

**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: Resolution and Order pertaining *Motion for Reconsideration of Resolution and Order of November 11, 2022 on LUMA's Fiscal Year 2022 Budget Amendment*, filed by LUMA; Determination on LUMA's Fiscal Year 2022 Budget Amendment Petition.

RESOLUTION AND ORDER

I. Relevant Procedural Background

On February 24, 2021, LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively "LUMA") 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 57-2014,¹ as amended by Act 17-2019;² and pursuant to LUMA's obligations under Section 4.2(e) of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("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. After an extensive examination process (which included public participation) on May 31, 2021, the Energy Bureau issued a Resolution and Order ("May 31 Resolution") through which it approved LUMA's Initial Budgets Petition, corresponding to the budget for Fiscal Year 2022 ("FY22"). The Energy Bureau also directed LUMA to comply with several reporting requirements.

On July 16, 2021, LUMA filed with the Energy Bureau a document titled *Request for Modification of Approved Budget for Fiscal Year 2022* ("First Amendment Request"). In the First Amendment Request, LUMA expressed the need to revise the FY22 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. LUMA requested that the Energy Bureau approve a revised FY22 Budget in accordance with the revisions identified in the Modification Request.

On June 6, 2022, LUMA filed with the Energy Bureau a document titled *Motion Submitting Fiscal Year 2022 Budget Amendment* ("Second Amendment Request"). In the Second Amendment Request, LUMA requested that the Energy Bureau review and approve certain changes in LUMA's executed and remaining expenditures for FY22. After a comprehensive review of LUMA's submissions, on August 3, 2022, the Energy Bureau entered a Resolution and Order approving LUMA's First Amendment Request and well as its Second Amendment Request, finding that the latter was subsumed in the First Amendment Request ("August 3 Resolution"). Notwithstanding the approval the First Amendment Request and the Second Amendment Request, in the August 3 Resolution, the Energy Bureau warned LUMA that, (i) the window for justifications of budget modifications based on lack of actual information was closed and that unexpected, delayed, or complex work cannot be a generic excuse for delayed work, (ii) any future reallocation or redistribution of funds amongst budget programs or line items shall be timely anticipated and the corresponding budget amendment requested before the Energy Bureau, (iii) LUMA and PREPA need to effectively coordinate budget matters, and (iv) that noncompliance with the August 3 Resolution, regulations, and/or applicable laws would carry the imposition of fines and administrative sanctions.

¹ Knowns as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014").

² Knowns as the *Puerto Rico Energy Public Policy Act* ("Act 17-2019").



On November 2, 2022, LUMA filed before the Energy Bureau a document titled *Motion Submitting Fiscal Year 2022 Budget Amendment* (“Third Amendment Request”). Through the Third Amendment Request, LUMA requests that the FY22 Budget be amended to reallocate a \$21 million surplus in LUMA’s Operating Budget to its Non-Federally Funded Capital Budget line items. LUMA stated that said modification was a result of LUMA’s cost saving measures and year-end closing adjustments and financial reviews. LUMA asserted that because of these cost savings in operational expenditures, it was able to increase overall spending on non-federally funded capital and advance work on several Improvement Programs. LUMA further indicated that the activities in LUMA’s Second Amendment Request remain unchanged. Finally, LUMA stressed that the proposed modification did not result in increased customer base rates or in an increase to LUMA’s aggregate expenditures. On November 11, 2022, the Energy Bureau issued a Resolution and Order whereby it denied LUMA’s Third Amendment Request (“November 11 Resolution”).

