

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

NEPR Received: Apr 7, 2024 8:55 PM

IN RE: REVIEW OF LUMA’S INITIAL BUDGETS

CASE NO.: NEPR-MI-2021-0004

SUBJECT: Informative Motion and Request for Extension of Time

INFORMATIVE MOTION ON STATUS OF FY 2025 BUDGET ALLOCATION DISCUSSIONS AND REQUEST FOR ADDITIONAL TIME TO CONCLUDE DISCUSSIONS ON THE FISCAL YEAR 2025 CONSOLIDATED SYSTEM BUDGET

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 submit the following:

I. Introduction

1. LUMA respectfully requests that this Honorable Puerto Rico Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) grant additional time until May 15, 2024, in connection with the order issued on March 14, 2024 to file by April 15th, a Fiscal Year 2025 (“FY2025”) Consolidated System Budget for the Electric Power System (“Consolidated System Budget”). Said additional time is needed for the budget allocation discussions that LUMA, Genera PR, LLC (“Genera”) and the Puerto Rico Electric Power Authority (“PREPA”), shall conduct with the Puerto Rico Public Private Partnerships Authority (“P3A”), pursuant to Section 7.3(a) of the Puerto Rico Electric Power System Operation and Maintenance Agreement (“T&D OMA”), Section 3.1(b) of the PREPA-GenCo-HydroCo Operating Agreement (“PGHOA”), and Section 7.3(a) of the Puerto Rico Thermal Generation Facilities Operation and Maintenance Agreement (the “Generation OMA”).

2. This Energy Bureau has conducted annual budget examinations to evaluate whether proposed annual budgets comply with the 2017 Rate Order. *See* Resolutions and Orders of May 31, 2021 p. 1, and February 27, 2022 p. 1. In said annual budget examinations which take place after LUMA, Genera and PREPA conduct the budget allocation process that is discussed below in this Motion, the overall revenue requirements for proposed annual budgets must not result in a change to the base rates or rate structure approved in the 2017 Rate Order. *See* February 27th Order, p. 1. In contrast, in years when there is a rate case, the Energy Bureau may, after proper and sufficient analysis and evaluation, establish a new revenue requirement, a new cost of service, a new revenue allocation and a new rate design.¹ *See id.* Relying on said scope and nature of annual budgets examinations and the rate case process, and in furtherance of the Energy Bureau's determination to open a proceeding to review electricity rates charged by PREPA and set rates effective July 1, 2024, *see* Resolution and Order of June 30, 2023 issued in Case No. NEPR-AP-2023-0003 ("June 30th Order"), LUMA had been working on a proposed budget in the context of a rate review petition and to submit in the Rate Case Proceeding, Case No. NEPR-AP-2023-0003 ("Rate Review Proceeding"). Thus, the budget allocation process that precedes the filing of a proposed Consolidated System Budget in this annual budget proceeding, was not conducted by the parties within the applicable time frame of one-hundred and twenty-five (125) days prior to the start of the Fiscal Year. Instead, in good faith, the parties were working on their respective portions of FY2025 budgets filing for the Rate Case Proceeding.

3. As will be discussed, to comply with the March 14th Order to file a FY2025 Consolidated System Budget, LUMA, Genera, and PREPA require time beyond the current

¹ It bears noting that per Section 7.3(a) of the T&D OMA, Section 3.1(b) of the PGHOA, and Section 7.3 of the Generation OMA, the annual budget allocation process is conducted in years where a rate adjustment will not take place.

deadline of April 15th, to conduct the necessary and critical budget allocation discussions and obtain a budget allocation determination.

II. Background

A. Relevant Procedural Background of the Initial Budgets Docket

4. On May 31, 2021, this Energy Bureau issued and published a Resolution and Order approving LUMA's Initial Budgets (“May 31st Order”). The Energy Bureau ordered LUMA to file, not later than August 1, 2023, a formal rate review for rates effective July 1, 2024.

