

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

IN RE: REVIEW OF LUMA'S INITIAL
BUDGETS

CASE NO.: NEPR-MI-2021-0004

SUBJECT: Determination on Genera's Requests to Amend Section 7.3(f) of the LGA OMA; Order to Amend Cadence of Genera's Quarterly Fuel Budget Report; and for Modification of Attachment J and Reporting Schedule as Required in the June 25 Resolution.

RESOLUTION AND ORDER

I. Introduction and Procedural Background

On May 16, 2023, LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly referred to as "LUMA") filed for review and approval with the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau"), a document titled *Submission of Consolidated Annual Budgets for Fiscal Year 2024 and Proposed Annual T&D Projections Through Fiscal Year 2026* ("May 16 Motion"). The May 16 Motion included the following budget components: (i) the proposed T&D budget developed by LUMA, (ii) the proposed generation budget developed by Genera PR, LLC ("Genera") on behalf of the Puerto Rico Electric Power Authority ("PREPA") for the PREPA subsidiary GENCO LLC ("GenCo"), and the proposed Budget developed by PREPA for its holding company, HoldCo, and its subsidiaries PREPA HydroCo LLC ("HydroCo") and PREPA PropertyCo, LLC ("PropertyCo").

On June 25, 2023, the Energy Bureau issued a Resolution and Order ("June 25 Resolution") through which it modified and approved the Proposed Consolidated Fiscal Year 2024 ("FY24") Budget submitted by LUMA subject to certain reporting requirements.

On August 1, 2023, Genera PR LLC ("Genera") filed a document titled *Motion to Submit Critical Replacement Program and Monthly Maintenance Report in Compliance with Resolution and Order Dated June 25, 2023* ("August 1 Motion"), through which, Genera provided as Annex B, the Project Master Tracker in alignment with the model template provided in Attachment J of the June 25 Order. Genera proposed a revision to the reporting requirement template in Attachment J of the June 25 Resolution and requested approval to submit its subsequent monthly reports in the form it provided in Exhibit B, which it asserted included all of the mandatory parameters outlined in Attachment J.¹

On September 1, 2023, Genera filed a document titled *Motion to Submit Monthly Maintenance Report for August 2023 in Compliance with Resolution and Order Dated June 25, 2023* ("September 1 Motion"), through which, Genera requested that the Energy Bureau modify the filing schedule of the B2A Reporting from quarterly to within forty-five (45) days after the end of the quarterly reporting period.²

On November 15, 2023, Genera filed a document titled, *Motion to Submit Budget to Actuals Report for First Quarter of Fiscal Year 2024* ("November 15 Motion"), through which, Genera submitted the B2A Report for the first quarter of FY 2024 and included the adjusted Fuel Budget for Q1 of FY 2024. In the November 15 Motion Genera stated that it has submitted

¹ August 1 Motion, p. 3.

² September 1 Motion, p. 3.



the B2A within the forty-five (45) days after the end of the quarterly reporting period as requested in the September 1 Motion, on ¶ 7, page 3.³

On November 22, 2023, Genera filed a document titled, *Request of Order to Amend Cadence of Genera's Quarterly Fuel Budget Report* ("November 22 Motion"), through which, Genera requested that the Energy Bureau amend the cadence of its required Quarterly Fuel Report form "no later than fourteen (14) days prior to the end of a Quarter" as stated under Article 7, Section 7.3(f) of the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement ("LGA OMA")⁴ to "within forty-five (45) days after the end of the quarterly reporting period."⁵ In support of its request, Genera cited the avoidance of "reporting incongruencies and deficiencies" and reducing "scheduling conflicts, administrative inefficiencies and potential discrepancies in reporting."⁶

Genera cites Article 7, Section 7.3(f) of the LGA OMA as requiring that the Quarterly Fuel Budget Report be filed no later than fourteen (14) days prior to the end of a Quarter, providing as follows:

"Quarterly Adjustments to Fuel Budget. No later than fourteen (14) days prior to the end of a quarter, operator shall prepare and submit to PREB for approval (with copy to Administrator and the T&D Operator), as necessary, (i) a record of actual Fuel Costs spent in the current quarter, with all applicable invoices and necessary supporting information for auditing purposes, and (ii) revised quarterly budgets describing the estimated variable Fuel Costs for the following quarter for the purpose of resetting the Fuel Costs to be recovered for that quarter. In the event PREB does not timely approve a proposed revised quarterly Fuel Budget prior to the start of the applicable quarter, the proposed quarterly Fuel Budget shall be adjusted to reflect the maximum amount of Fuel Costs to be recovered through the rates set forth in the applicable Fuel Adjustment Clause then in effect."

