

**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: Determination on LUMA's Fiscal
Year 2022 Budget Amendment Petition.

RESOLUTION AND ORDER

I. Introduction and Background

On February 24, 2021, LUMA ENERGY, LLC as ManagementCo, and LUMA ENERGY SERVCO, LLC as ServCo (collectively, "LUMA" or "Operator") filed before the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau" or "PREB") a document titled *Petition for Approval of Initial Budgets and Related Terms of Service* ("Initial Budgets Petition"),¹ 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" or "T&D 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 April 22, 2021, LUMA filed with the Energy Bureau a document titled *Motion Submitting PREPA's Generation Budget in Compliance with Order (April 22 Compliance Motion)*⁴ in which LUMA submitted the Generation Budget, prepared by PREPA.

On May 31, 2021, the Energy Bureau issued a Resolution and Order ("May 31 Resolution"),⁵ through which it 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 July 16, 2021, LUMA filed with the Energy Bureau, a document titled *Request for Modification of Approved Budget for Fiscal Year 2022* ("Modification Request").⁶ In the Modification Request, LUMA expressed the need to revise the Fiscal Year 2022 Approved Budget to conform it to the Amended Puerto Rico Electric Power Authority Budget for Fiscal Year 2022, as certified by the Fiscal Oversight and Management Board's ("FOMB") on June 30, 2021. LUMA stressed that the resulting impacts would not result in increased rates.⁷ LUMA requested that the Energy Bureau approve a revised FY 2022 Budget in accordance with the revisions identified in the Modification Request.

¹ See, *Petition for Approval of Initial Budgets and Related Terms of Service, In Re: Review of LUMA's Initial Budget*, Case No. NEPR-MI-2021-0004, February 24, 2021 ("Initial Budgets Petition").

² *The Puerto Rico Energy Transformation and RELIEF Act*, as amended.

³ *The Puerto Rico Energy Public Policy Act*.

⁴ See, *Motion Submitting PREPA's Generation Budget in Compliance with Order, In re: Review of LUMA's Initial Budget*, Case No. NEPR-MI-2021-0004, April 22, 2021 ("April 22 Compliance Motion").

⁵ See, *Resolution and Order, In re: Review of LUMA's Initial Budget*, Case No. NEPR-MI-2021-0004, May 31, 2021 ("May 31 Resolution").

⁶ See, *Request for Modification of Approved Budget for Fiscal Year 2022, In Re: Review of LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, July 16, 2021 ("Modification Request").

⁷ *Id.*, p. 3, ¶7.



On September 9, 2021, the Energy Bureau issued a Resolution and Order ("September 9 Resolution")⁸, through which it directed LUMA to (i) provide the information identified in Attachment A of the Resolution and Order, relative to the Modification Request; (ii) modify the Modification Request; and (iii) supplement its answers if additional information becomes available or if submitted information changes.⁹

On September 17, 2021, LUMA filed with the Energy Bureau, a document titled *Motion in Compliance with September 9th Order Submitting Revised Request for Modification of Approved Budget for Fiscal Year 2022 and Responses to Requests for Information* ("September 17 Motion")¹⁰, in which LUMA responded to the Requirements of Information in the Energy Bureau's September 9 Resolution and provided a revised Modification Request.

On November 15, 2021, LUMA filed with the Energy Bureau, a document titled *Motion to Submit Quarterly Report* ("FY 2022 Q1 Report"),¹¹ 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.

On January 21, 2022, the Energy Bureau issued a Resolution and Order ("January 21 Resolution"),¹² through which it directed LUMA to undertake an independent assessment and evaluation of the revised energy demand forecast it relies upon in its Modification Request.¹³

On February 15, 2022, LUMA filed with the Energy Bureau, a document titled *Motion to Submit Quarterly Report* ("FY 2022 Q2 Report"),¹⁴ in which LUMA provided its second Quarterly Report of the 2022 Fiscal Year, for the quarter ending December 31, 2021, in compliance with the May 31 Resolution.

On April 2, 2022, LUMA filed with the Energy Bureau, a document titled *Submission of Annual Budgets for Fiscal Years 2023 through 2025* ("Annual Budget Request")¹⁵ 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.

On April 14, 2022, LUMA filed with the Energy Bureau, a document titled *Motion in Compliance with Resolution and Order Dated April 11, 2022* ("Motion in Compliance")¹⁶ through which it submitted to the Energy Bureau the FY 2023 PREPA GenCo Proposed

⁸ See, Resolution and Order, *In re: Review of LUMA's Initial Budget*, Case No. NEPR-MI-2021-0004, September 9, 2021 ("September 9 Resolution").

⁹ *Id.*, p.9.

