

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

**NEPR**

**Received:**

**Aug 31, 2022**

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IN RE: REVIEW OF LUMA'S INITIAL  
BUDGETS

**CASE NO. NEPR-MI-2021-0004**

**SUBJECT: Motion for Partial Reconsideration of  
Resolution and Order of August 26, 2022, and  
Proposing Alternative Schedule for Submission and  
Consideration of Financial Actuals**

**MOTION FOR PARTIAL RECONSIDERATION OF RESOLUTION AND ORDER OF  
AUGUST 26, 2022, AND PROPOSING ALTERNATIVE SCHEDULE FOR  
SUBMISSION AND CONSIDERATION OF FINANCIAL ACTUALS**

**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 May 31, 2021, this honorable Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) issued and published a Resolution and Order approving LUMA’s Initial Budgets (“May 31<sup>st</sup> Resolution and Order”).

2. In the May 31<sup>st</sup> Resolution and Order, the Energy Bureau listed certain “requirements for LUMA to fulfill during the Interim Period and going forward” including, among others, annual explanations of the differences between accounts expenses and approved budgets and efficiencies, quarterly reports on Initial Budgets spending amounts, and reporting on federal funding activity. *See* May 31<sup>st</sup> Resolution and Order at page 36, paragraphs 1 through 4; *see also* Resolution and Order of July 16, 2021 at page 6 (modifying the federal funding reporting requirements stated in the May 31<sup>st</sup> Resolution and Order) (“July 16<sup>th</sup> Order”).

3. Per the May 31<sup>st</sup> Resolution and Order, as amended by the July 16<sup>th</sup> Order, on April 2, 2022, LUMA submitted to this Energy Bureau its Annual Budgets for Fiscal Years 2023 through 2023 (“Annual Budgets”). LUMA also submitted supporting workpapers on April 8, 2022.

4. On May 19, 2022, this Energy Bureau issued a Resolution and Order with the subject “Fiscal Year 2023 Annual Budget Review: Requirement of Information and Establishing a Procedural Calendar” (“May 19<sup>th</sup> Order”). On page 5 of said May 19<sup>th</sup> Order, this Energy Bureau outlined the applicable filing requirements that were adopted in the May 31<sup>st</sup> Order. To wit, this Energy Bureau identified as relevant two annual filing requirements: the annual explanation of the differences between account expenses and approved budgets and the annual report on efficiencies. Regarding the former, this Energy Bureau recognized that as of the filing of the Annual Budgets on April 2, 2022, LUMA did not have the information that corresponded to the end of FY 2022 on expenses. Consequently, this Energy Bureau ordered that LUMA shall file the information on the differences between expenses and approved budgets “to the extent available based on the first nine months of operations.” *See* May 19<sup>th</sup> Order at page 5<sup>1</sup>; *see also* Attachment B to the May 19<sup>th</sup> Order (requesting information for the first nine months of operations). The Energy Bureau also issued one hundred and sixteen (116) requests for information, stated in Attachments A through F of the May 19<sup>th</sup> Order.

5. Additionally, in the May 19<sup>th</sup> Order, this Energy Bureau scheduled a Technical Conference for June 10, 2022, which conference convened and was cancelled minutes after the record opened and witnesses were sworn in. That is, when the Energy Bureau scheduled and begun

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<sup>1</sup> The Energy Bureau further stated that this “does not modify the full requirement following FY 2022 and FY 2023.”

proceedings for the first Technical Conference to consider the Annual Budgets, it did not require financial actuals for Q4 to examine the Annual Budgets.

6. In compliance with the May 31<sup>st</sup> Resolution and Order as amended by the July 16<sup>th</sup> Resolution and Order, LUMA has submitted to date, three quarterly reports for the Fiscal Year 2022 on November 15, 2021 (“Q1 Report”); February 15, 2022 (“Q2 Report”), and May 16, 2022 (“Q3 Report”) (jointly, “the Quarterly Reports”).<sup>2</sup> The Quarterly Reports cover the information regarding the T&D System Initial Budget spending amounts and the information on federal funding activity required in the May 31<sup>st</sup> Resolution and Order, as modified by the July 16<sup>th</sup> Resolution and Order. Additionally, LUMA also submitted the Quarterly Reports in the dockets of Case No. NEPR-MI-2020-0019, *In Re: Review of the Puerto Rico Electric Power Authority’s System Remediation Plan*, and Case No. NEPR-MI-2021-0002, *In Re: Review of Puerto Rico Electric Power Authority’s 10 Year Infrastructure Plan*.

