

**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 to Reconsider Portion of the
Resolution and Order Issued on September 22, 2023

**MOTION TO RECONSIDER PORTION OF THE RESOLUTION AND ORDER ISSUED
ON SEPTEMBER 22, 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. Procedural Background

1. On May 31, 2021, this honorable Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) issued and published a Resolution and Order approving LUMA’s Initial Budgets (“May 31st Resolution and Order”).

2. In the May 31st Resolution and Order, the Energy Bureau listed “requirements for LUMA to fulfill during the Interim Period and going forward” for reporting on the Initial Budgets T&D System spending amounts and federal funding activity listed in Section IV, paragraphs 2 and 3 thereof, respectively. *See* May 31st Resolution and Order at pp. 36-37.

3. On February 27, 2023, this Energy Bureau issued a Resolution and Order whereby it approved the Certified Budgets for the Puerto Rico Energy System (the “System”) for Fiscal Year 2023 and established certain reporting requirements.

4. On May 15, 2023, LUMA submitted to this Energy Bureau the proposed Budgets for the System for Fiscal Year 2024, including the proposed budget for the Transmission and Distribution System (“Proposed Annual 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 the Puerto Rico Electric Power Authority (“PREPA”) and its subsidiaries other than GenCo and HydroCo (the, “HoldCo Budget”) (collectively referred to as the “System Annual Budgets, FY2024”). *See Submission of Consolidated Annual Budgets for Fiscal Year 2024 and Annual T&D Projections through Fiscal Year 2026* filed in this proceeding.

5. On June 25, 2023, the Energy Bureau entered a Resolution and Order whereby it modified and approved the System Annual Budgets, FY2024 subject to compliance with certain directives detailed in the Resolution and Order (the “June 25th Resolution and Order”).

6. On July 10, 2023, LUMA moved for partial reconsideration of the June 25th Resolution and Order. *See, Motion for Partial Reconsideration of Resolution and Order of June 25, 2023 on Fiscal Year 2024 System Budgets.*

7. On August 14, 2023, LUMA submitted its Comprehensive Quarterly Report of Fiscal Year 2023, for the Fourth Quarter ending June 30, 2023 (“Q4 Report”).

8. On September 18, 2023, this Energy Bureau issued a Resolution and Order whereby, in its pertinent part, it stated that because LUMA filed with this Energy Bureau consolidated budgets for the electric power system (“System Budgets”) it should prospectively

submit the budgets to actuals information for the System, that is, for GridCo,¹ GenCo,² HoldCo³ and Genera PR, LLC (“Genera”). The Energy Bureau did not expand at the time on the reasons for this requirement.

9. On September 22, 2023, this Energy Bureau entered a Resolution and Order whereby, among other matters, it ruled upon LUMA’s July 10th Motion for Reconsideration (the “September 22nd Order”). In what is pertinent here, on page 3 of the September 22nd Order, the Energy Bureau cautioned LUMA that “in accordance with the T&D OMA, LUMA bears the responsibility to do more than merely relay submissions by PREPA and Genera.” The Energy Bureau further maintained “its requirement that LUMA file the Q4 Report, as the Q1, Q2 and Q3 Reports, within forty-five (45) days after each Fiscal Year including all actual costs funded by the Base Rate in the Budgets to Actual Reporting.” *See*, September 22nd Order at page 8. Finally, this Energy Bureau directed that “LUMA must submit the Budget to Actual for GridCo, GenCo, and HoldCo and other expenses in the Report, not just the T&D Budget portion of the System.” *Id.*

10. On September 29, 2023, LUMA moved for an extension of time, until October 10, 2023, to comply with an additional requirement set forth in the September 18th Order pertaining the breakdown of budgeted amounts and expenditures for federally funded projects in Fiscal Year 2023.