II. Discussion and Analysis

A. Request to Amend Cadence of Genera's Quarterly Fuel Budget Report

The requirement in Section 7.3(f) the LGA OMA regarding Fuel Cost reporting and estimated variable Fuel Costs for the following quarter are intended to facilitate a process for the effective review and accurate establishment of quarterly adjustments to the Fuel Budget, as relevant to the Fuel Charge Adjustment (FCA).⁷

In making its request for approval to amend the submission cadence of the Fuel Budget Report from no later than fourteen (14) days prior to the end of a quarter, as outlined in Article 7, Section 7.3(f) of the LGA OMA, to within 45 days after the end of the quarterly reporting period, aligning it with the B2A Report schedule,⁸ Genera acknowledges that the current filing cadence is required by the LGA OMA, but Genera omits addressing the requirements set forth in the LGA OMA to initiate any amendment requests as stated in Section 21.3 of the LGA OMA.

³ November 15 Motion, p. 2, ¶¶ 4-5.

⁴ *Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement ("LGA OMA")*, dated January 24, 2023, by and among The Puerto Rico Electric Power Authority as Owner, The Puerto Rico Public-Private Partnerships Authority as Administrator, and Genera PR LLC as Operator.

⁵ November 22 Motion, p. 2.

⁶ November 22 Motion, p. 3.

⁷ LGA OMA, Article 7, Section 7.3(f).

⁸ November 22 Motion, p. 3.



Section 21.3 of the LGA OMA provides:

“Amendments. Neither this Agreement nor any provision hereof may be changed, modified, amended or waived, except by written agreement duly executed by the Parties. Any such amendment shall not be effective until (i) to the extent required by Applicable Law, approved by PREB and the FOMB (if then in existence) and (ii) Administrator has obtained a Tax Opinion and a Reliance Letter, at the cost of Owner or Administrator, with respect to any such amendment. Wherever this Agreement requires the Parties to use good faith, reasonable, commercially reasonable or other efforts to amend the terms of this Agreement, Operator shall not be deemed to be in breach of such requirement as a result of its insistence that such amendment not adversely affect Operator’s compensation under, or its return on investment or other economic interests with respect to, this Agreement, except to the extent such adverse effect results solely from inflation or the imposition of a Tax or an increase in Taxes of general application.”

In accordance with the specific language of the LGA OMA, amendment requires that the enumerated prerequisites be carried out before the amendment is filed with the Energy Bureau for its approval. **The Energy Bureau, accordingly, makes no determination on the merits of Genera’s request pending appropriate action in accordance with the LGA OMA.**

It should be noted that any request to the Energy Bureau by Genera regarding amendment of its quarterly fuel budget reporting should consider the procedure established in *In re: Puerto Rico Electric Power Authority’s Permanent Rate*, NEPR-MI-2020-0001, through which, LUMA provides the factors associated with several riders, including the FCA, based in part on information provided by Genera.

B. Request to Modify Attachment J of the June 25 Resolution

In the August 1 Motion, Genera requests authorization to submit the information required in Attachment J of the June 25 Resolution, in a revised format, utilizing the Microsoft projects platform and including all of the mandatory parameters outlined in Appendix J. Genera asserts that the requested submittal form allows Genera to produce monthly reports that clearly show any revisions made to the timelines and information provided.⁹ In the June 25 Resolution, the Energy Bureau specifically provided Genera the opportunity to proposed modifications to the Reporting Template.¹⁰

The Energy Bureau has reviewed Genera’s request to modify the Reporting Template in Attachment J to show the status of the repairs and maintenance activities planned and underway and instead utilize the Gantt Chart, provided as Exhibit B, and finds that the Gantt Chart provides some, but not all, of the information required in **Attachment J**.

C. Request to Modify the Reporting Schedule of the June 25 Resolution

In the September 1 Motion, Genera requests authorization to amend the existing deadline, for submitting monthly, bi-monthly and quarterly reports, as required by the June 25 Resolution. Specifically, Genera requests that the filing schedule for the Implementation of the Grid Modernization Plan be within 20 days after the end of the bi-monthly reporting period,¹¹ that the Permanent and Emergency Work-Related Federal

⁹ August 1 Motion, pp. 3 – 4.

