

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

**NEPR**

**Received:**

**Sep 9, 2022**

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IN RE: REVIEW OF LUMA'S INITIAL  
BUDGETS

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

**SUBJECT: Urgent Request to Re-Schedule the  
Second Day of Technical Conference and for Issuance  
of Agenda.**

**URGENT REQUEST TO RE-SCHEDULE SECOND DAY OF TECHNICAL  
CONFERENCE AND FOR ISSUANCE OF AGENDA**

**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, 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.
2. 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”). This Energy Bureau issued one hundred and sixteen (116) requests for information, stated in Attachments A through F of the May 19<sup>th</sup> Order.
3. 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.

4. 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 and inure a more effective hearing and avoid, to the extent possible, post-conference issues.

5. 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.

6. In compliance with the May 19<sup>th</sup> 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.<sup>1</sup>

7. Additionally, on June 1<sup>st</sup>, 2022, LUMA filed a Motion Submitting Proposed Agenda for Virtual Technical Conference Scheduled for June 10, 2022 in Compliance with Order whereby it included a proposed agenda for the Virtual Technical Conference in compliance with a Resolution and Order entered on May 24, 2022 by the Energy Bureau requiring the same.

8. 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 ahead of the virtual technical conference. *See, Motion Submitting Presentation for Virtual Technical Conference in Compliance with Resolution and Order dated May 19, 2022.*

9. The June 10, 2022 technical conference, however, was suspended shortly after being convened and, on June 13, 2022, the Energy Bureau issued a Resolution and Order

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<sup>1</sup> LUMA responded to all of the Energy Bureau's requirements, 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.

modifying the procedural calendar to establish that the technical conference would continue on June 17, 2022.

10. 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.

11. 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.

12. 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 15<sup>th</sup> 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.

13. Consequently, the June 17<sup>th</sup> Technical Conference and the June 24<sup>th</sup> Public Hearing were automatically postponed.

14. As a result of several meetings and working sessions held by the Financial Oversight and Management Board, the Puerto Rico Electric Power Authority (“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 30<sup>th</sup> FOMB Resolution”).

15. 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. 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.

16. On July 16, 2022, the Energy Bureau entered a Resolution and Order (the “July 16<sup>th</sup> 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 to open a review of the Certified Budget.

17. As part of such process, the Energy Bureau ordered LUMA to submit further responses to 9 requests included in the July 16<sup>th</sup> 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.

18. In compliance with the July 16th Order, on July 29, 2022, LUMA submitted the information requested.

19. 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 second 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 was scheduled for August 24, 2022.

20. Similar to the May 19<sup>th</sup> Order, per the July 29<sup>th</sup> 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.

21. 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.

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

23. On August 12, 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 financial information for the Fourth Quarter of Fiscal Year 2022 (“Q4”) with the year-end reporting on financial results pursuant to Annex I, Section V(B) paragraph (4) of the T&D OMA.<sup>2</sup> As explained in LUMA’s Request for Alignment, given that June 30, 2022 is the close of the fiscal year, year-end results are available 120 days after the end of each fiscal year. Moreover, the activities to produce year-end financial results require additional time than quarter-end results and the year-end financial results are not available until the financial close.

24. Also on August 12, 2022, this Energy Bureau entered a Resolution and Order through which, in its pertinent part, it 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

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<sup>2</sup> 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 12<sup>th</sup>.

for October 7, 2022. LUMA's filing of its presentation for the virtual technical conference was consequently set for September 6, 2022.

25. This Energy Bureau also issued seven (7) additional requests for information due on August 29, 2022. The requests called for more information on the comparison between the FY2022 Budget and the Certified Budget, to include actual expenditures; and 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. That is, the Energy Bureau adjusted the procedural calendar to request additional information on the financial results for the approved budgets for Fiscal Year 2022 and the Certified Budgets.

26. In the August 12<sup>th</sup> 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 12<sup>th</sup> Order, LUMA devoted time and resources to ensure that it complies with such requirement.

27. Furthermore, in Attachment A to the August 12<sup>th</sup> Order, the Energy Bureau included 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.

28. On August 18, 2022, PREPA filed a *Request for Continuance of Technical Conference* which was granted through Resolution and Order entered on August 19, 2022.

Therefore, the virtual technical conference was postponed and is currently set for September 13, 2022.

29. 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.

30. On August 22, 2022, LUMA filed a *Motion Requesting Modification of Procedural Calendar* requesting that the Energy Bureau modify the procedural calendar to allow the parties at least 14 days to submit any additional or modified information requested during the virtual technical conference and consequently modify the dates for the virtual public hearing and filing of public comments.

31. The Energy Bureau granted LUMA's August 22<sup>nd</sup> Motion Requesting Modification of Procedural Calendar through Resolution entered on August 25, 2022 ("August 25 Resolution"). Through the August 25 Resolution, the Energy Bureau therefore established that the filing of any revised or additional information required during the technical conference would be due on September 27, 2022 and the filing of comments by the general public would be due and the virtual public hearing would be held on October 7, 2022.

32. 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.

33. 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.

