

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

NEPR

Received:

Jul 10, 2023

10:38 PM

IN RE: REVIEW OF LUMA'S INITIAL
BUDGETS

CASE NO. NEPR-MI-2021-0004

**SUBJECT: Motion for Partial Reconsideration of
Resolution and Order of June 25, 2023 on FY 2024
System Budgets**

**MOTION FOR PARTIAL RECONSIDERATION OF RESOLUTION AND ORDER OF
JUNE 25, 2023 ON FISCAL YEAR 2024 SYSTEM BUDGETS**

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

On June 25, 2023, the Honorable Puerto Rico Energy Bureau (“Energy Bureau”) issued a Resolution and Order (“June 25th Order”) regarding the Proposed System Budgets (“System Budgets”) filed by LUMA on May 16, 2023. In what is relevant to this Motion, the Energy Bureau reduced the Proposed Annual T&D Budgets by \$14.8 million. *See LUMA’s Submission of Consolidated Annual Budgets for Fiscal Year 2024 and Annual T&D Projections through Fiscal Year 2026 and Exhibit 1 (“LUMA’s May 16th Budgets Submission”)*. Specifically, the Energy Bureau reduced by \$6.8 million the budget allocated for Customer Experience and by \$7.7 million the budget allocated for Support Services, *see June 25th Order*, at pages 9-10 and Attachment C, for a total reduction of LUMA’s Proposed Annual T&D Budgets from \$651 million to \$636 million.

It is important to note that LUMA's Proposed Annual T&D Budgets for FY2024, after accounting for record inflation in calendar years 2021 and 2022, is already approximately \$86 million lower in real terms than the FY2022 Annual T&D Budget. As a result of cost-savings, deferral of specific activities and a focus on LUMA's key goals tied to Puerto Rico public energy policy, LUMA has been able to continue to improve utility performance despite record inflation. The reduction approved by the Energy Bureau in the June 25th Order would mean an FY2024 Annual T&D Budget \$100 million lower in real terms than what LUMA received for the Annual T&D Budget in its first year of operation.

LUMA arrived at the T&D Budgets for FY2024 after months of careful work in order to determine the minimum funding needed of \$651 million. This effort even included working to identify additional funding to avoid exceeding the Base Rate Revenue Requirement and avoid an increase in customer rates during FY2024. LUMA's T&D Budgets enable LUMA to deliver better service to customers during the coming twelve (12) months while reducing spending in real terms. As will be explained in this Motion, the approximately \$15 million reduction ordered by the Energy Bureau lacks support in the administrative record. Furthermore, the Energy Bureau did not consider the relation of additional cuts on necessary activities that directly contribute to LUMA's improved customer service and overall performance. Unless the Energy Bureau reconsiders this decision, the additional reduction imposed would result in substantial negative impacts to LUMA's overall operations, compliance activities and ability to provide customers with the level of customer service they expect and deserve.

LUMA hereby requests that the Energy Bureau reconsider its determination to reduce by \$14.8 million the Proposed Annual T&D Budgets. LUMA also requests reconsideration of that

portion of the June 25th Order on filing of annual reports of financial activity within sixty (60) days after the close of Fiscal Year 2024 (“FY2024”).

II. Procedural Background

On May 16, 2023, LUMA submitted to the Energy Bureau the proposed System Budgets for the Puerto Rico Energy System which are comprised of the Proposed T&D Budgets, developed by LUMA; the budget proposal for the legacy thermal generation units (the "GenCo Budget"), the budget proposal for the hydroelectric generating units and the public irrigation facilities (the "HydroCo Budget") and the budget proposal for PREPA and its subsidiaries other than GenCo and HydroCo (the "HoldCo Budget") (collectively referred to as the "System Annual Budgets"). *See* Submission of Consolidated Annual Budgets for Fiscal Year 2024 and Annual T&D Projections through Fiscal Year 2026 filed in this proceeding ("FY 2024 Consolidated Budgets Submission").

On May 23, 2023, after other procedural developments, the Energy Bureau issued a Resolution and Order (the "May 23rd Order") whereby, in what is pertinent, determined that "additional information is required for its review of the Proposed Consolidated FY2024 Budgets." *See*, May 23rd Order, page 3. Consequently, the Energy Bureau ordered LUMA, Genera and PREPA (HydroCo and HoldCo) to respond, on or before June 2, 2023 at 12:00pm, to a Second Requirement for Information (the "Second RFI") included as Attachment A and Attachment B to its May 23rd Order.

On May 26, 2023, LUMA submitted the supporting workpapers to the Proposed Annual T&D Budgets. *See Motion in Compliance with Resolution and Order of May 23, 2023 and Submitting Supporting Workpapers*, filed on May 26, 2023 (“May 26th Motion Submitting Workpapers”).

On June 2, 2023, LUMA requested a brief extension of time to submit its responses in compliance with the May 23rd Order. *See Urgent Request for Extension of Time to Submit Response in Compliance with Order of May 23, 2023, and Request of Clarification of Order.* In compliance with the May 23rd Order, on June 6th, 2023, LUMA submitted the responses to the Second RFIs.