5. On February 27, 2023, the Energy Bureau issued a Resolution and Order, through which it ordered LUMA to file, on or before March 15, 2023, the Fiscal Year 2024 Annual Budgets Proposal (“February 27th Order”). A day later, on February 28, 2023, the Energy Bureau issued a Resolution and Order whereby it changed the date of filing the Fiscal Year 2024 Annual Budgets Proposal to April 15, 2023.

6. In the February 27th Order, this Energy Bureau re-stated the requirement that LUMA should file a rate review petition by August 1, 2023 “in which a comprehensive review of a utility rate proposal is undertaken, and base rates are set for the upcoming fiscal period” *See* February 27th Order p. 29. This Energy Bureau stated that said rate review process would provide the historic information with which to effectively set rates for Fiscal Year 2025. *Id.*

7. On May 16, 2023, after the parties concluded the budget allocation process with the P3A, LUMA filed a *Submission of Consolidated Annual Budgets for Fiscal Year 2024 and Proposed Annual T&D Projections Through Fiscal Year 2026* (“May 16 Motion”). LUMA submitted to the Energy Bureau the proposed T&D Budgets, the proposed GenCo Budgets from Genera, LLC (“Genera”), and the proposed HydroCo and HoldCo Budgets from the Puerto Rico Electric Power Authority (“PREPA”) (jointly, “proposed FY2024 Budgets.”).

8. On June 25, 2023, the Energy Bureau issued a Resolution and Order modifying the proposed FY2024 Budgets and approving them as modified (“June 25th Order”). The Energy Bureau held that the August 1st filing date for a formal rate review for rates effective July 1, 2024, would be rescheduled to a date to be determined through a separate Resolution and Order. Regarding the need to review rates, this Energy Bureau stated the following in the June 25th Order: “The Energy Bureau is cognizant of LUMA’s contention that various constraints have resulted in its inability to fund the activities that would have been funded in the Proposed FY24 Budgets, without those constraints. Some [of the] constraints [that] LUMA cites are the limitation imposed by current approved base rates, inflation, Title III expenses and increasing regulatory mandates.” *See* June 25th Order, p. 30.

9. On March 14, 2024, this Energy Bureau issued a Resolution and Order in this proceeding, stating, among other matters, that LUMA, Genera, and PREPA shall file the consolidated FY2025 Budget Proposal on or before April 15, 2024. The Energy Bureau based its determination on the procedure previously established to review annual budgets in accordance with the 2017 Rate Order.

B. Relevant Procedural Background of the Rate Review Proceeding

10. On June 30, 2023, the Energy Bureau entered a Resolution and Order “to initiate an adjudicative process to review PREPA’s rates.” It opened a new proceeding under the case caption *In Re: Puerto Rico Electric Power Authority*, Case No. NEPR-AP-2023-0003. *See* June 30th Order issued in Case No. NEPR-AP-2023-0003, p. 2 (“Rate Review Proceeding”).

11. In the June 30th Order issued in the Rate Review Proceeding, the Energy Bureau divided the rate review process into three (3) separate phases. Phase I entails an informal review of previously established filing requirements, including those established through the New

Regulation on Rate Filing Requirements for the PREPA’s First Rate Case, Regulation 8720 of March 28, 2016 (“Regulation 8720”), that will apply to a rate order modification request, allocate responsibility for the various requirements across the relevant operating entities and ensure coordination among such entities. *See* June 30th Order, issued in the Rate Review Proceeding, p. 2.

12. Per the June 30th Order, Phase II entails filing a rate order modification request based on the applicable filing requirements adopted by the Energy Bureau as a result of Phase I. *Id.*, p. 2. Upon such Phase II filing, the Energy Bureau will begin its review of the rate order modification request and will adopt any interim decisions [that] it deems appropriate. *See id.*, pp. 2-3. Finally, Phase III involves the “formal review of a complete rate filing [which] contain[s] the items addressed in an interim matter in Phase II,” as well as the remaining filing requirements determined during Phase I to be deferred to Phase III. *Id.*, p. 4.