¹⁰ June 25 Resolution, p. 18 of 47.

¹¹ In a September 25 Motion in this docket, Genera requested authorization to submit the Grid Modernization Reports on a monthly rather than bi-monthly basis. The Energy Bureau approved this request by Resolution of November 13, 2023, in this docket.



Funding Report & Infrastructure plan be within 20 days after the end of the monthly reporting period and the Budget to Actuals Reporting be within 45 days after the end of the quarterly reporting period. Genera asserts that these modifications will enable it to provide reports that capture the entire reporting period and better align with Genera's internal reporting mechanisms to facilitate more meticulous data preparation and enhancing the quality of the reports.¹²

The Energy Bureau has reviewed Genera's request to modify the schedules of reporting requirements finds that the requested modifications promote uniformity of reporting and facilitate more accurate and efficient reporting by Genera.

III. Conclusion

The Energy Bureau **FINDS** that Genera's request for approval to amend the submission cadence of the Fuel Budget Report Form no later than fourteen (14) days prior to the end of a quarter, as outlined in Article 7, Section 7.3(f) of the LGA OMA, to within 45 days after the end of the quarterly reporting period, aligning it with the B2A Report schedule, is premature and must follow the procedures set forth in the LGA OMA, specifically Section 21.3 of the LGA OMA. Therefore, the Energy Bureau, makes no determination on the merits of Genera's request pending appropriate action in accordance with the LGA OMA.

The Energy Bureau **DENIES** Genera's request modify the Reporting Template. Instead, the Energy Bureau **ORDERS** Genera to use the information as provided in the Gantt Chart of Exhibit B to satisfy the following requirements of Attachment J:

- Power Plant & Unit Number
- NME Maintenance Activity
- Activity Budget
- Start Date
- Completion Date
- Activity Status - % Completion
- Current Fiscal Year Activity Budgeted Amount
- Current Fiscal Year Actual Incurred Expense

The Energy Bureau **APPROVES** Genera's request to modify the reporting schedule set forth in the June 25 Resolution. Specifically, Genera **SHALL** file Monthly Reports on or before twenty (20) days after the end of the reporting period and Quarterly Reports on or before forty-five (45) days after the end of the reporting period.

The Energy Bureau **WARNS** Genera that:

- (i) noncompliance with this Resolution and Order, regulations and/or applicable laws may carry the imposition of fines and administrative sanctions of up to \$25,000 per day;
- (ii) any person who intentionally violates Act 57-2014, as amended, by omitting, disregarding, or refusing to obey, observe, and comply with any rule or decision of the Energy Bureau shall be punished by a fine of not less than five hundred dollars (\$500) nor over five thousand dollars (\$5,000) at the discretion of the Energy Bureau; and
- (iii) for any recurrence of non-compliance or violation, the established penalty shall increase to a fine of not less than ten thousand dollars (\$10,000) nor greater than twenty thousand dollars (\$20,000), at the discretion of the Energy Bureau.

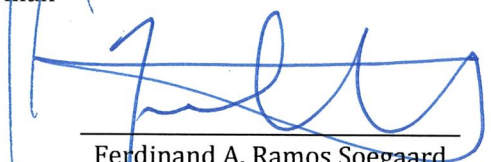
Be it notified and published.


¹² September 1 Motion, p. 3.





Edison Avilés Deliz
Chairman


Lillian Mateo Santos
Associate Commissioner


Ferdinand A. Ramos Soegaard
Associate Commissioner


Sylvia B. Ugarte Araujo
Associate Commissioner


Antonio Torres Miranda
Associate Commissioner

CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau have agreed on March 6, 2024. I also certify that in March 6, 2024 a copy of this Resolution and Order was notified by electronic mail to pre@promesa.gov; margarita.mercado@us.dlapiper.com; julian.angladapagan@us.dlapiper.com; mvalle@gmlex.net; arivera@gmlex.net; legal@genera-pr.com; regulatory@genera-pr.com; jfr@sbgblaw.com; alopez@sbgblaw.com; and I have moved forward with filing the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today March 6, 2024.


Sonia Seda Gaztambide
Clerk