PREPA and Genera also filed additional information requested by this Energy Bureau in the May 23rd Order and in an Order issued on May 31, 2023. *See Genera's Motion Submitting Response to Request for Information in Compliance with May 23 Order*, filed on June 2, 2023, *Genera's Motion Submitting Supplemental Response to ROIs in Compliance with May 23 Order*, submitted on June 6, 2023, *Genera's Motion Submitting Responses to Request for Information in Compliance with May 31 Order*, filed on June 7, 2023, *Genera's Motion Submitting Supplemental Response to Request for Information in Compliance with May 31 Order*, filed on June 8, 2023, and *PREPA's Motion to Submit Responses to the Energy Bureau's Second Request for Information in Compliance with the May 23 Order*, filed June 6, 2023.

On June 9, 2023, the Energy Bureau held the Virtual Technical Conference as scheduled ("June 9th Technical Conference"). During the June 9th Technical Conference, the Energy Bureau issued bench orders with six (6) additional requests for information directed to LUMA. In compliance with the deadline set forth in the May 8th Order and the bench orders issued during the June 9th Technical Conference, on June 15, 2023, LUMA submitted its responses to the requests for additional information that this Energy Bureau issued during said Technical Conference. Genera and PREPA also submitted their responses to requests issued during the June 9th Technical Conference. *See Genera's Motion to Submit Genera PR LLC Responses in Compliance with the June 9 Bench Order* filed on June 15, 2023, and *Genera's Motion to Submit*

Genera PR LLC's Supplemental Responses to June 9, 2023 Bench Order, filed on June 16, 2023, and PREPA's *Motion to Submit Responses to the Energy Bureau's June 9 Bench Orders and Third Request for Information in Compliance with the June 12, 2023 Order*, filed on June 21, 2023.

On June 23, 2023, LUMA submitted its comments to the Proposed Maintenance and Outage Schedule that Genera sent to LUMA on June 13, 2023.

As stated, on June 25, 2023, this Energy Bureau approved the System Budgets, with amendments to the proposed System Budgets, including the Proposed T&D Budgets.

On June 29, 2023, PREPA filed a motion titled *Motion for Reconsideration of the June 25 Resolution and Order on the Determination of the FY24 Annual Budgets for the Electric Utility System-LUMA, Genera and PREPA*, whereby it requests that this Energy Bureau reconsider the determinations to reduce the proposed HoldCo and HydroCo Budgets and presented amended HoldCo and HydroCo Budgets.

On June 30, 2023, Genera submitted an *Urgent Motion in Compliance with the Resolution and Order of June 25, 2023 and for Partial Reconsideration*, whereby it "urge[d] that the proposed revenue allocated to GenCo remain unaltered and that the labor budget remain unchanged," *see* Genera's Motion for Partial Reconsideration at pages 4-5, and "requested reconsideration and revision of the June 25th Order's GenCo labor budget reduction." *Id.*, at page 5. Genera further explained that it "is not requesting an increase to the GenCo budget allocation, thus, it's not requesting an increase to the revenue allocation or base rate. Genera requests that the Energy Bureau approve the labor expenses proposed by Genera with a reallocation of the revenues already allocated to GenCo. These funds may be reallocated from projects that Genera presented as, although important, optional and not considered in the budget proposal." *Id.* at pages 10-11.

In the evening of June 30, 2023, this Energy Bureau issued a Resolution and Order stating that it will not consider PREPA's Motion for Reconsideration nor Genera's Motion for Partial Reconsideration and returned the same to PREPA and Genera ("June 30th Order"). This Energy Bureau construed that "LUMA is the entity charged with the responsibility to represent PREPA and Genera before the Energy Bureau with respect to any regulatory or legal matters as they relate to the OMA including budget policy and carry out other tasks in connection thereto before the Energy Bureau." *See* June 30th Order at page 2.

In response to requests received from both Genera and PREPA, on June 30, 2023, LUMA submitted to this Energy Bureau, PREPA's Motion for Reconsideration in identical form as it was filed by PREPA on June 29, 2023, and Genera's Motion for Partial Reconsideration in identical form as it had been filed earlier by Genera on June 30, 2023. *See Submission of Motions for Reconsideration by PREPA and Genera and Notice of Intent to Request Reconsideration of Resolution and Order of June 25, 2023* ("June 30th Submission"). LUMA clarified in the June 30th Submission, that it did not prepare or participate in the development of PREPA's Motion for Reconsideration nor PREPA's Proposed Amended HoldCo and HydroCo Budgets, and that LUMA's June 30th Submission should not be construed as an endorsement by LUMA of the substance of PREPA's requests.

Regarding Genera's Request for Partial Reconsideration, LUMA explained in the June 30th Submission that it did not prepare or participate in the development of Genera's request. LUMA informed that it understood Genera's request to be for the Energy Bureau to establish a budget for GenCo that is consistent with the budget and revenue allocation reflected in the System Annual Budgets as submitted by LUMA on May 16th, 2023. LUMA further stated that the budgets and allocations resulting from the revenue allocation exercise conducted pursuant to Section 7.3(a)

of the T&D OMA,¹ Section 3.1(b) of the PGHOA² and the LGA OMA,³ and the allocation approved by the Puerto Rico Public-Private Partnerships Authority (“P3A”), *see* May 12th, 2023 letter included as Appendix B: P3A Budget Allocation of LUMA’s Proposed Annual T&D Budgets, provide the bare minimum needed for LUMA to perform the Operation and Maintenance Services (“O&M Services”) under the T&D OMA.