11. On October 2, 2023, LUMA filed a *Partial Response to Resolution and Order of September 18, 2023, Request for Reconsideration and Submission of Motion by Genera*, whereby

¹ Per the T&D OMA, “GridCo” is “the entity, which may be directly or indirectly owned by Owner or an Affiliate of Owner, that acquires or obtains ownership of the T&D System after the reorganization of PREPA.

²Per the T&D OMA, “GenCo” means the entity, which may be directly or indirectly owned by Owner or an Affiliate of Owner, that acquires or obtains ownership of the Legacy Generation Assets after the reorganization of PREPA.” *See also* PREPA’s Petition for Leave to Create Subsidiaries and for Approval of the Puerto Rico PREPA-GENCO-HYDROCO Operating Agreement, pages 12 and 13.

³ This Energy Bureau understands that HoldCo supports PREPA’s administrative functions and those of its subsidiaries HydroCo and Property. *See* Resolution and Order of June 25, 2023, page 2, note 9.

it requested reconsideration of the Energy Bureau's directive to LUMA to prospectively submit the budgets to actuals information for the System the ("October 2nd Motion"). As explained by LUMA in the October 2nd Motion, such requirement is not only unsupported by the terms of the T&D OMA but also raises practical concerns for LUMA. Without waiving its objections as to the submission of consolidated budget to actuals information, LUMA also filed GenCo's and HoldCo's Q4 Report as received from PREPA.

12. On October 10, 2023, LUMA filed a *Motion in Compliance with Resolution and Order to Submit Breakdown of Budgeted Amounts and Expenditures for Federally Funded Project in Fiscal Year 2023 and Supporting Explanations and Request for Confidential Treatment of Portions Thereof* submitting the balance of the information requested in the September 18th Order on federal expenditures.

II. Request for Reconsideration of that Portion of the September 22nd Order Requiring the Consolidated Submission of Budget to Actuals.

13. To preserve its procedural rights regarding the September 22nd Order, LUMA hereby requests that, for the same reasons espoused in LUMA's October 2nd Motion, the Energy Bureau reconsider the requirement that LUMA file consolidated budget to actuals information for the System.

14. As explained in its October 2nd Motion, LUMA's duties and obligations arise under the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated June 22, 2020 ("T&D OMA"). Pursuant to the T&D OMA, however, LUMA only acts on behalf of PREPA in connection with LUMA's role as Operator *of the T&D System*. The T&D OMA did not contemplate that LUMA would assume activities related to PREPA's responsibilities (as Owner) that are not the result of the operation of the T&D System. Therefore, the T&D OMA does not impose obligations on LUMA in connection with expenditures incurred by HydroCo,

GenCo or HoldCo, nor did LUMA assume responsibilities to review and file reports required by this Energy Bureau on Genera's spending of an approved Generation Budget.

15. Article 5 of the T&D OMA outlines the general services that LUMA, as Operator, will provide to PREPA, as Owner. It states that Operator shall provide "management, operation, maintenance, repair, restoration and replacement and other related services *for the T&D System* ... and establish policies, programs and procedures with respect thereto ... in accordance with the Contract Standards." "Operator shall (A) be entitled to exercise all of the rights and perform the responsibilities of Owner in providing the O&M Services, and (B) have the autonomy and responsibility to operate and maintain the T&D System and establish the related plans, policies, procedures and programs with respect thereto as provided in [the T&D OMA]." (the "O&M Services").

16. In its preamble, Annex I of the T&D OMA lists O&M Services in addition to those contained in Article 5 of the T&D OMA. While Annex I provides that it is "not intended, nor should it be deemed, to be an exclusive list of O&M Services," it also provides that "the [T&D OMA], including this Annex I (*Scope of Services*), absent subsequent changes agreed to by the Parties, sets forth the entire scope of O&M Services to be provided by pursuant to the [T&D OMA]." Annex I includes a comprehensive list of services and activities deemed to be O&M Services ranging from electric transmission and distribution to billing and collections, maintaining, improving and developing a culture of safety, and producing, reviewing and maintaining operating logs and maintenance records. Annex I puts a limit on the universe of regulatory and legal matters that were assumed by LUMA under Sections I.G (Planning, Environmental and Regulatory) and I.H (Legal Services) of Annex I by establishing that LUMA would provide these services to the extent "*they relate to the [OMA]*." (Emphasis added).