7. On August 12, 2022, this Energy Bureau entered a Resolution and Order through which, in its pertinent part, it issued seven (7) additional requests for information in this proceeding due by noon, August 29, 2022. Through these additional requests, this Energy Bureau **for the first time** requested information on the comparison between the Budgets approved for Fiscal Year 2022

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<sup>2</sup> The quarterly reports were filed within 45 days after quarter-end. When a quarter-end is also a year end, then a Q4 report is replaced with a year-end report and as such, would be filed 120 days after the end of the fiscal year in alignment with the reporting requirement for financial information under the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (“T&D OMA”), Annex I, Section VI(B), paragraph 4, which requires that LUMA submit interim and unaudited financial statements within one hundred and twenty days after the end of each fiscal year. Year-end financial processes are more involved than quarterly financial processes and result in adjustments typically made in the fourth quarter. Mainly for that reason, on August 12, 2022, LUMA filed a 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 (“Request for Alignment”) requesting that this Energy Bureau align the Q4 Report with LUMA’s year-end report.

(“FY 2022 Approved Budgets”) and the Annual Budgets for Fiscal Year 2023 as certified by the Financial Oversight and Management Board (“Certified Budget”), required *actual* expenditures; and that LUMA 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. *See* August 12<sup>th</sup> Order at pages 3 through 4. In the August 12<sup>th</sup> Order, the Energy Bureau also adjusted the procedural calendar and postponed the Technical Conference to accommodate the aforementioned requests for additional information.

8. On August 19, 2022, LUMA filed a *Request for Modification of Procedural Calendar in Response to Resolution and Order dated August 12, 2022*, whereby it requested that the Energy Bureau proceed with the procedural calendar, without the year-end financial information which, as had been anticipated through the Request for Alignment, would not be available until 120 days after the financial year-end.

9. On August 26, 2022, this Energy Bureau issued a Resolution and Order denying LUMA’s Request for Alignment and the August 19<sup>th</sup> *Request for Modification of Procedural Calendar in Response to Resolution and Order dated August 12, 2022* (the “August 26<sup>th</sup> Order”). Consequently, the Energy Bureau reaffirmed its August 12<sup>th</sup> Resolution and Order as it pertains to the requests for information on the year-end financial information.<sup>3</sup> In relevant part, this Energy Bureau determined that the most recent actual budget data is a critical component of the process to evaluate the Certified Budget and directed LUMA to file on or before September 2, 2022, the Q4 with financial actuals for said quarter of FY 2022. *See* August 26<sup>th</sup> Order at pages 4 and 5.

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<sup>3</sup> Additionally, the Energy Bureau ordered 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 th[e] Resolution and Order.” *See* August 26<sup>th</sup> Order at page 5.

10. Importantly, on August 29, 2022, LUMA submitted its Responses in Compliance with the August 12<sup>th</sup> Order. With its Responses, LUMA submitted a comparison between the FY2023 Certified Budgets and the FY2022 Budget as approved by the Energy Bureau on August 2, 2021. As part of its Responses, LUMA also referenced the information that it filed on June 3, 2022 which Attachment A-10 includes financial information on three quarters of Fiscal Year 2022 and one quarter of forecasted data for Improvement Programs. *See* ROI-LUMA-MI-2021-0004-20220519-PREB-A10\_Attachment.xlsx.

11. Since its initial submission of the proposed Annual Budgets, made on April 2, 2022, LUMA and its personnel have complied with the orders of this Energy Bureau to place this Energy Bureau in a position to review LUMA's proposed Annual Budgets to be implemented starting on July 1, 2022. To wit, LUMA responded to three sets of requests for information; its personnel appeared for a technical conference set for June 10, 2022, prepared for the Technical Conference that was re-scheduled for August 17, 2022, and are preparing for the Technical Conference that is currently scheduled for September 13, 2022. Also, a month and a half after LUMA submitted the Annual Budgets, LUMA submitted the Q3 Report that provides information on LUMA's year-to-date spending for FY 2022.