In the June 30th Submission, LUMA reserved any and all rights to request reconsideration of any of the determinations made by the Energy Bureau in its June 25th Order and informed its intent to timely request reconsideration. LUMA stated that should the Energy Bureau elect to reconsider its June 25th Order and approve a budget that maintains the revenue allocations originally proposed by LUMA and Genera, such an outcome would address a majority of the determinations for which LUMA intended to seek reconsideration.

On July 5, 2023, this Energy Bureau issued a Resolution and Order whereby it took notice of the June 30th filing and determined that on or before July 10, 2023, LUMA shall “file i) LUMA’s position pertaining the June 25 Resolution, including proposed amendments, and ii) LUMA’s position to Exhibits 24 and 35 of LUMA June 30 Motion. Any proposed amendments by LUMA to the June 25 Resolution must take into consideration the amendments proposed in Exhibit 2 [PREPA’s Motion for Reconsideration] and Exhibit 3 [Genera’s Motion for Partial Reconsideration] of LUMA June 30 Motion.” *See* July 5th Order at page 1.

¹ The Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (“T&D OMA”) executed on June 22, 2020, among the Puerto Rico Electric Power Authority (“PREPA”), the Puerto Rico Public-Private Partnerships Authority (“P3A”) and LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively, “LUMA”).

² The Puerto Rico PREPA-GenCo-HydroCo Operating Agreement (“PGHOA”) executed on June 19, 2023 by and among the Puerto Rico Electric Power Authority (“PREPA”), PREPA Genco LLC (“GenCo”), PREPA Hydroco LLC (“HydroCo”), LUMA Energy ServCo, LLC (“LUMA”), and the Puerto Rico Public-Private Partnerships Authority (“P3A”).

³ The Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement (“LGA OMA”) executed on January 24, 2023 by and among the Puerto Rico Electric Power Authority (“PREPA”), the Puerto Rico Public-Private Partnerships Authority (“P3A”), and Genera PR LLC (“Genera”).

III. Requests for Reconsideration

A. Request to Reconsider Reduction in LUMA's Proposed Annual T&D Budgets

a. *The reduction of \$14.8 million in LUMA's T&D Budgets is unsupported and arbitrary*

LUMA strongly disagrees with the determination by this Energy Bureau to reduce the Proposed Annual T&D Budgets by \$14.8 million. Particularly, LUMA disagrees with that portion of the June 25th Order that determined that: (1) the amount in Labor and Non-Labor/Other Operating Expenses for Customer Experience will be limited to \$81.0 million which is the amount budgeted and approved in FY2023, instead of the amount budgeted and proposed by LUMA of \$87.845 million; and (2) the proposed increase in Support Services funding for FY2024 will be limited to \$170.015 million, *See* June 25th Order, at page 9. The determination to reduce LUMA's Proposed Annual T&D Budgets and the proposed allocations for the Customer Experience and Support Services Department Operation and Maintenance (O&M) Expenses was issued without prior notice to LUMA or opportunity to present its position on said proposed reductions in the June 9th Technical Conference or otherwise. Moreover, this Energy Bureau did not include findings of facts nor supported its determination with data, information, or filings in the administrative record.

Art. II, Sec. 7 of the Constitution of the Commonwealth of Puerto Rico establishes the right of every person to be guaranteed due process of law as a condition for being deprived of his property or liberty. *See also Fuentes Bonilla v. ELA*, 200 DPR 364 (2018). The procedural aspect of due process requires that the deprivation of property and liberty rights be carried out through a fair and equitable process. *Picorelli López v. Depto de Hacienda*, 179 DPR 720, 735-36 (2010). For the procedural modality of due process of law to apply, an individual interest of liberty or property must be at stake. *Rivera Rodríguez & Co. v. Stowell Taylor*, 133 DPR 881, 887 (1993). Once it is determined that this requirement has been met, it is necessary to define what process is

due. "In view of the circumstances, different situations may require different types of procedures, but there always remains the general requirement that the governmental process must be fair and impartial." *Id.*, at 888.⁴

The Puerto Rico Supreme Court has recognized due process in administrative proceedings as requiring "a fair and equitable process that respects the dignity of affected individuals." *López Vives v. Policía de PR*, 118 DPR 219, 231 (1987); *see also López y otros v. Asoc. de Taxis de Cayey*, 142 DPR 109 (1996). Among the guarantees that make up due process of law, jurisprudence has recognized that the administrative decision must be informed, with knowledge and understanding of the evidence pertaining to the case. *A.D.C.V. v. Tribunal Superior*, 101 DPR 875, 883 (1974). Furthermore, findings of fact must be included and the grounds for the administrative decision shall be stated. *Rivera Santiago v. Srio. De Hacienda*, 119 DPR 265, 274 (1987). In ensuring due process guarantees, parties must not only have a *pro forma* opportunity to present and rebut evidence but be able to do so effectively. *See e.g., Rentas Nieves v. Betancourt Figueroa*, 201 DPR 416, 429 (2018).

It is also a fundamental principle in administrative law that the resolution or order issued by the agency must be based exclusively on the record of the particular case in question. *Magriz Rodríguez v. Empresas Nativas, Inc.*, 143 DPR 63, 70 (1997). Only when the administrative determination is based on the record of the case the parties are guaranteed the opportunity to challenge the correctness of the agency's opinion and subsequent judicial review. *Id.* at 71 (citing sources). Thus, it is reasonable to conclude that a decision issued in disregard of the principle of exclusivity of the record of the case cannot prevail, since it has no legal effect. *Id.*

⁴ Courts evaluate: (1) what are the individual interests affected by the official action; (2) the risk of an erroneous determination depriving the person of the interest protected by the process used and the likely value of additional or different guarantees, and (3) the governmental interest protected by summary action and the possibility of using alternative methods. *Rivera Rodríguez*, 133 DPR at page 888.

