

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

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IN RE: REVIEW OF LUMA’S INITIAL
BUDGETS

CASE NO. NEPR-MI-2021-0004

SUBJECT: Motion in Compliance with Resolution
and Order of March 25, 2023

**MOTION IN COMPLIANCE WITH RESOLUTION AND ORDER OF MARCH 25, 2023
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:

I. Introduction

1. On March 25, 2023, this Energy Bureau issued a Resolution and Order with the subject “Request for Information on PREPA’s March 14, 2023 Amendment Request” in reaction to a *Request to Amend FY2023 PREPA Budget for Implementation of FOMB Certified Fiscal Plan Transformation Initiatives* filed by the Puerto Rico Electric Power Authority (“PREPA”) on March 14, 2023 (“Amendment Request”). In what is relevant to LUMA, this Energy Bureau directed that within three (3) business days, that is, by March 29, 2023, LUMA shall state its position on PREPA’s March 14th Amendment Request, including the requirement for LUMA to notify PREB of any budget amendments as stated in section 7.3(e) of the T&D OMA. LUMA hereby appears in compliance with the March 25th Order.

II. Procedural Background

2. On April 2, 2022, LUMA submitted to this Energy Bureau its Annual Budgets for Fiscal Years 2023 through 2025 (“Annual Budgets”). LUMA also submitted supporting workpapers on April 8, 2022.

3. 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 19th Order”). This Energy Bureau issued one hundred and sixteen (116) requests for information, stated in Attachments A through F of the May 19th Order. Additionally, in the May 19th Order, this Energy Bureau scheduled a Technical Conference for June 10, 2022, which conference convened and was canceled minutes after the record opened and witnesses were administered the oath or affirmation.

4. In compliance with the May 19th Order, through separate filings dated May 26, June 3 and June 7, 2022, LUMA and the Puerto Rico Electric Power Authority (“PREPA”) submitted their responses to the Energy Bureau’s Requirements for Information (“RFIs”).¹

5. 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.

6. On July 16, 2022, the Energy Bureau entered a Resolution and Order (the “July 16th Order”) whereby it took notice of the Certified Budget. In what is pertinent here, the Energy Bureau further determined to open a review of the Certified Budget. As part of such process, the Energy Bureau

¹ 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.

ordered LUMA to submit further responses to 9 RFIs included in the July 16th Order. In compliance with the July 16th Order, on July 29, 2022, LUMA submitted the information requested.

7. After other procedural developments, 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 (“August 12th Order”). In the August 12th Order, this Energy Bureau also issued seven (7) additional requests for information due on August 29, 2022.

8. 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 to September 13, 2022.

9. On August 29, 2022, LUMA submitted its Responses in Compliance with the August 12th Order.

10. The first day of the Technical Conference on the Certified Budget was held on September 13, 2022 from 10:00 a.m. until past 5:00 p.m. (“September 13th Technical Conference”). Throughout the Technical Conference, this Energy Bureau and its consultants issued several additional RFIs. In total, the Energy Bureau issued eighteen (18) RFIs, some of which include several requests.

11. Close to 5:00 pm during the September 13th Technical Conference, this Energy Bureau determined that it was necessary to extend the Technical Conference for a second day and set the same for September 27, 2022.

12. Regarding the RFIs, at the close of the September 13th Technical Conference, this Energy Bureau indicated that it would issue a written order with the RFIs and granted LUMA until 5:00 pm on September 23, 2022 to submit its responses.

13. On September 20, 2022, this Energy Bureau issued a Resolution and Order whereby it issued an amended procedural calendar in this proceeding (“September 20th Order”). This Energy Bureau set the date for LUMA to file its responses to the RFIs for October 7, 2022. Further, this Energy Bureau scheduled the continuation of the Technical Conference for October 18, 2022.

14. On October 5, 2022, LUMA submitted a Motion styled *Urgent Request for Extension of Time to Submit Responses to Requests for Information and Request for an Agenda for the October 18th Technical Conference* (“October 5th Request for Extension”). In the October 5th Request for Extension, LUMA proposed to submit a first set of RFI responses by October 7th and requested that additional time beyond October 7th, until October 12, 2022, be granted to submit a second set of responses.

15. In compliance with the bench orders issued on September 13th and the September 20th Order, on October 7, 2022, LUMA submitted a first set of four (4) responses to the RFIs. In further compliance with the bench orders issued on September 13th and the September 20th Order, on October 12, 2022, LUMA submitted a second set of fourteen (14) responses to the RFIs as *Exhibit I* to this motion. As part of its submission, LUMA requested that the redacted portions of responses to RFI number 13 of *Exhibit I* be kept confidential 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, on October 24, 2022, LUMA submitted a Memorandum of Law in support of its request for confidentiality.

16. A second Technical Conference was held on October 18, 2022. LUMA’s representatives appeared and answered questions posed by the Commissioners and consultants of this Energy Bureau. During the second Technical Conference, the Bureau issued bench orders with two (2)

additional RFIs. In compliance therewith, on November 1, 2022 LUMA submitted its responses to those two (2) requests through a motion titled *Submission of Responses to Requests for Information in Compliance with Bench Orders Issued During Technical Conference of October 18, 2022*.