12. Given the aforementioned, LUMA requests that this Energy Bureau reconsider that portion of the August 26<sup>th</sup> Order that links for the first time at this stage of the proceedings, the budget review process with the filing of financial actuals for Q4. Said determination was issued more than four (4) months after LUMA submitted the Annual Budgets and more than one month after the Financial Oversight and Management Board for Puerto Rico ("FOMB") issued the Certified Budget on June 30, 2022. Furthermore, it is contrary to the May 19<sup>th</sup> Order whereby for the purposes of considering LUMA's Annual Budgets, this Energy Bureau determined that LUMA

was required to file financial actuals for the first nine (9) months of its operation. The determination issued in the August 26<sup>th</sup> Order that LUMA shall submit financial actuals for Q4 and that said information is relevant and crucial for this Energy Bureau to evaluate the Certified Budget, is thus an unreasonable change in interpretation that should be reconsidered for the purposes of the current process to consider the Certified Budget. *See Díaz Marín v. Municipio de San Juan*, 117 DPR 334, 412 (1996) (stating the well-established principle of legal and statutory interpretation that interpretations that could lead to “unreasonable . . . results” should be avoided).

13. LUMA respectfully submits that an alternate schedule by which this Energy Bureau proceeds with the Technical Conference to consider the Certified Budget and affords LUMA the time needed to close its financial records and prepare a year-end report that will include the Q4 financial actuals on or close to October 28, 2022, is reasonable and congruent with the May 19<sup>th</sup> Order where this Energy Bureau determined that LUMA was to submit nine months of financial data, **to the extent available**. It also furthers the Energy Bureau’s purpose, as expounded in the August 26<sup>th</sup> Order, to ascertain that the Certified Budget properly considers and reflects utility revenue, operating expenses, and the applicable conditions in the period when it will apply, *see* August 26<sup>th</sup> Order at page 4. It bears noting that this Energy Bureau currently has before its consideration, the Certified Budget that was prepared with the financial information for two quarters of FY 2022 and is based on LUMA’s projected expenses for the last half of FY 2022, as well as supporting workpapers and additional information.

14. The Certified Budgets are based on projections made by LUMA and its personnel with the information that they had available as of Spring 2022. Budget preparation processes are based on forecasting activities and associated expenses and assumptions made using information and conditions occurring at the time that the budgets are prepared and with the expertise and

experience of subject-matter experts.<sup>4</sup> See LUMA’s Annual Budgets, Section 2.2 (Key Assumptions and Basis of Annual Budgets) and Submission of Annual Budgets for Fiscal Years 2023 Through 2025, Section VI (“Key Assumptions in the Annual Budgets”). Thus, it is reasonable to determine that the Energy Bureau’s examination of the proposed Annual Budgets for Fiscal Year 2022 that has since been certified by the FOMB, should be based on the information that was used to prepare the budgets or on information of the first nine months of LUMA’s operations as this Energy Bureau determined in the May 19<sup>th</sup> Order.

15. Given the aforementioned, LUMA respectfully requests that the Energy Bureau reconsider that portion of the August 26<sup>th</sup> Order where the Energy Bureau states that it needs actual financial data for Q4 to evaluate the Certified Budget and determine that it will consider the FY2023 Certified Budget with the information that is on record, while LUMA continues to work on the report for the year-end to be submitted on or before October 28, 2022. While LUMA is unable to provide final financial data for the entire fiscal year, LUMA has included preliminary FY2022 numbers in line with what was provided to the FOMB in Exhibit 1. LUMA respectfully requests that *Exhibit 1* herein be kept confidential as work product by this honorable Energy Bureau pursuant to the Energy Bureau’s Policy on Management of Confidential Information, CEPR-MI-2016-0009, issued on August 31, 2016, and partially amended on September 16, 2016. In accordance with this policy, LUMA will submit a Memorandum of Law in support of this request in within the next ten (10) days.