Due process guarantees in administrative adjudicative proceedings are codified in Section 3.1 of the Uniform Administrative Procedure Act of the Government of Puerto Rico (“LPAU” by its initials in Spanish), 3 LPRA § 9641(2022). Section 3.1 of LPAU provides:

In all formal adjudicative proceedings before an agency, the following rights will be safeguarded:

- (A) Right to timely notification of the charges or complaints or claims against a party.
- (B) Right to present evidence.
- (C) Right to a fair adjudication.
- (D) Right to have the decision based on the record of the case.

3 LPRA § 9641.

Section 1.3 (b) of LPAU, defines “adjudication” as the pronouncement by which an agency determines the rights, obligations or privileges that correspond to a party. 3 LPRA § 9603(b). The Puerto Rico Supreme Court has also recognized that the informal or summary nature of an adjudicative proceeding is not an obstacle in guaranteeing affected parties the irreducible minimum of procedural guarantees recognized as fair and equitable. *See Baerga Rodríguez v. F.S.E.*, 132 DPR 524, 538 (1993) (recognizing in the context of an informal proceeding before the Puerto Rico Industrial Commission that the minimal procedural guarantees applicable to formal proceedings that have been deemed fair and equitable, apply to informal proceedings).

In our administrative legal system courts give deference to administrative decisions. *Graciani Rodríguez v. Garage Isla Verde*, 202 DPR 117, (2019). However, this rule is not absolute. Courts cannot validate, under the pretext of deference, administrative determinations and interpretations that are unreasonable, illegal or contrary to law. *Id.*, at 127. Judicial review of an administrative decision seeks to determine whether the agency acted arbitrarily or illegally, or in such unreasonable manner that it abused its discretion. *Mun. de San Juan v. J.C.A.*, 149 DPR 263,

280 (1999). The Puerto Rico Supreme Court has identified situations in which the adjudicator abused discretion. These include:

[W]hen the judge, in the decision he issues, does not take into account and ignores, without basis for it, an important material fact that could not be overlooked; when, on the contrary, the judge, without any justification or basis for it, attaches great weight and value to an irrelevant and immaterial fact and bases its decision exclusively on it; or when, while considering and taking into account all material and important facts and discarding irrelevant ones, the judge lightly weighs and calibrates them.

Ramírez v. Policía de PR, 158 DPR 320, 340-41 (2002) (internal citations omitted)

In that portion of the June 25th Order where this Energy Bureau reduced the proposed Annual T&D Budgets and determined which portions of the Proposed T&D Budgets should suffer the reduction, this Energy Bureau adjudicated LUMA's proposal on the funding levels needed to operate the T&D System, a determination that directly impacts LUMA's ability to operate the T&D System and meet its duties under the T&D OMA, including its ability to deliver on improvements, and its ability earn an incentive fee in future years and avoid the potential imposition of fines due to reductions in performance or quality of service associated with the reduced budget. Even if this Energy Bureau considers that this is an informal proceeding, it is still an adjudicative proceeding per the LPAU whereby LUMA presented a proposal supported by its expert analysis on the funding needs of the T&D System, submitted written responses to requests for information, and testimonial evidence under oath, and this Energy Bureau issued a decision construing LUMA's proposal and establishing LUMA's rights and obligations in connection with the System Budgets. The Energy Bureau was called upon to follow the dictates of procedural due process to afford LUMA reasonable prior notice that it was considering a reduction in specific components of the T&D Budgets, base its decision on the record, and explain its determination with reference to the information, data and testimonies that LUMA presented for consideration.

The rationale included in the June 25th Order for the reduction in the Customer Experience Department's Operation and Maintenance (O&M) Expenses is that the "Energy Bureau recognize[s] the improvement that LUMA has achieved in Customer Service and determines that additional expenditure in this area would be disproportionate to the need for further enhancement at this time." *See* June 25th Order, at page 10. That finding, however, **does not include** reference to the administrative record nor the information, analysis, expert testimony or other sources that this Energy Bureau considered to then conclude that "[r]ather than approving LUMA's requested increase in funding for Customer Experience, the Energy Bureau finds that it is appropriate and in the public interest, to limit LUMA's proposed funding for Customer Experience to the approved FY23 amount. This will enable increased emphasis on funding to be applied to areas with greater need." *Id.* at page 10.

Other than acknowledging LUMA's progress in Customer Service in its determination of the funds reasonably needed for FY2024, the Energy Bureau did not explain its rationale, nor the correlation between LUMA's progress in Customer Service and funding needs for FY2024. The determination that additional funding for Customer Service would be disproportionate to needs for further enhancements in Customer Service during FY 2024 is conclusory and speculative. No explanation or support is found for that determination to enable LUMA to minimally understand how the proposed funding is disproportionate to operational needs. *See A.D.C.V.*, 101 DPR at page 883 (*stating* that fundamental to due process is that the defendant has a clear and informed notion of what the Government's position is and the purpose that directs the public interest.). This Energy Bureau did not mention, much less discuss, the Improvement Programs that were proposed based on O&M expenditures in the Customer Experience Department to gauge how timelines and milestones in those Programs could still be met despite the reduction or be delayed or affected, nor

did it discuss the enhancements in Customer Service it now deems are unnecessary or disproportionate to other needs. Also absent from the June 25th Order is any support for a determination that customer interests are better served by prioritizing “other areas with greater need” as opposed to enabling continued enhancements in Customer Service.

