

**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: Correction of Determination on LUMA's Fiscal Year 2023 Budget Reallocation Request

RESOLUTION AND ORDER

I. Introduction

On June 22, 2023, LUMA Energy Management, 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 *Motion Submitting Fiscal Year 2023 Budget Reallocation* ("June 22 Reallocation Request"). Through the June 22 Reallocation Request, LUMA submitted a reallocation between Improvement Portfolios within LUMA's FY23 Capital Budget - Non-Federally Funded in the following manner: \$9.1 million out of the Substation Portfolio; \$5.0 million out of the Support Services Portfolio; \$9.5 million into the Distribution Portfolio; \$2.8 million into the Customer Experience Portfolio; and \$1.8 million into the Transmission Portfolio.¹ LUMA stated that the referenced reallocation did not result in an increase to customer rates and that its aggregated operating and capital expenditure budgets remain within the expenditures limit.² LUMA requested that the Energy Bureau take notice of the aforementioned and make the determinations it deems necessary to enable LUMA to continue its work to maintain and operate Puerto Rico's Transmission and Distribution System.³

On June 26, 2023, the Energy Bureau issued a Resolution and Order ("June 26 Resolution") through which it made its determination on LUMA's June 22, 2023 Budget Reallocation Request.

June 26 Resolution states on page 1:

"The referenced reallocation doesn't exceed five percent (5%) of the Budget in which such reallocation is made. Therefore, in accordance with Section 7.3(c) of the OMA,⁴ it is not subject to the approval of the Energy Bureau. Nonetheless, the Energy Bureau **TAKES A NOTICE** of the June 22 Reallocation Request as submitted by LUMA and **FINDS** that LUMA has opportunely complied with the directives set forth in the Resolutions issued on December 14, 2022 and March 20, 2023, whereby it was instructed that any future reallocation of funds amongst budget programs or line items shall be timely anticipated, and the correspondent budget amendment timely requested before the Energy Bureau."

The Energy Bureau **CORRECTS** the cited language to read:

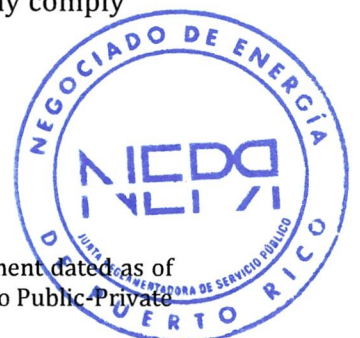
All three of the referenced allocations **exceed** five percent (5%) of the Budget in which such reallocations are made. Therefore, in accordance with Section 7.3 (c) of the OMA, **it is** subject to the approval of the Energy Bureau. The Energy Bureau **FINDS** that the June 22 Reallocation Request, as submitted by LUMA, does not fully comply

¹ June 22 Reallocation Request, p. 2, ¶ 4.

² *Id.*

³ *Id.*

⁴ The Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated as of June 22, 2020 ("OMA") by and among the Puerto Rico Electric Power Authority, the Puerto Rico Public-Private Partnerships Authority and LUMA.



with the directives set forth in the Resolutions issued on December 14, 2022 and March 20, 2023, whereby it was instructed that any future reallocation of funds amongst budget programs or line items shall be timely anticipated, and the correspondent budget amendment timely requested before the Energy Bureau.

II. Discussion and Analysis

The Energy Bureau takes issue with several components of LUMA's proposal.

LUMA states, "In this case, LUMA's Operating and Capital Budgets for FY 2023 remain unchanged and a budget amendment under the T&D OMA is not required, but in the interest of transparency, LUMA has notified the PREB and P3A of the Budget Reallocation to reallocate funding within the currently approved Capital Budget – Non-Federally Funded."⁵

This contention is in direct contravention of the OMA, which states in Section 7.3 (c) that the "[o]perator shall have complete flexibility, subject to compliance with Contract Standards and prior consultation with, but not subject to approval by, Administrator or PREB, to...(iii) reallocate, accelerate or postpone expenditures within the approved Capital Budget – Non-Federally Funded...(y) in such manner that the reallocations do not exceed five percent (5%) of the Budget in which such reallocations are made or the expenditures are not postponed for a period of longer than one (1) year."

The requested reallocations exceed five percent (5%) of the Capital Budget, Non-Federally Funded in aggregate and individually for Distribution, Substation and Support Services. The Capital Budget, Non-Federally Funded is \$77.228 million as approved by the Energy Bureau in the February 27, 2023 Resolution and Order⁶. The reallocations in aggregate amount to \$28.278 million or 36.6%, although they net to zero. The Distribution reallocation is \$9.506 million or 12.3%, the Substation reallocation is \$9.136 million or 11.8% and the Support Services reallocation is \$5.003 million or 6.5%.⁷

The OMA at Section 7.3 (c) specifically establishes five percent (5%) of the budget in which such allocations are made, as the threshold, up to which, LUMA has flexibility to reallocate funds within the Operating Budget, the Capital Budget Federally Funded and Capital Budget Non-Federally Funded. The OMA does not afford discretion in this matter, and therefore, the Energy Bureau must approve reallocations that exceed five percent of the Budget in which such reallocations are made. This is important, in that, the Energy Bureau must exercise oversight and approval of proposed budget reallocations that may significantly alter budgets it has approved to ensure safe and adequate electric service.

The Energy Bureau expects that when a required request for approval of a reallocation is made, it be made promptly. The Energy Bureau also expects that, in accordance with the OMA, LUMA will consult with the Energy Bureau prior to any reallocation, although approval is not required if the proposed reallocation does not exceed five percent (5%) of the Budget in which such reallocation is made.

