

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

NEPR
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IN RE: REVIEW OF LUMA’S INITIAL BUDGETS

CASE NO.: NEPR-MI-2021-0004

SUBJECT: Response to June 29th Resolution and Order, Request for Reconsideration and Request for Evidentiary Hearing

LUMA’S RESPONSE TO THE ENERGY BUREAU’S JUNE 29, 2023 RESOLUTION AND ORDER, REQUEST FOR RECONSIDERATION AND REQUEST FOR EVIDENTIARY HEARING

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. Background

1. On July 13, 2022, LUMA submitted to the honorable Puerto Rico Energy Bureau (“Energy Bureau”) a Motion Submitting Fiscal Year 2023 Annual Budget as Approved and Certified by the Financial Oversight and Management Board for Puerto Rico (“July 13th Motion”) providing notice of the Financial Oversight and Management Board for Puerto Rico’s (the “Oversight Board”) certification of a Fiscal Year 2023 Budget for the Puerto Rico Electric Power Authority (“PREPA”) pursuant to Section 202(e) of the Puerto Rico Oversight, Management and Economic Stability Act (“PROMESA”), which budget is comprised of LUMA’s Transmission and Distribution (“T&D”) System Budgets and PREPA’s Generation and HoldCo budgets (the “Fiscal Year 2023 Consolidated Budget”).

2. Through a Resolution and Order entered on February 27, 2023, the honorable Energy Bureau determined to approve the Fiscal Year 2023 Consolidated Budget certified by the Oversight Board, subject to certain conditions and requirements (“February 27th Order”).

3. On June 9, 2023, through transmittal number LUMA-PREB-T-00206, LUMA provided this honorable Energy Bureau notice of the potential need to reallocate funds between Improvement Portfolios within LUMA’s Capital Budget – Non-Federally Funded (the “June 9th Notice”). The June 9th Notice was provided in response to the Energy Bureau’s August 3, 2022 Resolution and Order approving LUMA’s Fiscal Year 2022 Budget Amendment (the “August 3rd Order”) whereby the Energy Bureau stated that “any future reallocation or redistribution of funds amongst budget programs or line items shall be timely anticipated and requested before the Energy Bureau.” *See* August 3rd Order at page 7.

4. On June 22, 2023, LUMA filed a Motion Submitting Fiscal Year 2023 Budget Reallocation (June 22nd Motion) whereby it identified a reallocation of \$14.1 million within its Capital Budget – Non-Federally Funded Budget. *See* Exhibit 1 to the June 22nd Motion at page 3. Specifically, \$9.1 million from the Substation Improvement Portfolio and \$5.0 million from the Support Services Improvement Portfolio were being reallocated as follows: \$9.5 million to the Distribution Improvement Portfolio, \$2.8 million to the Customer Experience Improvement Portfolio, and \$1.8 million to the Transmission Improvement Portfolio. *Id.*

5. As explained in the June 22nd Motion and its accompanying Exhibit, the reallocation (i) did not increase or change the Capital Budget – Non-Federally Funded Budget of \$75.714 million, (ii) did not cause LUMA to spend or anticipate spending in excess of its Operating Budget and/or Capital Budget, (iii) did not require any change in customer rates, and (iv) is consistent with the 2017 Rate Order.

6. On June 26, 2023, the honorable Energy Bureau issued a Resolution (June 26th Resolution) whereby it determined that:

The referenced reallocations doesn't (*sic*) exceed five percent (5%) of the Budget in which such reallocation is made. Therefore, in accordance with Section 7.3(c) of the OMA, it is not subject to the approval of the Energy Bureau. Nonetheless, the Energy Bureau **TAKES 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 (*sic*) budget amendment timely requested before the Energy Bureau.

See June 26th Resolution at page 1. (emphasis in bold in the original) (emphasis underlined added).

7. On June 29, 2023, the Energy Bureau issued a Resolution and Order (June 29th Order) to “correct” the June 26th Resolution to read as follows:

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

See June 29th Order at pages 1-2 (emphasis in the original)

8. Notwithstanding, the Energy Bureau determined to approve the reallocation identified by LUMA in its June 22nd Motion. *See* June 29th Order at page 3.