17. Relatedly, Section H of Annex I of the T&D OMA states that LUMA is “responsible for preparing, presenting, defending current or future ... rate cases or other regulatory or legal matters *as they relate to the Agreement*, as the Owner’s representative before PREB...” Thus, the delegation of responsibility for regulatory and legal filings before this Energy Bureau is limited and does not encompass matters outside the scope of LUMA’s duty to provide O&M Services. (Emphasis added).

18. Section 5.6(a) of the T&D OMA provides that Operator shall “function as agent of Owner, and ... authorizes Operator to (i) represent Owner before PREB with respect to any matter related to the performance of any of the O&M Services provided by Operator under th[e] [T&D OMA], (ii) prepare all related filings and other submissions before PREB and (iii) represent Owner before any Governmental Body.” Furthermore, “Operator, as agent of Owner, shall make all filings and applications and submit all reports necessary to obtain and maintain all Governmental Approval in the name of Owner or, if required by Applicable Law.” Section 5.6(b) of the T&D OMA. Among the services identified in Annex I, LUMA agreed to being “responsible for preparing, presenting, defending current or future ... rate cases or other regulatory or legal matters as they relate to the Agreement, as the Owner’s representative before the PREB.” As is the case with Annex I of the T&D OMA, Section 5.6 of the T&D OMA also limits LUMA’s duties as agent of PREPA in connection with filings before this Energy Bureau, to those that relate to LUMA’s performance of O&M Services.

19. As LUMA argued in its October 2nd Motion, the T&D OMA does not contemplate that LUMA would assume activities related to PREPA’s (as Owner) responsibilities that are not the result of the operation of the T&D System such as reviewing and filing reports on HoldCo’s, HydroCo’s or GenCo’s costs and expenditures or reviewing and filing reports with this Energy

Bureau on Genco's or Genera's spending for Generation activities. The T&D OMA does not contemplate LUMA providing GenCo, HydroCo, or HoldCo, services related to reporting on their financial activities. Those are not O&M Services under the T&D OMA.

20. Importantly, the T&D OMA does not designate LUMA as PREPA's agent in any matter not directly related to the operation of the T&D System and does not designate LUMA as Genera's agent before this Energy Bureau.

21. The fact that pursuant to Section 7.3(a) of the T&D OMA, LUMA submits the consolidated System Budgets to the Puerto Rico Public Private Partnerships Authority ("P3A") (including the Generation Budget that refers to the Pass-Through Expenditures incurred in providing Power and Electricity,⁴ and the T&D Budget that includes the Operating Budget and the T&D Capital Budgets, Federally Funded and Non Federally Funded), does not render LUMA GenCo's, HydroCo's, or HoldCo's agent before this Energy Bureau in connection with preparing or filing reports on quarterly and annual spending, nor impose on LUMA a duty to report on spending in connection with an approved Generation Budget.

22. Given the aforementioned, LUMA respectfully requests that this Energy Bureau reconsider the directives of the September 22nd Order that LUMA shall prospectively submit the budgets to actuals information for the System. *See* September 22nd Order, page 8.