34. Furthermore, on August 31, 2022, LUMA submitted a motion styled *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”), requesting that this Energy Bureau reconsider that portion of the August 26<sup>th</sup> Order that determined that consideration of the financial data for the fourth quarter of FY 2022 (“Q4”) was necessary to evaluate the Certified Budget; maintain the order 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. LUMA

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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.

also provided preliminary FY2022 results as part of this submission under the seal of confidentiality.

35. On September 2, 2022, LUMA submitted a “Motion in Compliance with the Order to Show Cause,” in response to the August 26<sup>th</sup> Order to Show Cause.

36. On September 6, 2022, this Energy Bureau issued a Resolution and Order where it denied LUMA’s Motion for Partial Reconsideration and directed that LUMA shall submit the financial data for Q4, on or before September 8, 2022. LUMA is set to submit the financial information for Q4 today, September 8, 2022.

37. Finally, at 4:15 pm on Wednesday, September 7, 2022, LUMA was notified of a Resolution and Order whereby this Energy Bureau set September 14, 2022 as a second day for the technical conference to consider the Certified Budget (“September 7<sup>th</sup> Order”). Given that since May 2022 this Energy Bureau had scheduled one day for the technical conference to consider the Certified Budget and in light of the fact that for the past three (3) weeks LUMA and its personnel had been required by this Energy Bureau to appear for the technical conference on September 13<sup>th</sup> without a prior notice that a second day would be convened, several of LUMA’s and the Puerto Rico Electric Power Authority’s (“PREPA”) witnesses and management personnel are not available to appear before this honorable Energy Bureau on September 14, 2022.

38. Immediately upon receipt of the September 7<sup>th</sup> Order, LUMA contacted PREPA through its legal representative to be in a position to offer alternative dates to this Energy Bureau to hold the second day of the Technical Conference. Upon conferring with PREPA, LUMA has been authorized to inform that PREPA is not available on September 14<sup>th</sup> as its Executive Director, Josué Colón, is travelling to Washington D.C. for an appearance before the United States

Congress. Similarly, several of LUMA's witnesses for the Technical Conference are travelling to Washington D.C. for a congressional hearing and are thus unavailable on September 14, 2022.

39. 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 and prepared for the Technical Conference. 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; and LUMA's witnesses have prepared in two occasions since June, 2022, to answer questions from this Energy Bureau regarding the Certified Budget. However, because LUMA's personnel did not have prior notice of the possibility that a second day would be scheduled for the Technical Conference and thus, they had other professional commitments and engagements after September 13, 2022, the urgent need arises to request that this Energy Bureau reschedule the second day of the Technical Conference.

40. LUMA respectfully informs that the earliest availability for both LUMA and PREPA is on September 27, 2022. LUMA's witnesses are also available on September 19, 2022. Additionally, PREPA is available to appear on September 26, 2022. It is informed that LUMA's witnesses are not available on the 26<sup>th</sup>. However, if the Energy Bureau convenes a technical conference for September 26<sup>th</sup> to discuss PREPA's budget, LUMA would be able to designate representatives to appear on the 26<sup>th</sup>, with the caveat that LUMA's representatives would not appear as witnesses on the subject matter of PREPA's budget.

41. As result of the Energy Bureau's decision to schedule an additional day of hearing for the consideration of the Certified Budget, LUMA respectfully requests that this Energy Bureau

issue an amended agenda, distributing the topics that will be discussed during each day of the Technical Conference.

42. LUMA respectfully proposes that the agenda for the Technical Conference be set to allow for the LUMA budget to be solely discussed on September 13, 2022 and for the PREPA budget to be solely discussed on the second day on the alternate day that this Energy Bureau sets. This will allow both LUMA's and PREPA's personnel to appear before this Energy Bureau on the day that the topics within their knowledge will be discussed. This proposed allotment of time is meant to suggest an efficient process for all parties involved that allows LUMA and PREPA to comply with the orders of this Energy Bureau and answer the questions that the Energy Bureau and its consultants deem fit to ask.

43. Finally, LUMA respectfully requests that if this Energy Bureau requires that LUMA appear on both days of the Technical Conference, the date to file additional information be set fourteen (14) days after the second day of the Technical Conference.

**WHEREFORE**, LUMA respectfully requests that the honorable Bureau **take notice** of the aforementioned for all purposes; **reschedule** the second day of the Technical Conference and **determine** that on September 13, 2022, it will address the topics on LUMA's Budget and that in the second day of the Technical Conference, it will address topics related to PREPA's Budget. It is further requested that this honorable Energy Bureau **consider** that PREPA is available for the second day of the Technical Conference on September 26<sup>th</sup> and 27<sup>th</sup>; that LUMA's witnesses are available on September 19<sup>th</sup>, and September 27<sup>th</sup>, and that LUMA would be able to designate representatives to appear on September 26<sup>th</sup>, but that LUMA's witnesses are not available on the 26<sup>th</sup>. Finally, LUMA requests that the Energy Bureau **clarify or amend** the agenda for the Technical Conference to allow for the LUMA budget and related topics to be solely discussed on

the first day of the Technical Conference and for the PREPA budget to be solely discussed on the second day, and **set** the date to file additional information to fourteen (14) days after LUMA's last appearance before this Energy Bureau for the Technical Conference on the Certified Budget.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 9<sup>th</sup> day of September, 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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