9. Through the June 29th Order, the Energy Bureau also made a determination that LUMA's June 22nd Motion and corresponding reallocation “was filed close to the end of the Fiscal Year”, reflected “expenditures that were apparently already made” and that the June 22nd Motion

did not comply with the Energy Bureau’s determinations that “any future reallocation of funds amongst budget programs or line items shall be timely anticipated and the correspondent (sic) budget amendment timely requested before the Energy Bureau.” *See* June 29 Order at page 3.

10. The Energy Bureau then determined that “[f]or future references, 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.

11. Finally, the June 29th Order requires:

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 of funds amongst budget programs or line items shall be timely anticipated and the correspondent (sic) budget amendment timely requested before the Energy Bureau.**

(emphasis added)

II. LUMA’s Response to the Energy Bureau’s Order to Show Cause

a. LUMA’s application of Section 7.3 of the T&D OMA in the June 22nd Motion

12. The Energy Bureau’s June 29th Order concludes that LUMA’s June 22nd Motion identified the reallocation of funds within LUMA’s Capital Budget – Non-Federally Funded in amounts in excess of five percent (5%) without the Energy Bureau’s prior approval and that LUMA failed to comply with the August 3rd Order requiring any reallocations of funds amongst budget programs or line items to be timely anticipated and submitted for approval through a budget amendment to the Energy Bureau.

13. For clarity, in its June 22nd Motion, LUMA did not state that the reallocations contemplated therein did not exceed 5% of the Capital Budget – Non-Federally Funded. Exhibit 1 of the June 22nd Motion identified the variances at the Improvement Portfolio level, all of which exceeded 5% of each Improvement Portfolio budget. LUMA notes that it identified the variances at the Improvement Portfolio budget level given what it understands to be the Energy Bureau’s directives in its August 3rd Order, which refer to reallocations or distributions “amongst budget programs or line items.” *See* August 3rd Order at page 3.

14. However, Section 7.3(c) of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (“T&D OMA”), grants LUMA “complete flexibility, subject to compliance with Contract Standards and prior consultation with, but not subject to approval by, Administrator or PREB” to reallocate funds within each of the Operating Budget, the Capital Budget – Non-Federally Funded and the Capital Budget – Federally Funded. The 5% threshold under which LUMA enjoys “complete flexibility” established in Section 7.3(c) of the T&D OMA applies to reallocations that “do not exceed five percent (5%) of the Budget in which such reallocations are made”. In other words, five percent (5%) of the Operating Budget, the Capital Budget – Non-Federally Funded or Capital Budget – Federally Funded, as applicable.

15. The T&D OMA does not specify that reallocations in excess of the 5% threshold must be approved by the Energy Bureau through a Budget Amendment nor does it specify that budget amendments that do not have an impact on the approved Operating Budget and Capital Budget, and therefore are not inconsistent with the applicable Rate Order, must be approved by the Energy Bureau. Only when LUMA “becomes aware that T&D Pass-Through Expenditures or Generation Pass-Through Expenditures are expected to exceed” the Operating Budget and Capital Budget, is LUMA required to “promptly notify PREB and Administrator and prepare and submit

to PREB a proposed amendment Operating or Capital Budget.” *See* Section 7.3(e) of the T&D OMA.

16. As stated in the June 22nd Motion, the reallocation did not cause any change to the total Capital Budget – Non-Federally Funded, the overall Capital Budget or the Operating Budget and did not cause a change or require any adjustment to customer rates and, therefore, the resulting Operating Budget and Capital Budget remained unchanged and compliant with the 2017 Rate Order.

17. Although the Energy Bureau has stated that it is not bound by the provisions of the T&D OMA, its determinations in relation to the reallocation of funds have been based on the provisions of the T&D OMA. *See* June 29th Order at page 3. *See, also*, June 26th Resolution at page 1 and Part III of the August 3rd Resolution.

18. It is, therefore, based on the express provisions of the T&D OMA, and in particular Section 7.3, that LUMA understood that the reallocation contemplated in the June 22nd Motion did not constitute a budget amendment that requires approval by the Energy Bureau under Section 7.3(e) of T&D OMA. Accordingly, through the June 9th Notice and June 22nd Motion, LUMA provided notice to the Energy Bureau of the reallocation as soon as it became aware that such a reallocation would be needed.

b. Inherited Constraints on LUMA’s Financial Reporting Capabilities

19. LUMA’s ability to forecast if reallocations of funds between budgets, programs or line items are needed or whether expenses will exceed an approved budget is constrained by current systems and capabilities. As this Energy Bureau recognized in approving the System Remediation Plan (“SRP”), several components of the T&D System require remediation to allow

LUMA to meet performance standards per industry practices. These constraints are also recognized in the T&D OMA, whereby the parties agreed that:

(A) certain components of the T&D System and the manner in which the T&D System is operated do not currently meet the standards of performance required under this Agreement, including the fact that certain matters related to the T&D System or T&D System Sites and certain general operating and administrative practices may not comply with Contract Standards, and (B) a period of review, planning, remediation, repair and replacement will be required to enable Operator to achieve the Contract Standards.