¹⁰ See, Motion in Compliance with September 9th Order Submitting Revised Request for Modification of Approved Budget for Fiscal Year 2022 and Responses to Requests for Information, *In Re: Review of LUMA's Initial Budget*, Case No. NEPR-MI-2021-0004, September 17, 2021 ("September 17 Motion").

¹¹ See, Motion to Submit Quarterly Report, *In Re: Review of LUMA's Initial Budget*, Case No. NEPR-MI-2021-0004, November 15, 2021 ("FY 2022 Q1 Report").

¹² See, Resolution and Order, *In Re: Review of LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, January 21, 2022 ("January 21 Resolution").

¹³ See, Evaluation of LUMA's September 17, 2021 Motion in Compliance, *In Re: Review of LUMA's Initial Budgets*, Case No. NEPR-MI-2021-0004, January 21, 2021 ("January 21 Resolution"), p.5.

¹⁴ See, Motion to Submit Quarterly Report, *In Re: Review of LUMA's Initial Budget*, Case No. NEPR-MI-2021-0004, February 15, 2022 ("FY 2022 Q2 Report").

¹⁵ See, Submission of Annual Budgets for Fiscal Years 2023 through 2025, Case No. NEPR-MI-2021-0004, April 2, 2022 ("Annual Budget Request").

¹⁶ See, *Motion in Compliance with Resolution and Order Dated April 11, 2022*, Case No. NEPR-MI-2021-0004, April 14, 2022 (Motion in Compliance).



Budget Expenses dated as of April 14, 2022 and FY 2023 GenCo Budget Proposal submitted to LUMA by PREPA that day.

On May 16, 2022, LUMA filed with the Energy Bureau, a document titled *Motion to Submit Quarterly Report* (“FY 2022 Q3 Report”),¹⁷ in which LUMA provided its third Quarterly Report of the 2022 Fiscal Year, 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”),¹⁸ through which it advised LUMA that approval of the Modification Request would not be considered until the independent assessment of the load forecast was received and evaluated by the Energy Bureau.¹⁹ The Energy Bureau ordered LUMA to, on or before 12:00 p.m., on May 26, 2022 to submit the independent assessment.

On May 26, 2022, LUMA filed with the Energy Bureau, a document titled *Motion Submitting Response to Specific Request for Information in Compliance with Resolution and Order dated May 19, 2022* (“May 26 Motion”),²⁰ in which LUMA responded to the Requirements of Information in the Energy Bureau’s May 19 Resolution.

On June 6, 2022, LUMA filed with the Energy Bureau, a document titled, *Motion Submitting Fiscal Year 2022 Budget Amendment* (“Amendment Request”).²¹ In the Amendment Request, LUMA requests that the Energy Bureau review and approve certain changes in LUMA’s executed and remaining expenditures for FY 2022. LUMA requests that it be authorized to reallocate \$47 million from its non-federally funded Capital Budget to its Operating Budget to provide for higher than anticipated labor expenditures for FY 2022 and to reallocate \$29 million between Improvement Portfolios, moving costs to the Enabling Improvement Portfolio for increases in spending within the Health, Safety, Environment and Quality (HSEQ) and Technical Training Improvement Program. In addition, LUMA seeks to reflect updated data and changed assumptions regarding PREPA’s expected Exit from Title III and the FOMB certification of PREPA’s FY 2022 Budget, in accordance with the Modification Request.

On June 22, 2022, the Energy Bureau issued a Resolution and Order (June 22 Resolution),²² through which, it stated that LUMA had not independently assessed the revised energy forecast it relied upon in its Modification Request as ordered on January 21 Resolution and the May 19 Resolution and directed LUMA to respond to the attached Request of Information on or before June 27, 2022.

On July 6, 2022, LUMA filed with the Energy Bureau, a document titled, *Motion Submitting Responses in Compliance with Resolution and Order of June 22, 2022* (July 6 Motion)²³

¹⁷ See, Motion to Submit Quarterly Report, *In Re: Review of LUMA’s Initial Budget*, Case No. NEPR-MI-2021-0004, May 16, 2022 (“FY 2022 Q3 Report”).

¹⁸ See, Resolution and Order, *In Re: Review of LUMA’s Initial Budgets*, Case No. NEPR-MI-2021-0004, May 19, 2021 (“May 19 Resolution”),

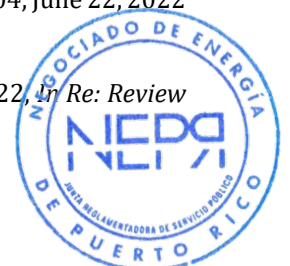
¹⁹ *Id.*, p.9.