13. For Phase I, the Energy Bureau directed LUMA to file a report on or before October 4, 2023, describing LUMA’s understanding of the applicability of previously established filing requirements to the filing of a future rate order modification request, including, but not limited to, the current status of compliance with such requirements, whether LUMA has the capability to comply with such requirements, the timeline necessary to achieve compliance and the entities on which LUMA would rely on to comply with each filing requirement. *See June id.*, p. 3.²

14. On October 4, 2023, LUMA filed a *Motion in Compliance with June 30th Resolution and Order- Submission of Phase I Report* in Case No. NEPR-AP-2023-0003 (“Phase

² The Energy Bureau also required LUMA to report on its progress in addressing the deficiencies in PREPA’s 2016 rate review application and described by the Energy Bureau in the 2017 Rate Order and the status of coordination activities among LUMA, Genera, and PREPA in preparation for the upcoming rate review. *Id.* Finally, the Energy Bureau required LUMA to provide in its report a list of the schedules it intends to submit along with its Phase II filing, as well as a discussion on how the filing will address PREPA’s legacy debt and pension obligations. *Id.*

1 Report”). *See Motion in Compliance with June 30th Resolution and Order* filed in Case No. NEPR-AP-2023-0003, Exhibit 1 to same, and Appendix A with supporting spreadsheet with matrix on filing schedules.

15. On October 24, 2023, this Energy Bureau issued a Resolution and Order in the Rate Review Proceeding determining that LUMA’s Phase I Report complied with the June 30th Order. This Energy Bureau also issued a First Requirement of Information in Attachment A of the October 24th Order (“First ROI”), including requests addressed to LUMA, Genera, and PREPA. *See* Resolution and Order dated October 24, 2023, issued in Case No. NEPR-AP-2023-0003.

16. On November 3, 2023, LUMA filed a *Motion Submitting Responses to First Requirement of Information in Compliance with October 24th Resolution and Order* in Case No. NEPR-AP-2023-0003, submitting its response to the First ROI (“LUMA’s November 3rd Response to First ROI”). LUMA submitted an updated Phase I Report with revisions to LUMA’s assessment on the applicability of four of the filing schedules of Regulation 8720.

17. In response to a question on when LUMA expected to file the rate review petition, *see* RFI-LUMA-AP-2023-0003-20231024-PREB-LUMA-01-03, LUMA informed that the then current timeline was to submit the filing on April 1, 2024. *Motion Submitting Responses to First Requirement of Information in Compliance with October 24th Resolution and Order* in Case No. NEPR-AP-2023-0003. The April 1st timeline informed in LUMA’s November 3rd Response to First ROI was set in accordance with several orders issued by this Energy Bureau in the captioned proceeding whereby the Energy Bureau ruled that LUMA should file a “formal rate review for rates starting July 1, 2024,” *see* May 31st Order p. 35 and February 27th Order p. 29, and that the Energy Bureau would conduct a “full rate review,” *see* May 31st Order, p. 37 and February 17th

Order p. 29. The April 1st timeline to file the rate review petition was also set in accordance with the scope of a rate review petition, *see* 2017 Rate Order, ¶415.

18. On March 15, 2024, the Energy Bureau issued a Resolution and Order in the Rate Review Proceeding whereby it divided Phase 2 of the rate review process in two steps (“March 15th Rate Review Order”). “Step 1 will focus on reviewing and finalizing the updated revenue requirements for LUMA, Genera, and PREPA. After a final decision on the revenue requirement, the Energy Bureau will formally begin Step 2 to review rate design.” *See* March 15th Rate Review Order, p. 4.

19. In the March 15th Rate Review Order, this Energy Bureau determined that LUMA shall file the proposed revenue requirement for Phase II, Step 1, on or before June 1, 2024. *Id.*, p. 6. In addition, the Energy Bureau scheduled a Technical Conference for April 17, 2024, and issued requests for information addressed to LUMA, Genera, and PREPA to be answered on or before April 8, 2024. *Id.*, and *id.*, Attachment One.