LUMA states it notified the Energy Bureau of the potential need to reallocate funds on June 9, 2023,⁸ pursuant to the Energy Bureau's August 3, 2022 Resolution and Order.⁹ Based on the description, provided by LUMA, of the reasons underlying the reallocations, the need for the proposed reallocations should have been recognized sooner than reflected by LUMA's purported June 9 notification to the Energy Bureau. The Energy Bureau notes that although

⁵ Annual Budgets FY2023 Budget Reallocation, June 22, 2023, ("Annual Budgets FY23 Reallocation") included as part of the June 22 Reallocation Request, p. 1.

⁶ See, Resolution and Order, *Determination on LUMA's FY23 Annual Budgets and LUMA's FY24 Annual Budgets Pre-filing requirements*, NEPR-MI-2021-0004, February 27, 2023 (February 27 Resolution).

⁷ Note: these figures include 2% Reserve for Excess Expenditures.

⁸ On June 9, 2023, through transmittal number LUMA-PREB-T-00206, LUMA presented the potential need to reallocate funds between Improvement Portfolios within LUMA's Capital Budget -Non-Federally Funded.

⁹ June 22 Reallocation Request.



LUMA asserts that it notified the Energy Bureau of the need for these reallocations on June 9, 2023, said notification was not filed in the docket and, therefore, does not constitute official notice.

A significant concern of the Energy Bureau is that LUMA may proffer a reallocation request at the end of the FY 24 which could erode Energy Bureau Directives with respect to appropriate expenditures in the FY 24 Budget. The Energy Bureau **STERNLY WARNS** LUMA that such actions are not acceptable.

It is important for LUMA to recognize, in instances where LUMA makes expenditures that necessitate budget reallocations for which Energy Bureau approval is required and LUMA requests Energy Bureau approval after expenditures that necessitate such reallocations are made or committed, or LUMA otherwise does not comply with Energy Bureau or OMA requirements, LUMA takes the significant risk that reallocations made without prior approval may be considered Disallowed Costs.

The Energy Bureau notes that, as stated on previous occasions, it is not bound by the provisions of the OMA. LUMA, however, is required to follow its provisions, and in this case the Energy Bureau makes its determination with reference to the five percent (5%) threshold set forth for reallocations within the individual budgets. Although the Energy Bureau here uses the five percent (5%) set forth in the OMA as the criteria pursuant to which Energy Bureau approval is required, this is not to be implicitly or explicitly interpreted to mean that the Energy Bureau, in the future, may not require compliance with a different standard.

III. Conclusion

For the reasons stated above and the explanations for such reallocations LUMA provided in the June 22 Reallocation Request, the Energy Bureau **APPROVES** the June 22 Reallocation Request, as submitted by LUMA and **WARNS** LUMA not to continue this pattern of presenting amendment or reallocation requests at near end of the fiscal year.

The Energy Bureau notes that the reallocation request was filed close to the end of the Fiscal Year, reflecting expenditures that were apparently already made. The Energy Bureau has stressed "that any future reallocation of funds amongst budget programs or line items shall be timely anticipated and the correspondent budget amendment timely requested before the Energy Bureau." This was not done. For future reference, the Energy Bureau will consider that a reallocation or amendment request (specifically at end of fiscal year) was made in a timely manner when presented, at the latest, in conjunction with the submission of the Q3 Report. The Energy Bureau, therefore, **ORDERS** LUMA to **SHOW CAUSE, within ten (10) business days of the notification of this Resolution and Order**, as to why it should not be fined in the amount of \$5,000.00 for: (i) reallocating funds within the approved FY 2023 Capital Budget, Non-Federally Funded in an amount exceeding five percent (5%) without first obtaining the Energy Bureau's approval and, (ii) failing to comply with the August 3 Order, which establishes that: 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.

The Energy Bureau notes, with respect to the magnitude of the penalty, that although LUMA was fined twenty-five thousand dollars (\$25,000) in relation to a prior amendment request¹⁰ that was made after the end of the fiscal year, in this instance, the request for approval of the reallocation was made prior to the end of the Fiscal Year and therefore, the potential penalty will be less.

The Energy Bureau **WARNS** LUMA that, in accordance with Art. 6.36 of Act 57-2014:¹¹

¹⁰ See, Resolution and Order, ., *In re: LUMA's Initial Budget and Related Terms of Service*, Case No. NEPR-MI-2021-0004, March 20, 2023.

¹¹ *Puerto Rico Energy Transformation and RELIEF Act*, as amended ("Act 57-2014").



- (i) 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 per day;
- (ii) any person who intentionally violates Act 57-2014, as amended, by omitting, disregarding, or refusing 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
- (iii) for any recurrence of non-compliance or violation, 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	
 _____ Lillian Mateo Santos Associate Commissioner	 _____ Ferdinand A. Ramos Soegaard Associate Commissioner
 _____ Sylvia B. Ugarte Araujo Associate Commissioner	 _____ Antonio Torres Miranda Associate Commissioner

CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on June 29, 2023. I also certify that on June 29, 2023 a copy of this Resolution and Order was notified by electronic mail: pre@promesa.gov; margarita.mercado@us.dlapiper.com; ana.rodriguezrivera@us.dlapiper.com; mvazquez@diazvaz.law; jmarrero@diazvaz.law; brannen@genera-services.com; kbolanos@genera-pr.com; regulatory@genera-pr.com; jfr@sbgbllaw.com; alopez@sbgbllaw.com. I also certify that on June 29, 2023, I have -moved forward with filing the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, on June 29, 2023.



Sonia Seda Gaztambide
Clerk