On November 23, 2022, LUMA filed before the Energy Bureau a document titled *Motion for Reconsideration of Resolution and Order of November 11, 2022 on LUMA’s Fiscal Year 2022 Budget Amendment* (“November 23 Motion”), through which it requested reconsideration of the November 11 Resolution and approval of the November 2 Amendment Request, seeking to reallocate \$21 million from the approved Operating Budget for FY22 to the Non-Federally Funded Capital Budget.³

II. LUMA’s November 23 Motion Argument

In the November 23 Motion, LUMA argues that the Third Amendment Request was filed promptly as LUMA was completing year-end closing activities and preparing the year-end report.⁴ LUMA indicated that it completed these tasks within the timeframe outlined in the T&D OMA, to wit, one hundred and twenty (120) days after the Fourth Quarter of FY22 closed, and filed the November 2 Amendment Request, three (3) days following completion of the Annual Report.⁵ Moreover, LUMA stated that said request was filed after it conclusively identified the need to request a budget amendment upon concluding analyses of year-end spending activities.⁶ LUMA stressed that prior to finalizing the Annual Report it did not have final numbers to determine the re-allocation and the need to request a year-end budget amendment⁷ and indicated that year-end closing activities periodically warrant reclassifications of various costs and that this is typical of other enterprises as well.

LUMA explained that year-end closing adjustments impacted actual budget allocations in FY22, and the Revised Amendment reflects these year-end adjustments. LUMA also advised that year-end closing adjustments may continue to impact annual budget allocations each year, at either the program, portfolio, or overall budget level. LUMA also stated that the Third Amendment Request does not result in increased customer base rates and does not result in an increase in LUMA’s aggregate expenditures. Specifically, LUMA argues that the Third Amendment Request, (i) decreases the FY22 Approved T&D Operating Budget from \$572 million to \$551 million, for a variance of \$21 million or 4%, (ii) the \$21 million surplus was reallocated to Non-Federally Funded Capital Expenditures which increases the approved Non-Federally Funded Capital Expenditures from \$77 million to \$98 million, for a variance of \$21 million or 27% , and (iii) Shared Services were also increased from \$59 million as per approved to \$60 million for a LUMA specified variance of \$2 million or 3%, increasing the Total Generation Budget by \$2 million or 1%.

³ November 23 Motion, pp. 3-4.

⁴ *Id.*, p. 4.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*



III. Discussion

Under Section 7.3(e) of the T&D OMA, LUMA 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, LUMA 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 T&D OMA clearly sets forth the requirement that the need for a budget amendment be recognized during the Contract Year and that LUMA promptly notify and submit the proposed amendment to the Energy Bureau for **review and approval**. Accordingly, in the August 3 Resolution, the Energy Bureau stated that the expectation under the T&D OMA is that LUMA shall notify the Energy Bureau, promptly, upon becoming aware that the T&D Pass Through expenditures are expected to exceed the budget for that Contract Year.

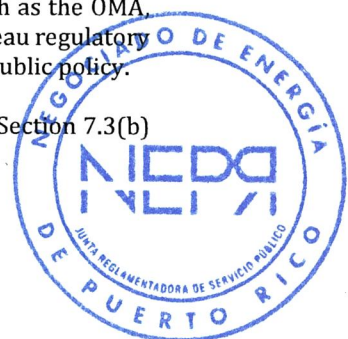
LUMA's Third Amendment Request simply misconstrues Section 7.3(e) of the T&D OMA. The budget amendment procedure established therein does to provide for modifications of the approved budgets after expenses have been incurred. Rather, it provides a mechanism for the Energy Bureau (and P3A, as the case may be) to review and approve **necessary** budget modifications **in advance**. LUMA cannot spend money contrary to the approved budget, and then obtain a retroactive modification, which would otherwise seem to suggest that LUMA fully complied with the applicable budget limitations.⁸ The Energy Bureau emphasizes that budget amendment requests must be received in a timely manner, when expenditures are expected to exceed the approved budget and, in all cases, **before the expense is incurred**.⁹ The same principles shall be applicable to LUMA's requests to reallocate or redistribute funds amongst budget programs or line items which exceeds the parameters provided in Section 7.3(c) of the T&D OMA.¹⁰

