau. Specifically, LUMA’s T&D operational expenditures, non-federally funded capital, and federally funded capital for Fiscal Year 2023 Budget remained the same within the Certified Budget, as shown in Exhibit 2 of the Informative Motion. In addition, LUMA informed that in the Certified Budget, the FOMB revised its assumption for PREPA to exit Title III from December 31, 2023 to June 30, 2023 (which had an impact on Title III associated costs including Advisor costs and LUMA’s Service Fee in accordance requirements under the T&D OMA) and reduced Bad Debts.

24. Finally, LUMA requested that this Energy Bureau take notice of the Certified Annual Budget and maintain under seal of confidentiality specific portions identified in the Informative Motion.

25. On July 16, 2022, the Energy Bureau entered a Resolution and Order (the “July 16th Order”) whereby it took notice of the Certified Budget and stated that **it is within the revenue requirements of the 2017 Rate Order**. The Energy Bureau further determined *sua sponte* to open a review of the Certified Budget.

26. As part of such process, the Energy Bureau ordered LUMA to submit further responses to 9 requests included in the July 16th Order before July 29, 2022 at noon. The requests called for a detailed explanation and side by side comparison of the Certified Budget and the Annual Budgets previously submitted by LUMA, “with the budget requested for each individual portfolio, entity,

division, program or project, contrasted with the approved FY2022 budgets”. The Energy Bureau required that such comparison include *at a minimum* 8 categories of information items but nonetheless “avoid unnecessary use of references to separate supporting documents, to the extent possible”. The Energy Bureau also required the filing of an executive summary in the Spanish language of the Certified Budget. Finally, the Energy Bureau ordered PREPA to provide LUMA with any additional information necessary to comply with the Resolution and Order.

27. In compliance with the July 16th Order, and without it being construed as a waiver of any arguments in connection with future budgets submissions, on July 29th, 2022, LUMA submitted the information requested.

28. On the same date, this Energy Bureau entered a Resolution and Order whereby it established a second Procedural Calendar in this proceeding. As per the Procedural Calendar, LUMA’s presentation for the Virtual Technical Conference was due on August 12, 2022; a Virtual Technical Conference was scheduled for August 17, 2022; the filing of any revised or additional information required by the Energy Bureau during the Virtual Technical Conference would be due on August 22, 2022 and the Virtual Public Hearing and filing of comments by the General Public is scheduled for August 24, 2022.

29. Similar to the May 19th Order, as per the July 29th Order, LUMA representatives and their consultants were required to be present and prepared themselves to answer questions under oath from the Energy Bureau, its staff, and consultants, regarding its presentation and all aspects of the Certified Budget.

30. On August 8, 2022, LUMA filed a *Motion Requesting Modification of Procedural Calendar and Issuance of Agenda for Virtual Public Hearing* whereby it confirmed the availability of its personnel for the Virtual Technical Conference and requested that the Energy Bureau confirm

the Agenda for the conference in order to facilitate the preparation for the hearing. In addition, LUMA requested that the Procedural Calendar be amended in order to afford the parties at least 14 days between the Virtual Technical Conference and the due date to submit any additional information requested by the Energy Bureau during the same.

31. On August 9, 2022, the P3A confirmed that the FY2023 Certified Budget is compliant with the applicable Rate Order.

32. Unbeknownst to LUMA, on August 9, 2022, the *Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico* (“ICSE”) filed a *Motion Requesting Amendment of Procedural Calendar* whereby it requested the postponement of the Public Hearing to allow more time for the public to prepare once LUMA submits any additional information required by the Energy Bureau during the Virtual Technical Conference (“ICSE’s Request”). ICSE failed to notify LUMA copy of its submission thus depriving LUMA of the opportunity to express its position on the motion prior to the Energy Bureau ruling on it. LUMA did not receive a copy of ICSE’s Request until the Bureau had already ruled on it.

33. Both LUMA’s and ICSE’s requests for modifications of the Procedural Calendar related to the stage of the proceedings that would follow the Virtual Technical Conference set for August 17, 2022. That is, none of those requests impacted the date that was previously set for the Virtual Technical Conference.