²⁰ See, Motion Submitting Response to Specific Request for Information in Compliance with Resolution and Order dated May 19, 2022, *In Re: Review of LUMA’s Initial Budget*, Case No. NEPR-MI-2021-0004, May 26, 2022 (“May 16 Motion”).

²¹ See, Motion Submitting Fiscal Year 2022 Budget Amendment, *In Re: Review of LUMA’s Initial Budget*, Case No. NEPR-MI-2021-0004, June 6, 2022 (“Amendment Request”).

²² See, Resolution and Order, *In re: Review of LUMA’s Initial Budget*, Case No. NEPR-MI-2021-0004, June 22, 2022 (“June 22 Resolution”).

²³ See, Motion Submitting Responses in Compliance with Resolution and Order of June 22, 2022, *In Re: Review of LUMA’s Initial Budget*, Case No. NEPR-MI-2021-0004, July 6, 2022 (“July 6 Motion”).



On August 2, 2022, the Energy Bureau issued a Resolution and Order (“Aug 2 Resolution”),²⁴ through which it approved LUMA's proposed FY 2022 Budget Amendment Request which subsumes the Modification Request.

On November 2, 2022, LUMA filed with the Energy Bureau, a document titled, *Motion Submitting Fiscal Year 2022 Budget Amendment* (“Nov 2 Amendment Request”).²⁵ In the Nov 2 Amendment Request, LUMA requests that the Energy Bureau review and approve certain changes in LUMA's executed and remaining expenditures for FY 2022. LUMA's request consists of primarily one adjustment to reallocate a surplus in LUMA's Operating Budget of around \$21 million to its Non-Federally Funded Capital Budget. LUMA's other budgets remain unchanged in an aggregate, however LUMA is also requesting an increase in Generation Shared Services of around \$1.8 million to reflect higher than budgeted costs resulting predominantly from increased insurance cost. This Budget Amendment Request includes reallocation of funds within the Improvement Portfolios.

II. Amendment Request

LUMA states it is filing the Amendment Request under Section 7.3(e) of the T&D OMA, which provides that the Operator may, from time to time, propose to amend the approved Operating Budget and Capital Budgets for a given Fiscal Year, provided that the amendment is compliant with the applicable Rate Order. If Operator becomes aware that T&D Pass-Through Expenditures are expected to exceed the Budget, Operator shall prepare and submit to PREB a proposed amended Operating Budget or Capital Budget for such Fiscal Year. LUMA states that the proposed FY2022 amendment does not result in any increase to customer rates and LUMA's aggregate operating and capital expenditure budgets remain within the Expenditures Limit. LUMA states that the Revised Amendment request consists of primarily one adjustment to reallocate a surplus in LUMA's Operating Budget to its Non-Federally Funded Capital Budget. LUMA's stated in the request that other budgets remain unchanged, however LUMA has provided for an increase in Generation Shared Services to reflect higher than budgeted costs resulting predominantly from increased insurance cost.²⁶

In the Amendment Request, LUMA requests authorization to reallocate \$21 million from its Operating Budget to its Non-Federally Funded Capital Budget. LUMA Claims this is largely driven by efficiencies and cost saving measures implemented by LUMA that resulted in having lower operating expenditures versus the Amended FY2022 Budget as well as year-end closing activities. As a result of the cost savings in operating expenditures, LUMA was able to increase overall spending on non-federally funded capital and advance work on several Improvement Programs. LUMA Asserts that as is typical with any enterprise, year-end closing activities periodically warrant reclassifications of various costs, and LUMA is no exception. Year-end closing adjustments impacted actual budget allocations in FY2022, and the Revised Amendment reflects these year-end adjustments.²⁷

LUMA asserts that the revised FY 2022 total Non-Federally funded T&D and Generation base rate expenditures per kWh is \$0.0733/kWh which is underneath the \$0.0746/kWh base rate limit as approved in the PREPA 2017 Rate Case Order.²⁸

²⁴See, Resolution and Order, *In re: Review of LUMA's Initial Budget*, Case No. NEPR-MI-2021-0004, Aug 2, 2022 (“Aug 2 Resolution”).

²⁵ See, Motion Submitting Fiscal Year 2022 Budget Amendment, *In Re: Review of LUMA's Initial Budget*, Case No. NEPR-MI-2021-0004, Nov 2, 2022 (“Nov 2 Amendment Request”).

²⁶ Nov 2 Amendment Request, pp. 1 -2.

²⁷ *Id.* Exhibit 1, pp. 3 – 4.

²⁸ *Id.* Exhibit 1, p. 2.