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<sup>4</sup> See Government Finance Officers Association, *Best Practices, Financial Forecasting in the Budget Preparation Process*, available at <https://www.gfoa.org/materials/financial-forecasting-in-the-budget-preparation-process> (last visited, August 30, 2022). “If the assumptions underlying the forecast are realistic, the forecast will be accurate enough to locate dangers and weaknesses, to uncover better methods of operation, and to establish a promising direction for the business.” MODERN CORPORATION CHECKLISTS §11.6

16. It is respectfully submitted that the proposed course of action would not negatively impact the Energy Bureau's authority to examine the Certified Budget as the Energy Bureau already has on record more than 450 pages of documents plus Excel files containing all the information relevant to LUMA's internal processes, analyses and forecast used to prepare the Certified Budgets and also has additional information in the form of the Q3 Report that was filed on May 15, 2022. LUMA's personnel will be available at the Technical Conference to discuss the Certified Budgets, as well as the financial data, methodology and assumptions used to prepare the Annual Budgets. This, to assist the Energy Bureau in its analysis.

17. Finally, LUMA respectfully submits that operationally, it is not feasible to comply in one week, with that portion of the August 26<sup>th</sup> Order that requires that LUMA submit a Q4 Report within a week, by September 2, 2022. Preparation of a YTD Q4 Report requires that LUMA compile information from multiple financial systems, conduct requisite internal administrative review of financial information, prepare any variance explanations, and compile the quarterly report which encompasses the totality of LUMA's operation and includes reporting on the budget, both operational and capital expenditures included in the FY2022 Approved Budgets, as well as programs included in LUMA's System Remediation Plan. It is also important to note that the same technical teams that contribute to reporting information regarding LUMA's operational and capital activities on a quarterly and annual basis, are the same teams that are endeavoring to improve LUMA's outage response performance, report on performance metrics, and are witnesses for the FY2023 Annual Budgets technical conference scheduled for September 13, 2022. It is not possible for the same individuals to prepare a quarterly report consisting of over eighty (80) pages in five (5) business days while also working to complete year end reporting activities, improve LUMA's outage response performance, prepare to be witnesses for the FY2023 Annual Budgets technical



conference, and execute Improvement Program activities to progress the recovery and transformation of the Puerto Rico transmission and distribution system.

18. LUMA acknowledges the importance of submitting the financial data for FY 2022 for consideration by this Energy Bureau. However, given current systems and processes, LUMA is not in a position to produce a Q4 FY2022 Report by September 2, 2022. LUMA is committed to providing accurate and timely information, but annual processes that include adjustments to financials occur in the months following the close of a fiscal year and are reflected in fourth quarter results. As is typical in company processes, the process to make all the necessary adjustments at fiscal year-end takes substantially longer than the process to make adjustments at the end of the first, second, or third quarters of a fiscal year. Year-end activities must formally close out the adjustments and estimates made throughout the year. This would include items such as: reconciliation of all subledger and general ledger accounts, clearing and justification of all accruals; ensuring that all completed work that has not been billed by vendors has been reflected in the financials; reconciling clearing accounts; validating asset and depreciation schedules; and conducting additional checks and verification. Historically, PREPA did not complete these activities until years after the close of the fiscal year when PREPA completed its audit. LUMA is endeavoring to complete them in a timely manner to ensure accurate reporting. This highly involved process prevents LUMA from being able to provide fourth quarter results prior to producing full year financials. This is why producing an annual report inclusive of fourth quarter results is common practice and this necessity is without consideration of the numerous challenges that LUMA is experiencing due to the state of the inherited financial systems, as outlined in LUMA's Improvement Programs, and the highly manual processes that are required as a result of financial information being housed across multiple antiquated systems. LUMA will continue to

work to submit said report as early as possible in the month of October 2022 and on or before October 28, 2022.

**WHEREFORE**, LUMA respectfully requests that the honorable Bureau **take notice** of the aforementioned for all purposes; **reconsider** that portion of the August 26<sup>th</sup> Order that determines that consideration of the Q4 financial data is necessary to evaluate the Certified Budget and **maintain** the orders issued on page 6 and Attachment B to the May 19<sup>th</sup> Order that require that LUMA file financial information for the first nine months of its operations; **alter the schedule for submission of the Q4 Report**; and **authorize** LUMA to submit its year-end actual financial information on or before October 28, 2022.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 31<sup>st</sup> 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](mailto:jmarrero@diazvaz.law) and [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law).



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*Exhibit 1*

*Filed under seal of confidentiality*