LUMA’s Proposed Annual T&D Budgets allocations are required to sustain the level of Customer Service that has been achieved to date. The Customer Experience O&M Budget is dedicated mostly to paying for labor. A reduction to the budget would result in a reduction to existing service levels. The increase reflected year-over-year from FY2023 to FY2024 is what LUMA has determined within its expertise and experience as T&D Operator, is required to sustain the current level of service.

Regarding the reduction in funding for the Support Services Department O&M activities, this Energy Bureau indicated that it “takes a similar view” as with Customer Experience. *See id.* Without further explanations on what it meant by “a similar view,” this Energy Bureau identified that for FY 2023 the approved Budget for Support Services was \$158.016 million and that for FY2024, LUMA proposed an increase for a total proposed budget of \$177.715 million. Without indicating or referring to support in the administrative record this Energy Bureau determined that “the proposed increase was excessive.” *Id.* The Energy Bureau went on to set available funding for Support Services at \$170.015 million, \$7.7 million less than what LUMA proposed. *Id.*

The Energy Bureau did not consider the components that make up the Support Services Department O&M Expenditures and the incremental initiatives that LUMA is focused on accomplishing. The FY2024 Proposed Annual T&D Budgets for the Support Services Department O&M Expenditures includes additional activities for FY2024 ordered by the Energy Bureau including but not limited to the Rate Review and development of the Integrated Resource Plan

(“IRP”). Thus, the activities impacted by a reduction to the Support Services Department O&M Expenditures include LUMA’s ability to support a Rate Review or the development of the IRP. Other initiatives that could also see a reduction include physical security, improvements to Financial Systems and Controls, quarterly and annual financial reporting, increased scope of procurement services to support increased capital work, and customer communications.

The determination on the reduction in funding for Support Services is wholly conclusory and lacks any support in findings of facts to place LUMA in a position to understand how the Energy Bureau reached its conclusion. The conclusion that the proposed funding for the Support Services is “excessive” is unexplained and unaccompanied by reference to the information, analysis, expert testimonies or other sources considered by this Energy Bureau to reach that determination. This Energy Bureau did not provide any guidance on what it means by “excessive.” It is also unknown how the Energy Bureau determined to set the funding needs for Support Services at \$170.015 million nor which metrics, standards, analysis or data it used to determine that a budget of \$170.015 million may be deemed reasonable or more reasonable or appropriate than LUMA’s proposed \$177.015 million. This determination fails to comply with procedural requirements to have a decision be based on the record and is unreasonable and arbitrary. *See id.*

In issuing the aforementioned determinations, this Energy Bureau did not afford LUMA prior notice that it would consider a reduction to the Proposed T&D Budgets, nor reductions applicable to LUMA’s Customer Experience and Support Services Opex Departments. The Energy Bureau did not, at any point, indicate its intention to propose a reduction to the T&D Budget, introduce into the evidentiary record, any materials, reports, testimonies or other sources to support such reductions, nor provide LUMA an opportunity to respond to such proposed reductions. Prior to the June 25th Order, LUMA was not aware of a proposal by the Energy Bureau to reduce the

aggregate T&D Budgets by \$14.8 million. Absent prior notice or an opportunity to timely submit its position or evidence regarding a potential reduction in funding for Customer Experience and Support Services, LUMA was not guaranteed the important procedural protection of adequate notice that our legal system affords before an administrative agency issues a determination that affects a party's rights or obligations under the law or requires that the party to conform its conduct to an order. This renders the Energy Bureau's determination null and void.

Moreover, this Energy Bureau did not include in the June 25th Order, findings of fact nor stated supported explanations for the reduction of \$14.8 million to LUMA's Proposed T&D Budgets. The determination on said reduction is found in less than a full page of the June 25th Order and does not include any citation to the administrative record or the sources that the Energy Bureau consulted to reach its decision.

Given the aforementioned and in light of settled due process principles, the determination to reduce by \$14.8 LUMA's Proposed Annual T&D Budgets is null and void, in addition to arbitrary and an unreasonable exercise of annual budget review processes that, currently, this Energy Bureau conducts pursuant to the 2017 Rate Order issued on January 10, 2017, as amended on March 8, 2017, Case No. CEPR-AP-2015-0001, ¶¶416-419. This Energy Bureau should reconsider the determination to reduce LUMA's Proposed Annual T&D Budgets and, instead, adopt the only allocation of the T&D Budgets that is supported by the record: LUMA's proposal of \$651 million.

b. The record establishes the need and reasonableness of the allocation of \$651 million for the T&D Budgets submitted to this Energy Bureau.