III. Orders by this Energy Bureau on the Distinct Nature and Scope of Annual Budget Examinations *vis à vis* a Rate Review Process

20. This Energy Bureau has conducted one-year budgets examinations that involve a determination whether the proposed annual budgets comply with the 2017 Rate Order and thus, do not contemplate consideration of changes to current base rates:

the overall revenue requirements for proposed annual budgets must not result in a change to the base rates or rate structure approved in the 2017 Rate Orders, **unless the proposed budget is subject to the rate review process under Section 6.25(c) of Act 57-2014**, as amended, known as the Puerto Rico Energy Transformation and RELIEF Act (“Act 57-2014”).² Accordingly, the Energy Bureau must determine, whether the FY23 Annal Budget complies with 2017 Rate Order.

See February 27th Order, p. 1 (emphasis added); *see also* June 25th Order issued in this proceeding, p. 1 (restating that proposed annual budgets must not change base rates unless the proposed budgets are subject to the statutory rate review process).

21. In contrast, in the rate review processes for rate cases, the Energy Bureau “will review PREPA’s cost-reduction efforts, the physical condition of its system and its prior and prospective budgets for each major department. With that information, the [Energy Bureau] may establish a new revenue requirement, a new cost of service, a new revenue allocation and a new rate design.” *See* 2017 Rate Order, ¶415.

22. A full rate review process involves a comprehensive review of a utility rate proposal, including constraints imposed by approved base rates. *See* June 30th Order in the Rate Review Proceeding, p. 2 (outlining changes since the 2017 Rate Order and opening an adjudicative process to review PREPA’s rates), and June 25th Order issued in this proceeding, regarding the upcoming rate case (stating that the Energy Bureau is cognizant of LUMA’s contention that various constraints have resulted in its inability to fund the activities that would have been funded in the Proposed FY24 Budgets, without those constraints, including the limitation imposed by current approved base rates, inflation, Title III expenses and increasing regulatory mandates, and stating that some of those constraints will be considered in the upcoming Rate Revision Petition), *see* June 25th Order, p. 30.

IV. Discussion in Support of Request for Additional Time to Submit FY2025 Consolidated System Budget

23. In attention to this Energy Bureau’s prior orders stating that the Energy Bureau would conduct a full rate review proceeding for rates effective July 1st, 2024 and considering the June 30th Order initiating the Rate Review Proceeding, LUMA allocated considerable resources to, among others, conduct a comprehensive cost and revenue review in light of LUMA’s

obligations under the T&D OMA, legal and regulatory requirements, and customer benefits and priorities for the T&D System, including improvements in reliability, resilience and emergency preparedness. To wit, LUMA has been working for months on a proposed budget as well as pre-filed testimonies and supporting exhibits and schedules, in alignment with the full rate review process that this Energy Bureau required through the May 31st and February 27th orders and formally initiated through the June 30th Order. The FY2025 Budget Proposal for the Rate Review Proceeding was developed to address continuing and accelerating improvements in reliability, resilience and emergency preparedness while fulfilling a long list of policy goals (renewable energy, energy efficiency, among many others) in the context of constraints that limit LUMA's ability to fund operations and offer safe, reliable and efficient electric power services, as such constraints were recognized by this Energy Bureau in its June 25th Order. Also, to enable timely and predictable recovery of reasonable costs.

24. The budgeting process that LUMA has conducted in the context of the upcoming rate review process is different from the budgeting process that LUMA followed for fiscal years 2023 and 2024 and that should be followed to comply with the March 14th Order for FY2025. This, because the annual budgets submitted in this proceeding are prepared following a budget

allocation process per Section 7.3(a) of the T&D OMA,³ Section 3.1(b) of the PGHOA,⁴ , and Section 7.3 of the Generation OMA,⁵ and filed with this Energy Bureau.

³ Section 7.3 (a) of the T&D OMA provides in relevant part regarding annual budgeting for Contract Years, except for those when an approved rate adjustment enters into effect that

Operator shall, no later than ninety (90) days prior to the commencement of such Contract Year, submit to Administrator the proposed Budgets for such Contract Year; provided that if any proposed Budget requires a rate adjustment to be approved by PREB, Operator shall have the right, at its sole discretion, to submit the proposed Budgets for such Contract Year directly to PREB rather than to Administrator. As promptly as practicable in any Contract Year, and sufficiently in advance to allow Operator to comply with the ninety (90) day period set forth above, Owner shall prepare and deliver to Operator the Generation Budget for consolidation with the Operating Budget and the Capital Budgets submitted to Administrator.