17. On November 14, 2022, LUMA filed a *Memorandum of Law in Support of Request for Confidentiality of Documents Submitted Under Seal with its November 1 Motion* in which it espoused the legal reasons for protecting the confidentiality of certain information.

18. On November 28, 2022, this Energy Bureau entered a Resolution and Order whereby it scheduled a confidential or closed Technical Conference for December 13, 2022 at 2:00 pm (AST) to facilitate its review of certain confidential information submitted by LUMA in response to the Energy Bureau's multiple RFIs in this proceeding. At LUMA's request, the conference was re-scheduled and celebrated on December 20th.

19. During the closed Technical Conference, the Energy Bureau issued another round of RFIs directed to LUMA. The Energy Bureau instructed that the responses to those RFI's should be provided by January 4, 2023.

20. LUMA moved for reconsideration of the deadline to comply with the additional RFI's and requested that the same be set on or around January 10th to allow some components of its internal team more working days to identify and produce the requested information. The honorable Energy Bureau denied such request.

21. On December 28, 2022, LUMA submitted a First Set of Responses to the Requests for Information issued during the closed Technical Conference. *See Motion Submitting First Set of Responses to Requests for Information Issued During December 20, 2022, Closed Technical Conference and Request for Confidential Treatment*. LUMA requested an extension of four (4)

business days, until January 12th, to submit the remaining responses to the RFIs issued by the Energy Bureau during the closed Technical Conference.

22. On January 11, 2023, LUMA filed a *Motion Submitting Responses to Pending Requests for Information Issued during December 20, 2022 Closed Technical Conference and Request for Confidential Treatment* (“January 11th Motion”). In addition, in the January 11th Motion LUMA informed that it would complete RFI-LUMA-MI-2021-0004-20221220-PREB-001, sub-part (d) as soon as possible, because the persons who may confirm the information were out of the office.

23. On January 12, 2023, LUMA submitted its response to RFI-LUMA-MI-2021-0004-20221220-PREB-001, sub-part (d). *See Motion Submitting Response to RFI-LUMA-MI-2021-0004-20221220-PREB-001(d) Issued during the December 20, 2022 Closed Conference and Request for Confidential Treatment*. On January 26, 2023, LUMA submitted an Amended Response to RFI-LUMA-MI-2021-0004-20221220-PREB-001(d). *See Motion Submitting Response to RFI-LUMA-MI-2021-0004-20221220-PREB-001(d) Issued during the December 20, 2022 Closed Conference and Request for Confidential Treatment*.

24. On February 10, 2023, this honorable Energy Bureau issued a Resolution and Order whereby it ordered the Puerto Rico Electric Power Authority (“PREPA”) to present to LUMA for LUMA to file with the Energy Bureau (i) all the documentation PREPA submitted to the FOMB in connection with a certain letter dated January 11, 2023, from PREPA to the FOMB; and (ii) copy of the contracts that PREPA has subscribed in the past six (6) months regardless of their amount. In compliance with the February 10th Order, on February 17, 2023, LUMA submitted, on behalf of PREPA, the documents produced by PREPA in response to the February 10th Order. LUMA also submitted on behalf of PREPA, a list of the contracts executed by PREPA between

August 1, 2022 and February 1, 2023. Finally, LUMA submitted on behalf of PREPA the PREPA contracts.

25. On February 27, 2023, this Energy Bureau issued a Resolution and Order approving the Certified Budget, subject to conditions and reporting requirements (“February 27th Order”).

26. On March 14, 2023, PREPA filed a motion entitled *Request to Amend FY 2023 PREPA Budget for Implementation of FOMB Certified Fiscal Plan Transformation Initiatives* (“PREPA’s March 14th Amendment Request”). Therewith, PREPA requested an amendment to its approved and certified Generation Budget, arguing that the amendment will not result in increased rates to customers because it is based on revenues from reimbursed federal funds. Particularly, PREPA requests that this Energy Bureau amend the approved Generation Budget for FY 2023 to: (1) allocate \$60 million for operating and necessary maintenance expenses (NME) (\$40 million for generation NME projects listed in Annex D of the PREPA March 14th Amendment Request and \$20 million for operating expenses); (2) reallocate funds from the FEMA Reimbursement Account to PREPA’s Operational account to fund expenses for construction projects that have been approved by the Energy Bureau; (3) allocate \$15 million from its operating budget to fund Genera’s mobilization fee; (4) allocate \$29.4 million to cover estimated costs for the Voluntary Transition Program of its employees; and (5) allocate \$150 million to fund PREPA’s Pension System.

27. On March 20, 2023, LUMA filed a motion entitled *Motion for Reconsideration and/or Request for Clarifications of Resolution and Order of February 27, 2023, on LUMA’s Fiscal Year 2023 Certified Budget and Request for Stay Pending Adjudication of the Motion for Reconsideration*. Therein, LUMA requested that this Energy Bureau reconsider several of the

Energy Bureau's orders and reporting determinations included in the February 27th Order approving the Budget for FY 2023.