The \$651 million petitioned in LUMA's Proposed Annual T&D Budgets represents the minimum funding reasonably needed to provide O&M Services under the T&D OMA and to operate the T&D System after prioritizing critical O&M expenditures. Any amount less than the

\$651 million significantly impedes LUMA’s ability to improve the T&D System or maintain those improvements it has already achieved, as explained in the T&D portions of the FY2024 Consolidated Budgets Submission and established by the information and allocations included in each of the Improvement Program Briefs of the T&D Budgets. The Proposed Annual T&D Budgets include activities and expenditures that are essential for LUMA to achieve performance pursuant to Contract Standards⁵ according to the System Remediation Plan approved by this Energy Bureau on May 31, 2021. LUMA’s Proposed Annual T&D Budgets should be adequate in both scope and amounts⁶ to reasonably assure that LUMA can carry out the related O&M Services⁷ according to Contract Standards. The Proposed Annual T&D Budget of \$651 million were designed to allow LUMA to meet those standards notwithstanding the significant external challenges impacting the T&D System and the complex environment in which LUMA is required to operate, including the impact of increased costs, four-decades record-high inflation and operational and implementation challenges related to PREPA. *See FY2024 Consolidated Budgets Submission*, pages 14 and 49.

The record shows that “LUMA has faced global supply chain disruptions, continued geopolitical volatility, additional regulatory requirements, cooperation challenges with the previous operator and unprecedented rates of inflation. In sum, these factors have had a significant

⁵ Per the T&D OMA, Contract Standards “means the terms, conditions, methods, techniques, practices and standards imposed or required by: (i) Applicable Law; (ii) Prudent Utility Practice; (iii) applicable equipment manufacturer’s specifications and reasonable recommendations; (iv) applicable insurance requirements under any insurance procured pursuant to this Agreement; (v) the Procurement Manuals, as applicable, and (vi) any other standard, term, condition or requirement specifically contracted in this Agreement to be observed by Operator.”

⁶ *See* Section 7.4 of the T&D OMA.

⁷ O&M Services include “(i) management, operation, maintenance, repair, restoration and replacement and other related services for the T&D System, in each case that are customary and appropriate for a utility transmission and distribution system service provider, including the services set forth in . . . Article 5 [of the T&D OMA] (O&M Services) (excluding the GenCo Shared Services) and Annex I (Scope of Services), and (ii) establish policies, programs and procedures with respect thereto, in each case, in accordance with the Contract Standards.” *See* T&D OMA, Section 5.1; *see also* T&D OMA, Annex I.

and ongoing impact on costs to operate the T&D System.” *Id.* page 14. Moreover, the record establishes without contradiction, that the Proposed Annual T&D Budgets were developed considering “the tremendous financial pressures that Puerto Rico and the electric system are facing have resulted in the need to be more vigilant and decisive than ever when it comes to spending and allocating resources across a system that is improving but still fragile.” *Id.* These pressures include “numerous revenue and cost pressures . . . four-decades record-high inflation, year-over-year decreases to forecasted Base Rate revenues, financial and operational limits due to PREPA’s continued Title III process and increasing unfunded regulatory mandates.” *Id.*, at page 49. For context, LUMA’s certified budgets in FY2022 and FY2023 were \$649 million and \$627 million, respectively, reflecting a \$22 million reduction in actual dollars before inflation (when comparing FY2023 against FY2022). Adjusting for inflation, LUMA’s budget decrease between those years amounted to approximately \$68 million. In the June 25th Order, however, this Energy Bureau did not consider the aforementioned reality, nor the challenges that LUMA faced in preparing the Proposed Annual T&D Budgets.

Moreover, the Proposed Annual T&D Budgets are based on LUMA’s prioritization of activities for FY2024 within current Base Rate revenues and the available additional funding. *See id.* “As a result, there are activities that remain unfunded at this time.” *Id.* Thus, a further reduction in the Proposed Annual T&D Budgets upends the careful balance reached by LUMA per its expertise in designing the Proposed Annual T&D Budgets.

The allocation of \$651 million for the Proposed Annual T&D Budgets is the product of LUMA’s technical, financial and operational expertise, including a considered judgment regarding available means to continue delivering services pursuant to best industry practices and in compliance with the T&D OMA and applicable law and public policy. No other evidence in the

record refuted LUMA's proposal or the underlying process and rationale employed for the Proposed Annual T&D Budgets and the allocation of funds for Customer Experience and Support Services. There is no basis on the record to reject a portion of LUMA's Proposed Annual T&D Budgets and direct that LUMA shall reduce funds in particular Departmental budgets.

This Energy Bureau acted arbitrarily in reducing the Proposed Annual T&D Budgets by \$14.8 million and determining that said reduction should apply to the Customer Experience and Support Services Department O&M Budgets. LUMA appreciates that at this time the 2017 Rate Order provides for annual budget examinations to "examine PREPA's proposed departmental budgets for the coming fiscal year, compare them to the prior year's budgets, then use that information to establish a just and reasonable revenue requirement for the fiscal year beginning on the upcoming July 1." *See* 2017 Rate Order, Case CEPR-2015-0001, ¶416. Per the 2017 Rate Order, PREPA shall submit departmental budgets that are reasonable matching revenue requirements to budgets that can work only if the budgets are reasonable, realistic and accurate. *Id.*, ¶419. "This set of departmental budgets, when totaled, shall be consistent with the proposed revenue requirement." *Id.*, ¶419. That is precisely what LUMA did for the System Budgets: presented a consolidated filing with budgets consistent with the revenue requirement set forth in the 2017 Rate Order. There is no legal basis for this Energy Bureau to reject a proposed budget allocation for the T&D System that complies with the applicable revenue requirement and Rate Order, particularly when, contrary to the circumstances in place when the 2017 Rate Order was adopted, the Proposed Annual T&D Budget was developed by a qualified, professional operator, with expert knowledge in the operation and maintenance of a T&D System and supported by expert witnesses and relevant analysis and data.