Administrator shall, acting reasonably, review such proposed Budgets to ensure compliance with the applicable Rate Order and Section 7.4 (Budget Policy). Within forty-five (45) days following its receipt of such Budgets, Administrator shall notify Operator whether the proposed Budgets are compliant with the applicable Rate Order and Section 7.4 (Budget Policy), and shall request, acting reasonably, any changes or modifications to the proposed Budgets to conform the proposed Budgets with the applicable Rate Order and Section 7.4 (Budget Policy).

Administrator and Operator shall collaborate in good faith to resolve any differences with respect to such proposed Budgets as promptly as practicable.

⁴ Section 3.1(b) of the PGHOA states the following regarding the budget allocation meeting for years when a rate adjustment will not be implemented and there is a single base rate for the T&D System and related assets, the Legacy Generation Assets, which budget allocation process begins one hundred twenty-five (125) days prior to the commencement of the relevant Fiscal Year meet to determine the allocation of such base rate and the resulting revenues among the System Budgets:

(i) Except as provided in Section 3.1(a)(i), for any Fiscal Year in which there is a single base rate covering each of the T&D System and related assets, the Legacy Generation Assets and the Hydropower Assets, Administrator, T&D Operator, Hydroco, PREPA, Genco and Genco Operator, shall no later than one hundred twenty-five (125) days prior to the commencement of the relevant Fiscal Year meet, to determine the allocation of such base rate and the resulting revenues among the non-generation budgets T&D Operator must prepare pursuant to the T&D O&M Agreement (collectively, the “T&D Budget”), the Genco Budget, the Hydroco Budget and the budgets for PREPA and its subsidiaries other than Genco and Hydroco (the “Other PREPA Budgets” and, together with the Genco Budget, Hydroco Budget and T&D Budget, the “Budgets”), which allocation shall be proportionate to, and consistent with, the cost allocation among the Budgets in the applicable Rate Order (such meeting, the “Budget Allocation Meeting”). For the avoidance of doubt, for any Fiscal Year in which there is a Budget Allocation Meeting, T&D Operator, Hydroco, PREPA, Genco and Genco Operator shall prepare and propose Budgets that are consistent with, and based on, the amount of funds allocated to each of the Budgets consistent with the terms of this Section 3.1(b).

(ii) If, during the Budget Allocation Meeting for a Fiscal Year, T&D Operator, Hydroco, PREPA, Genco and Genco Operator are unable to reach agreement on the allocation of the

25. As this Energy Bureau recognized in the June 25th Order, there are several constraints that affect LUMA’s ability to fund its activities, including limits imposed by the current base rates, inflation, PREPA bankruptcy or Title III expenses and increasing regulatory requirements. In light of those constraints, and considering other operational and capital funding needs, if new rates are not applied in FY2025, it is critical to determine and identify the most

base rate among the Budgets for such Fiscal Year, then Administrator shall, within five (5) days of the Budget Allocation Meeting, determine the final allocation of the base rate among the Budgets for such Fiscal Year; provided that such determination shall be proportionate to, and consistent with, the cost allocation among the Budgets in the applicable Rate Order.

(iii) If after the Budget Allocation Meeting is held for a Fiscal Year pursuant to this Section 3.1(b) but before the start of such Fiscal Year the load forecast on which the allocation of the base rate was based changes, then Administrator, T&D Operator, Hydroco, PREPA, Genco and Genco Operator shall, as promptly as practicable, meet to determine the allocation of the base rate based on the new load forecasts among the Budgets, which allocation shall be proportionate to, and consistent with, the cost allocation among the Budgets in the applicable Rate Order.