23. It should be noted that the Energy Bureau did not provide support for nor expanded on the reasons behind its decision to require LUMA to present consolidated budget to actuals

⁴ Per the T&D OMA the Generation Budget

means, for any given Contract Year, the budget of the Generation Pass-Through Expenditures for such Contract Year, together with the projected budget of the Generation Pass-Through Expenditures for the following two (2) Contract Years, in each case, including monthly budgets of such expenditures and cash flows, as such budget may be amended or adjusted from time to time in accordance with the terms and conditions of the GridCo-GenCo PPOA, the Shared Services Agreement and any Generation Supply Contract.

reports for the System. Insofar as the Energy Bureau's determination is beyond the terms of the T&D OMA, the Energy Bureau's action is arbitrary. *See, RBR Construction v. Aut. de Carreteras*, 149 DPR 836, 853 (1999) (determining that an administrative agency's unsupported determination to annul a public acquisition process is unreasonable and arbitrary); *see also e.g., Graciani Rodríguez v. Garaje Isla Verde*, 202 DPR 117 (2019) (deference to administrative decisions is not absolute and yields before unreasonable or arbitrary administrative determinations that constitute an abuse of discretion.); *García Fantauzzi v. Dir. Adm. Tribunales*, 182 DPR 560 (2011) (courts will intervene with administrative decisions that are unreasonable or arbitrary and that, as such, constitute an abuse of the agency's discretion).

24. Not only is the Energy Bureau's directive to submit budget to actuals information for the System contrary to the T&D OMA, but it also raises other practical considerations. Specifically, the Energy Bureau's requirement entails increased costs inherent to the coordination of consolidated quarterly reports that were not contemplated as part of the Proposed T&D Budget for FY 2024. Consolidated quarterly reporting would require additional steps and involve other actors such as a GenCo, HoldCo, and HydroCo with which LUMA would have to coordinate each filing. Such efforts would not only occupy time and resources of LUMA's internal resources but also of its external contractors and advisors. Moreover, LUMA should not be held accountable for delays incurred by other entities in producing financial reports.

25. In addition, the Energy Bureau's directive ignores that LUMA is not in charge of reviewing nor rendering an opinion as to the budget to actuals for other actors, such as GenCo, HoldCo, or HydroCo. That is, LUMA has no say on the contents of those reports.

26. The Energy Bureau's requirement also presents practical complications insofar as LUMA, PREPA and Genera have separate legal representation, each with their own duties and

responsibilities before their respective clients and this honorable Energy Bureau. LUMA, PREPA and Genera also have separate legal personalities. As such, each company has its own corporate structure, governing boards, financial policies and controls and should not be considered a consolidated structure or juridical person for legal or administrative purposes.

27. In light of the foregoing, LUMA respectfully requests that this Energy Bureau reconsider that portion of its September 22nd Order that requires LUMA to submit consolidated budget to actuals for GenCo, HydroCo, and HoldCo, in addition to those of GridCo. LUMA restates its availability to further discuss the practical considerations involved in such course of action with the Energy Bureau and explore alternatives that may better balance the contractual dispositions of the T&D OMA with the Energy Bureau's interests in a consolidated submission of such information.

WHEREFORE, LUMA respectfully requests that this honorable Energy Bureau **reconsider** the order to LUMA to prospectively submit with this Energy Bureau, HydroCo's, HoldCo's, and GenCo's information on expenses and spending for FY2024.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 12th day of October 2023.

We hereby certify that this motion was file using the electronic filing system of this Energy Bureau and that we will send an electronic copy of this motion to the attorneys for PREPA, Joannely Marrero-Cruz, jmarrero@diazvaz.law and mvazquez@diazvaz.law, from the [Díaz & Vázquez law firm](#); Lionel Santa, Lionel.santa@prepa.pr.gov, and to Juan M. Martínez-Nevárez, jmartinez@gmlex.net, Alexis G. Rivera-Medina, arivera@gmlex.net; Josely Rodríguez González, jrodriguez@gmlex.net, and Mirelis Valle-Cancel, mvalle@gmlex.net from the González &

Martínez Law Offices, P.S.C.; and to Genera PR LLC, through counsels of record, Jorge Fernandez-Reboredo, jfr@sbglaw.com and Alejandro López Rodríguez, alopez@sbglaw.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

/s/Ana Margarita Rodríguez Rivera

Ana Margarita Rodríguez Rivera

RUA NÚM. 16195

ana.rodriguezrivera@us.dlapiper.com