The expectation is that LUMA's Quarterly Reporting is executed coherently and facilitates the orderly identification of potential budget reallocations between programs. We find no merit to LUMA's allegation that it can only identify the need to request a budget amendment upon conclusion of year-end spending activities. LUMA must not view the end of the year financials as enabling funds to be allocated without adequate forethought after being expended. The Energy Bureau expects the budget process to be the result of careful program and expenditure planning and therefore that an amendment could be reasonably anticipated in accordance with prudent accounting during the fiscal year. Amendment requests can be reasonably based on projections and/or estimates. Furthermore, they need to be approved prior to making the expenditure to effectively prevent expenditures that may not be aligned with, among other things, public policy compliance and/or advancement or the provision of reliable service. The close of the fiscal year and the Annual Report with the final numbers

⁸ This does not prevent LUMA from, in the Annual Report document, making adjustments/revisions to the initial characterization or classification of certain budget items and explain the basis for such revision/adjustment. The Energy Bureau recognizes that the updated characterization or classification of budget items in the Annual Report could be reasonable, however, it does not justify a retroactive amendment to the approved budget in accordance with Section 7.3 of the T&D OMA or public policy. These circumstances, nevertheless, would be duly considered by the Energy Bureau in evaluating LUMA's compliance with the approved budgets.

⁹ These budget monitoring and management mechanism, even in the absence of a contract such as the OMA, are applicable to both LUMA and the Puerto Rico Electric Power Authority under the Energy Bureau regulatory powers to ensure the appropriate use of ratepayers' monies in furtherance of compliance with public policy.

¹⁰ Although LUMA must keep the Energy Bureau abreast of Excess Expenditures (as defined in Section 7.3(b) of the T&D OMA), such expenses do not require a modification to the approved budget.



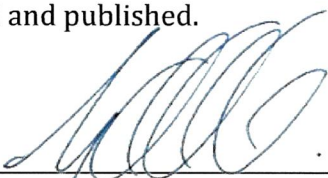
will show the performance in terms of adherence to the budget approved (including timely approved amendments) but shall not be used as basis for retroactive amendments.

IV. Conclusion

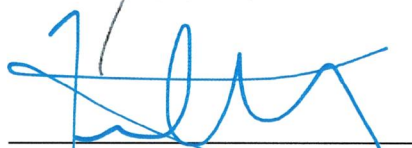
For the reasons stated above, the Energy Bureau **DENIES** the November 23 Motion.

In addition, after a comprehensive evaluation of the entire record of this case, including the November 23 Motion and accompanying documents, the Energy Bureau **ORDERS** LUMA to show cause within ten (10) business days of the notification of this Resolution and Order why LUMA should not be fined the maximum allowed fine of **\$25,000.00 per day**¹¹ for, (i) exceeding the expenses of the Non-Federally Funded Capital Budget for approved FY22 Budget in an amount of \$21 million, without first obtaining the Energy Bureau's approval, and (ii) for failing to comply with the August 3 Order, which establishes that: (a) the window for justifications of budget modifications based on lack of actual information was closed and that unexpected, delayed, or complex work cannot be a generic excuse for delayed work, and (b) any future reallocation or redistribution of funds amongst budget programs or line items shall be timely anticipated and the corresponding budget amendment timely requested before 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 December 14, 2022. I also certify that on December 14, 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, December 14, 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 December 14, 2022.



Sonia Seda Gaztambide
Clerk



¹¹ Article 6.36(a) of Act 57-2014 which states: "(a) The Energy Bureau shall impose administrative fines for violations of this Act, or the regulations and orders issued thereunder, committed by any person or electric power company subject to its jurisdiction, of up to a maximum of twenty-five thousand dollars (\$25,000) per day. Said fines shall never exceed five percent (5%) of the gross sales, fifteen percent (15%) of the net income, or ten percent (10%) of the net worth of the sanctioned person or the electric power company. The greater of the aforementioned amounts corresponding to the most recent taxable year shall be the amount of the fine."