T&D OMA, Section 4.1(d); *see also* Resolution and Order of June 23, 2021, Case NEPR-MI-2020-0019, at page 3 (referencing Section 4.1(d) of the T&D OMA); page 12.

20. The SRP programs on Critical Financial Controls and Critical Financial Systems are key to allowing LUMA to reach a remediated state when LUMA's financial processes meet Contract Standards. These SRP programs will also allow LUMA to improve the timeliness and accuracy of the recording of actual expenses. Concretely advancing these SRP programs will allow LUMA to report actual spending in a timely manner after the end of each period, potentially forecast when spending may exceed the allotted sums for a budget and, if required, request to amend approved budgets.

21. The issues highlighted in LUMA's SRP demonstrate that LUMA inherited financial systems and processes with significant gaps. LUMA proposed, and this Energy Bureau approved, investments in remediation programs. LUMA has progressed on this effort, including:

- Implementing the expense module of Oracle to automate the approval of employee expenses and charging to projects;
- Designing and implementing an online budgeting and forecasting system for operational expenses;

- Advancing software and process improvement projects related to time management and labor costing, procurement of non-warehouse goods and services, and financial and operational reporting;
- Making significant progress related to Internal Controls and Internal Audit.

22. Significant budgetary constraints have limited the amount of progress that LUMA has been able to make. The remediation of financial systems and processes requires resources and time beyond FY2023. As mentioned on page 49 of LUMA's Annual Budgets Filing for Fiscal Years 2024 to 2026, activities in the Critical Financial Controls and Critical Financial Systems programs have been slowed in FY2024 in order to maintain fiscal discipline. LUMA has also been subject to audits from various entities. Responding to multiple audits as well as fulfilling arduous reporting requirements from multiple stakeholders have diverted time and resources away from making progress on these SRP programs. Furthermore, LUMA has allotted resources to assist PREPA in connection with PREPA's year-end fiscal audits.

23. Additionally, PREPA's inability to provide a segregated set of financial statements for GridCo, as required prior to the start of LUMA's commencement and as is required to realize the reorganization of PREPA, materially limits LUMA's ability to meet the identified performance standard. Until reliable standalone, initial balance sheet, cash flow, and income statements for GridCo are available from PREPA, LUMA will not be able to complete the standard and proper period end closing processes.

III. Request for Evidentiary Hearing Pursuant to Regulation 8543

24. The Energy Bureau adopted Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings, Regulation No. 8543 of the Energy Commission of Puerto Rico (hereinafter, "Regulation 8543") to establish standards that shall

govern adjudicative proceedings, proceedings regarding notices of noncompliance and investigations. *See* Section 1.03, Regulation 8543. Regulation 8543 provides for the impositions of fines as one of the remedies available to the Energy Bureau when it determines noncompliance with the provisions of Act 57-2014, the Bureau's regulations, and any law whose interpretation and implementation is subject to the jurisdiction of the Energy Bureau and any order issued by the Bureau. *See* Section 12.02, Regulation 8543.

25. Chapter IV of Regulation 8543 provides a process through which the Energy Bureau, upon becoming aware of a potential noncompliance with the public energy policy of the Commonwealth of Puerto Rico, can grant the party whose alleged actions are noncompliant with the public energy policy an opportunity to present testimony in support of that party's position and to be interrogated by the Energy Bureau. *See* Section 14.04, Regulation 8543.

26. In such cases, the responding party is entitled to identify witnesses "whose testimony (i) seems to be necessary to prove the truth of the arguments submitted by the notified party, (ii) appears to be necessary to demonstrate that the notified party has not committed the alleged breach, or to demonstrate the existence of an adequate and reasonable justification for the breach, and (iii) is not a redundancy of the documental evidence identified and annexed to the reply." *See Id.*

27. Once the party has been given an opportunity to be heard, Regulation 8543 provides that the Energy Bureau can then make a determination with regards to whether the party has engaged in the alleged conduct and impose the remedies outlined in Article X of Regulation 8543, which include the imposition of fines similar in nature to those outlined in Section 12.02. *See* Section 14.05, Regulation 8543.