28. On March 24, 2023, PREPA filed a *Renewed and Reiterated Urgent Request to Amend FY2023 PREPA Budget for Implementation of FOMB Certified Fiscal Plan Transformation Initiatives* whereby it reiterated its request for an amendment to its FY2023 certified Generation Budget (the "Renewed Amendment Request"). Through the Renewed Amendment Request, PREPA also clarified and updated its original request for amendment. As per the Renewed Amendment Request, PREPA requested that the Energy Bureau authorize an amendment to the FY2023 Certified Generation Budget to: (i) allocate \$15 million to pay for the General mobilization costs; (ii) allocate \$29.4 million to fund the Voluntary Transition Program; (iii) allocate \$200 million to fund the Pension System; and (iv) allocate \$81.8 million for NME (\$46.4 million FY2023 and \$35.4 million for FY2024).

29. On March 25, 2023, this Energy Bureau issued a Resolution and Order with the subject "Request for Information on PREPA's March 14, 2023 Amendment Request". In what is relevant to LUMA, this Energy Bureau directed that within three (3) business days, that is, by March 29, 2023, LUMA shall state its position on PREPA's March 14th Amendment Request, including the requirement for LUMA to notify PREB of any budget amendments as stated in section 7.3(e) of the T&D OMA.

30. On March 26, 2023, PREPA filed a *Petition in Response to the Energy Bureau's March 25 Order Regarding the Revised Request to Amend the FY2023 Budget* whereby, in what is pertinent, it informed that on March 24, 2023, the FOMB issued a Resolution certifying the following amounts for PREPA's revised FY2023 Generation Budget: (i) \$15 million to pay for the General mobilization costs; (ii) \$29.4 million to fund the Voluntary Transition Program; and (iii) \$46.4

million for FY2023 NME through a reserve, subject to the Energy Bureau's review and approval (the "March 26th Response"). Through its March 24th Resolution, the FOMB did not approve any amount to fund the Pension System, pending further analysis with the Government of Puerto Rico.

31. Through its March 26th Response, PREPA also requested that the Energy Bureau schedule a technical conference for March 28, 2023, to discuss the operational and necessary maintenance expenditures. Finally, PREPA requested that the Energy Bureau take notice of the March 24th Resolution of the FOMB.

III. Discussion in Compliance with the March 25th Order

32. Section 7.3(e) of the T&D OMA sets forth the Parties responsibilities in connection with Amendments to Budgets. With respect to the Generation Budget, Section 7.3(e) of the T&D OMA establishes that "If, during a Contract Year, Operator becomes aware that . . . Generation Pass-Through Expenditures for such Contract Year are expected to exceed a Budget for such Contract Year (taking into account the allowances for Excess Expenditures), then . . . (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."

33. Pursuant to Section 7.3(e), LUMA is not required to submit a generation budget amendment request to the Energy Bureau. LUMA is to notify PREB, PREPA and the P3A for PREPA to request a budget amendment. Section 7.3(e) of the T&D OMA, however, has not been triggered to date as it relates to LUMA in connection with PREPA's Generation Budget. PREPA did not inform LUMA of the need to amend the Generation Budget prior to seeking such amendment from the FOMB and this Energy Bureau.

34. Therefore, the obligation set forth at Section 7.3(e)(ii)(x) of the T&D OMA for LUMA to notify this Energy Bureau, P3A and PREPA, was not triggered. Furthermore, as per the above cited contractual language, it is PREPA's obligation to prepare and submit to the honorable Energy Bureau a proposed amended Generation Budget for the Energy Bureau's approval.

35. With regards to the proposed amendment to the Certified Generation Budgets, as LUMA may expand separately and under seal of confidentiality and as PREPA is aware, LUMA is concerned with PREPA's ability to fully fund the Service Accounts. LUMA is, thus, supportive of any measure taken to ensure PREPA's compliance with its contractual obligations under the T&D OMA and respectfully requests that any measure taken by the Energy Bureau take into consideration PREPA's obligations to fund the Service Accounts under the T&D OMA.

36. It is important to note that per LUMA's initial analysis, some of the projects included in Exhibit B of Annex C of PREPA's March 14th Amendment Request (that is, the list of projects which expenditures are being reimbursed) are classified as T&D projects. Further information is needed to identify where the reimbursed funds for those projects should be allocated. It is LUMA's position that the proposed expenditures need to be explained by PREPA in further detail to make a determination as to the proper allocation.

37. Finally, LUMA is not in position to opine on or confirm the information included in PREPA's Renewed Request for Amendment regarding the availability of the federal funds for the generation projects. It is LUMA's position that any infrastructure or operational generation projects should be proven to be the most efficient use of funds consistent with the goal of building a more reliable electric system with low outage rates. The development and implementation of any such generation projects, however, are the responsibility of the generator.

WHEREFORE, LUMA respectfully requests that the honorable Bureau **take notice** of the aforementioned for all purposes; and **deem** that LUMA complied with the March 25th Order.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 29th day of March, 2023.

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 attorney of record: jmarrero@diazvaz.law.



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