The uncontested information on the record establishes that LUMA needs \$651.4 million to operate the T&D System to the standards required by the T&D OMA and that the Proposed Annual T&D Budgets meet the requirements of the 2017 Rate Order. The Energy Bureau's judgment in the June 25th Order of LUMA's operational needs regarding Customer Service and Support Services to reduce the proposed budget allocations unduly interfered with LUMA's operational duties in circumstances where the Proposed Annual T&D Budgets do not require a rate modification as they comply with the revenue requirement and contravenes Act 120-2018. *See Act 120-2018, Section 8 (d), 22 LPRA § 1118 (2022).*

To ensure that LUMA is able to deliver safe, reliable and efficient services to customers in Puerto Rico, LUMA requests that this Energy Bureau reconsider the determination to reduce the Proposed Annual T&D Budgets by \$14.8 and to approve a T&D Budget of \$651.4 million as proposed by LUMA, after a budgeting exercise developed through the Budget Allocation process as agreed under the PGHOA and approved by P3A.

B. Order to File Year-End Reports within 60 days

In Attachment 1 of the June 25th Order on Reporting Requirements, this Energy Bureau directed that LUMA shall “report annually within 60 days after the end of each fiscal year, on the use of funds within the budget for that timeframe. In this report explain any differences between accounts expenses and approved budgets.” The term of sixty (60) days is not consistent with current annual reporting requirements applicable to LUMA, pursuant to which LUMA is called upon to submit an annual report on expenditures, within one hundred and twenty (120) days after the close of the Fiscal Year. *See LUMA's Annual Report for FY 2022 and Report on Efficiencies*, filed on October 29, 2022. In a Resolution and Order of August 26, 2022, this Energy Bureau acknowledged that LUMA would file year-end financial information within 120 days after the close of FY2022, which LUMA did on October 29, 2022. The timing of LUMA's Annual Report,

in turn, is in compliance with T&D OMA, Annex I, Section VI(B), paragraph 4, which requires that LUMA submit interim and unaudited financial statements within one hundred and twenty days (120) after the end of each fiscal year.

LUMA reviewed several annual reporting requirements by the Federal Energy Regulatory Commission (“FERC”). As stated below, the time to submit annual financial reports with FERC ranges between 90 and 121 days after the end of each natural year:

FERC Form	Title	Filing Date	Days After Year End
No. 1	Annual Report of Major Electric Utility	4/18	108
No. 1-F	Annual Report of Non-major Electric Utility	4/18	108
No. 2	Annual Report of Major Natural Gas Pipeline	4/18	108
No. 2A	Annual Report of Non-major Natural Gas Pipeline	4/18	108
No. 552	Annual Report of Natural Gas Transactions	5/1	121
No. 6	Annual Report of Oil Pipeline Companies	4/18	108

- **No. 1 – Annual Report of Major Electric Utility.** This is an annual regulatory requirement for major electric utilities, licenses and others that supplements the annual financial reporting requirement. The report is designed to collect financial and operational information from electric utilities, licensees and other subjects to the jurisdiction of the FERC.⁸ See 18 CFR §141.1.

⁸ Among others, it requires information on formula rates, important changes during the year as additions, acquisitions purchase or sales, statements of income for the year, statements of cash flows, earnings for the year and statement of accumulated comprehensive income, hedging activities. See <https://www.ecfr.gov/current/title-18/chapter-I/subchapter-D/part-141/section-141.1>, <https://www.ferc.gov/general-information-0/electric-industry-forms>

- **No. 1-F Annual Report of Non-major Electric Utility.** This is a financial and operating report submitted annually for electric rate regulation, market oversight analysis, and financial audits by Nonmajor electric utilities and licensees.⁹ 18 CFR §141.2.
- **No. 2 - Annual Report of Major Natural Gas Pipeline.** This annual report is a compilation of financial and operational information from major interstate natural gas pipelines subject to the jurisdiction of the FERC. The form contains data for a calendar year. Among other things, the form contains a Comparative Balance Sheet, Statement of Income, Statement of Retained Earnings, Statement of Cash Flows, and Notes to Financial Statements.¹⁰ 18 CFR §260.1.
- **No. 2A – Annual Report of Non-Major Natural Gas Pipeline.** This is a form filed by non-major interstate natural gas pipelines subject to the jurisdiction of the FERC.¹¹ 18 CFR §260.2.
- **No. 552 – Annual Report of Natural Gas Transactions.** This annual report collects transactional information from natural gas market participants.¹² 18 CFR §260.401. It requires a schedule of reporting companies, price index reporting and purchases and sales information.