34. On August 15, 2022, LUMA filed a *Request to Align the Filing of the Quarterly Report for the Fourth Quarter of Each Fiscal Year with Year-End Reporting Under the T&D OMA and to File Q4 Information on October 28, 2022* (“Request for Alignment”). Through the Request for Alignment, LUMA petitioned the Energy Bureau to align the filing of the Q4 information with the year-end reporting on financial results pursuant to Annex I, Section V(B) paragraph (4) of the

T&D OMA.⁴ As explained in LUMA's Request for Alignment, given that June 30, 2022 is the close of the fiscal year, year-end results are only available 120 days after the end of the fiscal year. Moreover, the activities to produce year-end financial results require additional time than quarter-end results, the year-end financial results are not available until the financial close, and this is consistent with well-established practices of reporting entities.

35. On the same date, this Energy Bureau entered a Resolution and Order through which it decided to consider ICSE's Request as comments from the public as intervenors are not allowed in the present proceeding ("August 12th Order").

36. Through the August 12th Order, the Energy Bureau also issued a third revision to the Procedural Calendar as per which the Virtual Technical Conference was postponed for September 9, 2022, the filing of revised or additional information required by the Energy Bureau during the conference was scheduled for September 23, 2022 and the Virtual Public Hearing and filing of comments by the public was set for October 7, 2022. LUMA's filing of its presentation for the Virtual Technical Conference was consequently set for September 6, 2022.

37. This Energy Bureau also issued 7 additional requests for information due by noon on August 29, 2022. The requests call for a higher level of detail as part of the comparison between the FY2022 and the Certified Budget to include actual expenditures; identify any movement or reallocation of funds between portfolios, services, divisions, programs or projects to and from which the monies were reallocated with a detailed explanation of each reallocation. Despite already having issued 116 Information Requests in May and the 9 further detailed information

⁴ The Request for Alignment was submitted to the Energy Bureau via electronic mail as the electronic filing system was not working on the evening of Friday, August 12, 2022. As per the Clerk's directive, LUMA filed it through the electronic portal on August 15, 2022 with a request that it be deemed filed on August 12th.

requests in July, the Energy Bureau has used an adjusted procedural calendar to request additional information on budgets that were filed on April 2nd.

38. Through the August 12th Order, LUMA was once again required to “present and discuss thoroughly the proposed FY2023 Budgets” and to have its “representatives and consultants ...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.” Subsequent to the August 12th Order, LUMA devoted time and resources to ensure that it complies with such requirement.

39. The Energy Bureau also issued an Agenda for the Virtual Technical Conference which contemplates the following topics: (i) LUMA’s Presentation of all budgets; (ii) Consolidated Budgets Conformance to Rate Order and PREPA’s Fiscal Plan; (iii) Federally Funded Capital Expenditures; (iv) Non-Federally Funded Capital Expenditures (T&D); (v) Operating Budgets; (vi) Generation Budget; (vii) Holding Company Budget; and (viii) Follow up items.

40. As a result of the foregoing procedural history, the Energy Bureau will be reviewing the Certified Budgets for FY2023 three months into that fiscal year and LUMA will invest, for the third time, the human and monetary resources necessary for the preparation for the Virtual Technical Conference in connection with a Certified Budget that has already been approved by the FOMB and in effect as of July 1, 2022. It is respectfully informed that the delay in the proceedings and repeated requests for information result in added costs and redirection of the attention currently concentrated in the ongoing recovery and transformation of the T&D System which ultimately negatively impact customers.

41. In addition, it is respectfully informed that, as anticipated in the Request for Alignment, the year-end financial information for FY2022 will not be available until 120 days after the close

of the fiscal year which precludes the comparison of the allocations included in the Certified Budget with the actuals for the full FY2022 as requested by the Energy Bureau through the August 12th Order.

42. Finally, it is important to highlight that to date LUMA has submitted in excess of 450 pages plus Excel files in support of its Annual Budgets.

WHEREFORE, LUMA respectfully requests that the honorable Bureau **take notice** of the aforementioned for all purposes and **proceed** with the Procedural Calendar without the year-end financial information for FY2022 as would normally be expected for review of a future fiscal year budget.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 19th day of August, 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.



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