

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

NEPR Received: Apr 5, 2023 10:08 AM
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IN RE: REVIEW OF LUMA’S INITIAL
BUDGETS

CASE NO. NEPR-MI-2021-0004

SUBJECT: Payment of Fine

**INFORMATIVE MOTION ON PAYMENT OF FINE AND REQUEST FOR
CONFIRMATION OF PAYMENT**

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 November 2, 2022, LUMA submitted to this Honorable Puerto Rico Energy Bureau (“Energy Bureau”) a *Motion Submitting Fiscal Year 2022 Budget Amendment of November 2, 2022* (“November Budget Amendment Request”). In the November Budget Amendment Request, LUMA petitioned that the FY2022 Budget be amended to reallocate a surplus of \$21 million in LUMA’s Operating Budget to the Non-Federally Funded Capital Budget line items.

2. On November 11, 2022, this Energy Bureau issued a Resolution and Order with the subject *Determination on LUMA’s Fiscal Year 2022 Budget Amendment Petition* (“November 11th Order”), whereby this Energy Bureau denied LUMA’s November Budget Amendment Petition. *See* November 11th Order at page 6. On page 5 of the November 11th Order, this Energy Bureau referenced that LUMA should timely anticipate and inform the Energy Bureau of the need to reallocate funds among budget programs or line items. The Energy Bureau also recognized that the November Budget 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." *Id.* at page 5.

3. On November 23, 2022, LUMA requested reconsideration of the November 11th Order and moved this Energy Bureau to approve the November Budget Amendment Petition, which, as this Energy Bureau recognized in the November 11th Order, seeks to reallocate \$21 million from the Operating Budget for FY2022 (Approved on August 3, 2022) to the Non-Federally Funded Capital Budget, and complies with the 2017 Rate Order as required by Section 7.3(a) of the T&D OMA ("Motion for Reconsideration").

4. On December 14, 2022 ("December 14th Order"), this Energy Bureau denied LUMA's Motion for Reconsideration. This Energy Bureau construed Section 7.3(e) of the T&D OMA as requiring "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 Contact Year." *See* December 14th Order at page 3.

5. In the December 14th Order, this Energy Bureau also issued an order for LUMA to explain why a fine should not be imposed for allegedly failing to comply, in connection with the FY2022 Budgets, with certain requirements on the timing and circumstances to submit a request to amend an approved budget, that this Energy Bureau set in an Order issued on August 2, 2022 and notified on August 3, 2022 ("August 3rd Order"); that is, after FY2022 ended.

6. On January 3, 2023, in compliance with the December 14th Order, LUMA submitted a motion entitled *Motion in Compliance with Order to Show Cause and Request for Reconsideration* ("Motion in Compliance with Order to Show Cause"). In the Motion in Compliance with Order to Show Cause, LUMA established that a fine should not be imposed in connection with the November Budget Amendment Petition because prior to the end of FY 2022,

this Energy Bureau had not issued interpretative rulings or guidance on the requirements and timing for filing requests to amend an approved budget. LUMA explained that imposition of a fine would be an arbitrary and capricious determination that penalizes LUMA for actions undertaken at a time when this Energy Bureau had not adopted rules or limitations on the timing, circumstances and justifications for LUMA to move for an amendment of an approved budget. In essence, LUMA established that the fine would infringe upon its due process right to prior notice of applicable regulatory requirements and rules.

7. Also, in the Motion in Compliance with Order to Show Cause, LUMA explained that it filed the November Budget Amendment Request after it conducted year-end accounting process that is standard practice and identified the need to reallocate funds from the Operating Budget to the Capital Non-Federally Funded Budget. Prior to concluding year-end processes, LUMA was not able to determine whether it was necessary to request a further amendment to the FY2022 Budgets to conform them to actual spending.

8. On March 20, 2023, this Energy Bureau issued a Resolution and Order with the subject *Resolution and Order Regarding Motion in Compliance with Order to Show Cause and Request Reconsideration, filed by LUMA Energy, LLC and LUMA Energy ServCo, LLC*, whereby it rejected LUMA's arguments in the Motion in Compliance with Order to Show Cause and ruled that the Energy Bureau had not exercised its rulemaking or interpretative rulemaking authority and its determination did not give rise to a due process violation ("March 20th Order"). This Energy Bureau imposed a fine on LUMA of \$25,000 and granted LUMA fifteen (15) days, until April 4, 2023, to pay the fine. *See* March 20th Order, page 4.

9. It is respectfully informed that on April 3, 2023, LUMA issued an electronic payment to this Energy Bureau of \$25,000 to pay the fine assessed in the March 20th Order. A

screenshot of the confirmation information that LUMA has in its system regarding said payment, is included with this Motion as *Exhibit 1*. LUMA reserves applicable rights to request remedies in connection with the determinations and rulings of the March 20th Order and in connection with regulatory authority and requirements on budget amendments.

10. LUMA respectfully requests that this Energy Bureau issue a receipt or confirmation of payment by LUMA of the fine.

WHEREFORE, LUMA respectfully requests that the honorable Bureau **take notice** of the aforementioned for all purposes and **issue** a receipt to LUMA regarding payment of the fine.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 5th day of April, 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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Exhibit 1

Current Transactions

<u>Posted Date</u>	<u>Effective Date</u>	<u>Serial Number</u>	<u>Transaction Description</u>	<u>Amount</u>	<u>Balance</u>
04/03/2023	04/03/2023		230403004077000	\$25,000.00	