⁹The Report requires information on statement of income for the year, statement of retained earnings, statement of cash flows, statement of accumulated comprehensive income and hedging activities, capital stock data, long-term debt date, electric sales data for the year, electric operation and maintenance expenses, purchased power, utility plant data, purchases and sales of ancillary services, monthly transmission system peak load, transmission service and generation interconnection study cost, and others. <https://www.ecfr.gov/current/title-18/chapter-I/subchapter-D/part-141/section-141.2>, <https://www.ferc.gov/general-information-0/electric-industry-forms>

¹⁰<https://www.ferc.gov/industries-data/natural-gas/industry-forms>, <https://www.ecfr.gov/current/title-18/chapter-I/subchapter-G/part-260>

¹¹The Report requires statement of income for the year, statement of accumulated comprehensive income and hedging activities, statement of retained earnings for the year, statement of cash flows, gas plant services, property and capacity information, capital stock and long-term debt data, accumulated deferred income taxes, gas operating revenues, discounted rate services and negotiated rate services, gas operation and maintenance expenses, employee pensions and benefits, shipper supplied gas for the current quarter, and others.<https://www.ferc.gov/industries-data/natural-gas/industry-forms>, <https://www.ecfr.gov/current/title-18/chapter-I/subchapter-G/part-260/section-260.2>

¹²<https://www.ecfr.gov/current/title-18/chapter-I/subchapter-G/part-260/section-260.401>, <https://www.ferc.gov/industries-data/natural-gas/industry-forms>

- **No. 6 – Annual Report of Oil Pipeline Companies.** This annual report is designed to collect financial and operational information from oil pipeline companies subject to the jurisdiction of the Commission.¹³ 18 CFR §§357.1.

LUMA also reviewed financial reporting requirements in several States. The time to submit financial reports range between 90 and 120 days after the close of the year:

State	Report Type	Filing Date	Reported To	Days After Year End
Ohio	Annual Report	4/28	Public Utilities Commission of Ohio	118
New York	Annual Report	3/31	New York Public Service Commission	90
Illinois	Annual Report	3/31	Illinois Commerce Commission	90
Texas	Annual Report	3/31	Public Utility Commission of Texas	90

- **Ohio – Annual Report.** This report requires financial information, intrastate gross earnings of the company and docketing and fiscal contact information.¹⁴ See O.R.C. §§4905.10 & 4911.18.
- **New York – Annual Report.** This report requires corporate information and financial statements, electric plant service and lease, construction work in progress, investment in subsidiary companies, accumulated provision for depreciation of electric plant, material and supplies, study cost, extraordinary property losses, number of electric department employees, purchased power, depreciation and amortization of electric plant, research,

¹³ It requires income statements, statement of accumulated other comprehensive income and hedging activities, statement of cash flows, investment in affiliated companies and common stocks, undivided joint interest property, carrier property, amortization base and reserve, payables to affiliated companies, long-term debt, capital stock, operating revenue and expenses, pipeline taxes, income from noncarrier property, statistic of operations, and annual cost of service-based analysis schedule.<https://www.ecfr.gov/current/title-18/chapter-I/subchapter-R/part-357/section-357.2> ,<https://www.ferc.gov/general-information-1/oil-industry-forms>.

¹⁴ <https://puco.ohio.gov/documents-and-rules/resources/annual-reports/annual-reports-for-fiscal-assessment>

development and demonstration activities, electric energy account, monthly peaks and output, stockholders' reports.¹⁵

- **Illinois – Annual Report.** This report requires corporate information and financial statements, statement of income for the year, statement of retained earnings, special funds and deposits, reconciliation of gross revenue tax, investments, material and supplies, study cost, extraordinary property losses, employee data, purchased gas, depreciation and amortization of electric plant, and research, development, and demonstration activities.¹⁶ See Section 5-109 of the Public Utilities Act, 220 ILCS 5/5-109.

- **Texas – Annual Report.** This report requires annual revenues, revenue imputation for special rates, annual costs, calculation of adjusted report year expenses, invested capital, federal income taxes.¹⁷ See Public Utility Regulatory Act (PURA) §39.257.

LUMA requests that this Energy Bureau consider the aforementioned information on financial reporting timelines applicable to utilities, particularly, the FERC reporting deadlines detailed above that, as shown, adopt timelines above the sixty (60) days that this Energy Bureau established LUMA shall meet for its annual report in FY2024. LUMA further requests that, consistent with the practice and orders by this Energy Bureau in FY2022, LUMA's annual report on financial for FY2024 activity shall be filed within 120 days after the close of each fiscal year.

WHEREFORE, LUMA respectfully requests that the honorable Energy Bureau **take notice** of the aforementioned for all purposes; and **reconsider** the June 25th Order as requested in this Motion.

RESPECTFULLY SUBMITTED.

¹⁵<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fdps.ny.gov%2Fsystem%2Ffiles%2Fdocuments%2F2023%2F01%2Fpsc-fercform-rev11.15.19.xlsx&wdOrigin=BROWSELINK>

¹⁶ See <https://www.icc.illinois.gov/authority/electric-utility>

¹⁷ See page 2, item 2. <https://www.puc.texas.gov/industry/electric/forms/ear/earinst.pdf>

In San Juan, Puerto Rico, this 10th day of July 2023.

I HEREBY CERTIFY that this motion was filed using the electronic filing system of this Energy Bureau. I also certify that a copy of this motion will be notified to the Puerto Rico Electric Power Authority through attorneys of record: jmarrero@diazvaz.law and mvazquez@diazvaz.law; and to [Genera PR LLC, through](#) counsels of record Jorge Fernández-Reboredo, jfr@sbgblaw.com and Alejandro López Rodríguez, alopez@sbgblaw.com.



DLA Piper (Puerto Rico) LLC
500 Calle de la Tanca, Suite 401
San Juan, PR 00901-1969
Tel. 787-945-9107
Fax 939-697-6147

/s/ Margarita Mercado Echegaray
Margarita Mercado Echegaray
RUA NÚM. 16,266
margarita.mercado@us.dlapiper.com