⁵ Section 7.3(a) of the Genera OMA also provides for an annual budget allocation process, for years when a rate adjustment will not be implemented and when there is a single base rate for the T&D System and related assets, the Legacy Generation Assets, which budget allocation process begins, one hundred twenty-five (125) days prior to the commencement of the relevant Fiscal Year and includes meetings to determine the allocation of the base rate and the resulting revenues among the System Budgets:

(a) Budget Allocation Meeting.

For any Contract Year in which there is a single base rate covering each of the T&D System and related assets, Owner’s Hydropower Assets, and the Legacy Generation Assets (other than the initial Contract Year, for which the procedures for the Initial O&M Budget set forth in Section 4.3(c) (Owner and Administrator Responsibilities – Initial O&M Budget) shall apply, or a year in which a rate adjustment approved by PREB enters into effect, in which case the O&M Budget used in connection with obtaining such rate adjustment shall be used), in accordance with the PREPA-Genco-Hydroco Operating Agreement, Operator shall, no later than one hundred twenty-five (125) days prior to the commencement of such Contract Year, meet with T&D Operator, Administrator and other relevant parties to determine the allocation of such base rate and the resulting revenues among the non-generation budgets T&D Operator must prepare, the Hydroco Budget, the budgets for PREPA and its subsidiaries other than Genco and Hydroco, and the generation budgets Operator must prepare, which allocation shall be proportionate to, and consistent with, the cost allocation among such budgets in the then applicable Rate Order (the “Budget Allocation Meeting”); provided that if, (i) during the Budget Allocation Meeting for a Contract Year, T&D Operator, Operator, Hydroco and PREPA are unable to reach agreement on the allocation of the base rate among such budgets for such Contract Year and/or (ii) after the Budget Allocation Meeting is held for a Contract Year but before the start of such Contract Year, the load forecast, on which the allocation of the base rate was based, changes, then, in each case, the final allocation shall be determined in accordance with the applicable procedures set forth in the PREPA-Genco-Hydroco Operating Agreement.

prudent path to operate within current base rates and at the same time be in the position to operate safely and reliably and provide efficient electric power services compliant with applicable law and prudent utility practices, as Puerto Ricans deserve. Given the range and scope of critical energy responsibilities and services that should and must be provided, and the historical base rate revenues thus far in FY2024 and those forecasted for the rest of the year, as well as a reasonable forecast of base rate revenues for FY2025, LUMA anticipates that additional funding sources are necessary to supplement base rate revenues and file with this Energy Bureau, a proposed FY2025 T&D Budget within current rates. Given these circumstances, the budgeting exercise and the allocation process to be conducted in attention to the Energy Bureau's March 14th Order, demand careful review and consideration. The parties believe that said process will take significant time to complete beyond April 15th.

26. Respectfully, LUMA submits that an extension of the deadline for an Annual Consolidated System Budget filing is also necessary considering that for months, LUMA had been working on a process in connection with the ongoing Rate Review Proceeding and thus, the annual budgeting process and the budget allocation process contractually mandated had not been conducted under the reasonable assumption that this year, per the orders of this Energy Bureau, proposed budgets would be developed in connection with a revision of base rates.

27. The additional time requested herein is necessary to allow LUMA, Genera and PREPA to conduct the budget allocation process contemplated in the T&D OMA, the Generation OMA and the PGHOA.

28. This request for an extension is made in good faith and with the only purpose of allowing LUMA to evaluate the feasibility of a proposed FY2025 Consolidated System Budget within current rates, and enable LUMA, Genera and PREPA to engage in the contractually

mandated collaborative budget allocation process in connection with a proposed FY2025 Consolidated System Budget.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned and **extend** the April 15th deadline set in the March 14th Order up to and including May 15, 2024.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 7th day of April, 2024

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 its attorneys of record González & Martínez, Mirelis Valle-Cancel, mvalle@gmlex.net; Alexis G. Rivera Medina, grivera@gmlex.net; and counsels for Genera PR LLC, Jorge Fernandez-Reboredo, jfr@sbgblaw.com, Alejandro López Rodríguez, alopez@sbgblaw.com and Joaquín Lago, jlago@sbgblaw.com.



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