28. As explained above, serious and significant deficiencies in existing financial systems and controls constrain LUMA from providing financial information in a manner consistent with Contract Standards and Prudent Utility Practices.

29. In recognition of these deficiencies, LUMA identified specific Improvement Programs designed to remediate and upgrade PREPA's the outdated systems and unreliable accounting procedures. As mentioned above, since taking over operation of the T&D System, LUMA has undertaken steps to address the root cause of these deficiencies and measurable progress has been achieved. Nonetheless, significant challenges still remain, many of which either require extensive time to fully remediate or require cooperation from third parties, including PREPA, to move ahead.

30. LUMA believes that the Energy Bureau would benefit from an opportunity to gather evidence regarding LUMA's progress on this effort, as well as remaining challenges and the steps being taken to address them. The presentation of evidence is particularly important before this Energy Bureau issues a determination on imposing a fine on LUMA as outlined in its June 29th Order.

31. In light of the aforementioned, LUMA respectfully requests, that the Energy Bureau schedule an evidentiary hearing during which LUMA's witnesses, including, Mr. Corey Schneider, Chief Financial Officer of LUMA, are given an opportunity to testify regarding the current state of LUMA's financial systems and controls and the technical and practical reasons for which LUMA's ability to identify the need for reallocations with greater anticipation than the one provided through the June 9th Notice and June 22nd Motion is currently not feasible. The opportunity for the Energy Bureau to question LUMA's witness will place it in an optimal position to determine whether the imposition of the proposed fine is warranted.

IV. Request for Reconsideration

32. The June 29th Order includes a preemptive determination by the Energy Bureau that all future reallocations made after the date on which the Q3 Report is submitted will be deemed to have been filed in an untimely basis, presumably leading to the imposition of a fine on LUMA.

33. Specifically, the June 29th Order provides that “[f]or future reference, the Energy Bureau will consider that a reallocation or amendment request (specifically at the end of fiscal year) was made in a timely manner when presented, at the latest, in conjunction with the submission of the Q3 Report. See June 29th Order at p. 3.

34. Other than stating the Energy Bureau’s dissatisfaction with the timeline on which LUMA submitted its June 9th Notice and June 22nd Motion, the June 29th Order does not identify any rationale or justification for why any reallocation made by LUMA after the submission of the Q3 Report would be automatically deemed to have been filed untimely.

35. As explained above and in prior occasions, including the *Motion in Compliance with Order to Show Cause and Request for Reconsideration* filed in this proceeding on January 3, 2023, there are technical and practical considerations that reasonably limit LUMA’s ability to identify necessary budget reallocations within the timeline expected by the Energy Bureau. Subjecting LUMA to an arbitrarily determined cutoff date after which all reallocations are deemed untimely *per se* and presumably subject to penalization, far from improving the performance of the T&D System, imposes further constraints that negatively impact LUMA’s ability to operate efficiently and effectively, consistent with Contract Standards and Prudent Utility Practices.

36. LUMA respectfully submits that the timeliness of a reallocation, to the extent it is subject to approval by the Energy Bureau, should be determined on a case-by-case basis, considering the particular circumstances of each case.

37. For the reasons expressed above, and as would be further addressed during the evidentiary hearing requested by LUMA in part III of this Response, LUMA respectfully requests the Energy Bureau reconsider its determination that any reallocation made after the submission of the Q3 Report is automatically deemed to be untimely.

WHEREFORE, LUMA respectfully requests the Energy Bureau to **accept** this response and **deem** LUMA to have complied with the June 29th Order directing LUMA to show cause within ten (10) days from the date of the June 29th Order, **schedule** an evidentiary hearing pursuant to Section 14.04 of Regulation 8543 and **reconsider** its determination regarding automatic untimeliness of reallocations made after the submission of the Q3 Report.

I HEREBY CERTIFY that this motion was filed using the electronic filing system of this Energy Bureau and that electronic copies of this motion will be delivered to pre@promesa.gov; mvazquez@diazvaz.law; jmarrero@diazvaz.law; brannen@genera-services.com; kbolanos@genera-pr.com; regulatory@genera-pr.com; and jfr@sbglaw.com; alopez@sbglaw.com.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on July 10, 2023



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