III. Discussion

The Nov 2 Amendment Request, as well as the prior Amendment Request²⁹ are both based that under the T&D OMA Section 7.3(e) that says that the Operator may, from time to time, propose to amend the approved Operating Budget and Capital Budget for a given Contract Year provided that such amendment shall be compliant with the applicable Rate Order. If, during a Contract Year, Operator becomes aware that T&D Pass-Through Expenditures or Generation Pass-Through Expenditures for such Contract Year are expected to exceed a budget for such Contract year, then, (i) with respect to the Operating Budget and Capital Budget, Operator shall promptly notify PREB and Administrator and prepare and submit to PREB a proposed amended Operating budget or Capital Budget for such Contract year, as the case may be, which amendment shall require and be subject to approval by PREB, and (ii) with respect to the Generation Budget, (x) Operator shall notify PREB, Administrator and Owner and (y) Owner shall, as promptly as practical, prepare and submit to PREB a proposed amended Generation Budget, which amendment shall require and be subject to approval by PREB.

The Energy Bureau has highlighted before to LUMA (i)the expectation that, under the OMA that the Operator shall *promptly* notify the Energy Bureau upon becoming aware that the T&D Pass Through expenditures in the Operating Budget are expected to exceed the budget for that Contact Year. (ii)Moreover, that the window for justifications based on lack of actual information is closed, this explicitly noted in the Aug 2 Resolution. (iii)The Energy Bureau has warned LUMA that any future reallocation or redistribution of funds amongst budget programs or line items shall be timely anticipated and requested before the Energy Bureau.³⁰

It is important to mention that under the T&D OMA Section 1.1 it basically defines “Contract Year” to mean the period from July 1 through June 30 for each year with clarifications for the portion of the Term commencing on the Service Commencement Date and also the final Contract Year date and adjustment for those on a Pro Rata basis to take into account any Contract Year of less than 365/366 days. The T&D OMA is dated June 22, 2020.

The Energy Bureau understands the need to have budget amendment capacity toward the close of the fiscal year. The objective is to make sure that LUMA and PREPA and the other costs associated with the Base Rate have sufficient expenditure authority in the various line items in the budget and prevent any over-expenditure in a budget program or category. (i)LUMA filed an Amendment Request on June 6, 2022, only 24 days before the end of Fiscal Year 2022 Contract year. The Energy Bureau approved this proposed FY 2022 Budget Amendment Request.³¹ (ii)Section 7.3(e) of the T&D OMA is clear that amendments are to be notified promptly during the contract year to the PREB and the Administrator. The Nov 2 Amendment Request is requesting amendments for Fiscal Year 2022 PREB approved Budget which encompass a full contract year as per the T&D OMA. (iii)The Fiscal Year 2022 ended on June 30, 2022, and this Nov 2 Amendment was presented to the Energy Bureau **123 days after Year End**.

As an initial matter, the Energy Bureau notes that the Amendment Request **does not result in increased customer base rates and does not result in an increase to LUMA's aggregate expenditures. As such, a rate review proceeding is not needed.**



²⁹ See, Motion Submitting Fiscal Year 2022 Budget Amendment, *In Re: Review of LUMA's Initial Budget*, Case No. NEPR-MI-2021-0004, June 6, 2022 (“Amendment Request”).

³⁰ See, Resolution and Order, *In re: Review of LUMA's Initial Budget*, Case No. NEPR-MI-2021-0004, Aug 2, 2022 (“Aug 2 Resolution”).

³¹ Id.


IV. Conclusion

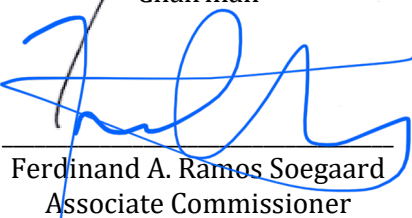
The Energy Bureau **DENIES** LUMA's proposed FY 2022 Budget Amendment Request filed on November 2, 2022.

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 \$25,000.00 per day.

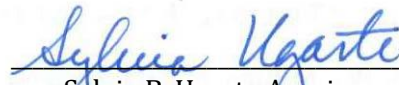
The Energy Bureau **WARNS** LUMA and PREPA that any person who intentionally violates any provision of Act 57-2014, as amended, omits, disregards, or refuses to obey, observe, and comply with any rule or decision of the Energy Bureau shall be punished by a fine of not less than five hundred dollars (\$500) 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.


Edison Avilés Deliz
Chairman


Ferdinand A. Ramos Soegaard
Associate Commissioner


Lillian Mateo Santos
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 November 11, 2022. I also certify that on November 11, 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 and kbolanos@diazvaz.law. I also certify that today, November 11, 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 November 11, 2022.


Sonia Seda Gaztambide
Clerk

