

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

NEPR
Received:
Oct 16, 2023
9:29 PM

IN RE: REVIEW OF LUMA'S INITIAL
BUDGETS

CASE NO.: NEPR-MI-2021-0004

URGENT INFORMATIVE MOTION AND REQUEST FOR CLARIFICATION

TO THE PUERTO RICO ENERGY BUREAU:

COMES NOW the Puerto Rico Electric Power Authority ("PREPA"), through its undersigned legal representation, and respectfully informs and requests as follows:

1. The *Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement* (hereinafter, the "T&D OMA"), imposes upon PREPA the responsibility to, among other things, "...fund the Service Accounts, all in accordance with the terms and conditions of [the OMA]", as it relates to the operation, management, and maintenance of the Transmission & Distribution System. See T&D OMA, Article 6(1)(a).

2. Under the T&D OMA, the Service Accounts comprise the: (a) Operating Account, (b) Capital Account – Federally Funded, (c) the Capital Account – Non-Federally Funded, (d) Outage Event Reserve Account, (e) Generation Expenditures Accounts, and (f) Contingency Reserve Account (hereinafter, the "Service Accounts"). See T&D OMA, Article 1.

3. Pursuant to the T&D OMA, PREPA is required to:

- a. ... replenish the Operating Account so as to maintain a funding level equal to the sum of anticipated T&D Pass-Through Expenditures for the subsequent four and a half (4.5) months, subject to Section 7.8 (*Owner Credit Rating*), under the Operating Budget ..." See T&D OMA, Article 7, Section 7.5 of (a)(ii).
- b. ... replenish the Capital Account – Federally Funded so as to maintain a funding level equal to, or ensure the availability of a credit facility in an amount equal to or greater than, the sum of anticipated Capital Costs – Federally Funded for Federally Funded Capital Improvements that have been Obligated and scheduled as of such date in accordance with the Federal Funding Requirements for the subsequent four and a half (4.5) months, subject to Section 7.8 (*Owner Credit Rating*), under the Capital Budget – Federally Funded." See id. (b)(iii).
- c. ... replenish the Capital Account – Non-Federally Funded so as to maintain a funding level equal to the sum of anticipated Capital Costs – Non-Federally Funded for the subsequent four and a half (4.5) months, subject to Section 7.8 (*Owner Credit Rating*), under the Capital Budget – Non-Federally Funded or the relevant Default Budget then in effect. See id. (c)(iii).
- d. ... replenish the Outage Event Reserve Account so as to maintain an amount equal to US\$30,000,000. See id. (d)(iii).
- e. ... replenish the Purchased Power Account so as to maintain a funding level equal to the sum of anticipated, applicable Generation Pass-Through Expenditures for the subsequent two (2) months, subject to Section 7.8 (*Owner Credit Rating*), under the Generation Budget or the relevant Default Budget then in effect. See id. (e)(ii).
- f. ... replenish the Contingency Reserve Account by depositing no later than the tenth (10th) Business Day of each month (beginning in the month following that in which the withdrawal occurred) an amount equal to 1/24 of the Contingency Reserve Amount until such time as the Contingency Reserve Account is funded to the level of the Contingency Reserve Amount ... See id. (f)(iv).

4. On October 10th, 2023, LUMA Energy, LLC ("LUMA") sent a letter to PREPA requiring the following Service Accounts to be replenished in the stated amounts:

- a. LUMA Operating Account: \$144,706,000.00
- b. Purchased Power Account: \$112,926,000.00
- c. Genco Operating Account: \$8,100,000.00
- d. Genco Fuel Account: \$282,700,000.00

(hereinafter, "LUMA's Funding Request").¹

5. After careful review of its operating accounts, PREPA hereby informs it is unable to meet LUMA's Request for Funding, as it is not able to provide at least two-thirds (2/3) of the requisite funding.

6. To meet the minimum requisite funding, PREPA would need to make, at the very least, the following allocations:

- a. LUMA Operating Account: \$96,471,000.00
- b. Purchased Power Account: \$ 40,535,000.00
- c. Genco Operating Account: \$ 5,400,000.00
- d. Genco Fuel Account: \$ 188,467,000.00

7. Presently, PREPA has \$396,291,360.56 in its operational accounts. If it keeps a minimum working balance of \$100,000,000.00, it is left with

¹ LUMA also requested funds for the Outage Event Reserve Account. Said request is currently being evaluated by PREPA.

\$296,291,360.56 which can be allocated to address LUMA's Request for Funding as follows:

- a. LUMA Operating Account: **\$86,342,000.00**
- b. Purchased Power Account: **\$36,279,000.00**
- c. Genco Operating Account: **\$4,833,000.00**
- d. Genco Fuel Account: **\$168,678,000.00**

8. In the *Resolution and Order* issued on June 25th, 2023, the Puerto Rico Energy Bureau of the Public Service Regulatory Board (hereinafter, the "Energy Bureau") "reiterate[d] its responsibility and authority to prioritize and ensure appropriate and timely use of individual expenditures from the FEMA Reimbursement Account and safe and adequate service."

9. Subsequently, in the *Resolution and Order* issued on September 13th, 2023, the Energy Bureau "HIGHLIGHT[ED] that it will only allow PREPA to draw money from the FEMA Reimbursement Account if compensation for such services is previously approved by FEMA and in a manner consistent with the FEMA approval" (hereinafter, the "September 13th Resolution")

10. PREPA's inability to meet LUMA's Request for Funding is a direct result of the restrictions imposed by the Energy Bureau to PREPA's ability to draw money from the FEMA Reimbursement Account. In PREPA's view, the September 13th Resolution prevents it from using the funds available in the FEMA Reimbursement Account to replenish the Service Accounts.

11. If PREPA had the authority to draw money from the FEMA Reimbursement Account to replenish Service Accounts, it would be able to meet LUMA's Request for Funding.

12. PREPA hereby requests the Energy Bureau to elucidate the extent of its September 13th Resolution and clarify whether PREPA may draw money from the FEMA Reimbursement Account to replenish Service Accounts.

WHEREFORE, PREPA respectfully requests for the Energy Bureau to elucidate the extent of its September 13th Resolution, and clarify whether PREPA may draw money from the FEMA Reimbursement Account to replenish Service Accounts.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 16th day of October 2023.

CERTIFICATE OF SERVICE: We hereby certify that this document was filed with the Office of the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and courtesy copies were sent via e-mail to LUMA Energy, LLC through its counsels of record at margarita.mercado@us.dlapiper.com, laura.rozas@us.dlapiper.com, and to Genera-PR, LLC through its counsels of record at jfr@sbgblaw.com, alopez@sbgblaw.com, legal@genera-pr.com and regulatory@genera-pr.com.

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