

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

**NEPR**

**Received:**

**May 16, 2024**

**9:51 PM**

IN RE: REVIEW OF LUMA'S INITIAL  
BUDGETS

**CASE NO. NEPR-MI-2021-0004**

**SUBJECT: Response to May 6<sup>th</sup> Order**

**RESPONSE TO MAY 6<sup>TH</sup> ORDER, REQUEST FOR CORRECTION, AND  
SUBMITTING INFORMATION**

**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. Introduction**

1. LUMA is committed with submitting to the Puerto Rico Energy Bureau ("Energy Bureau"), transparent information on spending and expenses in compliance with the orders issued to LUMA in this proceeding. Since commencement of operations on June 1, 2021, LUMA has submitted quarterly and annual reports on spending regarding approved budgets<sup>1</sup> and has complied with the requirements of this honorable Energy Bureau that LUMA submit budget amendment requests.<sup>2</sup>

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<sup>1</sup> Regarding FY2024, LUMA has submitted three quarterly reports on November 14, 2023, February 15, 2024, and May 15, 2024.

<sup>2</sup> To wit, the resolutions and orders dated August 3, 2022, November 11, 2022, December 14, 2022, and June 29, 2023. LUMA notes that the orders issued by this Energy Bureau adopt requirements regarding budget amendment requests beyond those set forth in Section 7.3 of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("T&D OMA"). LUMA reserves the right to seek that this Energy Bureau release it from those requirements in the context of the rate review proceeding.

2. LUMA completed its first two-years of operations and expects to close the third year of operations, within budget. As a result, LUMA has not requested a rate increase since taking over operations of the Puerto Rico Transmission and Distribution System (“T&D System”). LUMA has remained fiscally responsible while markedly improving service, providing higher value to customers, and actively managing activities in order to operate within the Electric Power System’s (“System”) current fiscal constraints.

3. LUMA’s spending has been compliant with public policy to operate the utility prudently while at the same time LUMA has implemented plans and programs approved or mandated by the Energy Bureau to remediate and transform Puerto Rico’s electric system. This, despite mounting financial pressures, including the fact that base rate revenues were set in the year 2017 and have not been updated, costs have increased due to inflation, the Puerto Rico Electric Power Authority (“PREPA”) has remained in bankruptcy under Title III of the Puerto Rico Oversight, Management and Stability Act of June 30, 2016 (“PROMESA”), and incremental regulatory requirements adopted by the Energy Bureau, which require funding but have been established without an identifiable funding source within the current rate structure approved by the Energy Bureau. In fact, when this Energy Bureau approved the FY2024 T&D Budgets, it acknowledged that various constraints have resulted in LUMA’s inability to fund activities and stated that some of those constraints will be considered in the upcoming Rate Revision Petition. *See* Resolution and Order of June 25, 2023, p. 30.

4. Operating within a backdrop of funding constraints, competing needs of the utility and regulatory requirements, LUMA has administered the FY2024 T&D Budgets in accordance with its expertise and prioritizing activities in line with the Recovery and Transformation Framework that serves as a basis for LUMA’s improvement programs that were approved by this

Energy Bureau in connection with LUMA's Initial Budgets, *see* Resolution and Order of May 31, 2021, and the FY2024 T&D Budgets.

5. LUMA's FY2024 T&D Budgets are built on projections. Projections fluctuate throughout the year based on actual spending, events and changing operational realities. In implementing the approved FY2024 T&D Budgets, LUMA has been and continues to be mindful of spending within the constraints of current base rates and the concomitant budget allocations set forth in the 2017 Rate Order. However, operating a utility to deliver safe, reliable and efficient electric power services **requires flexibility and ability to adapt budget projections** to changes and occurrences that oftentimes cannot be anticipated in full and are beyond the control of the utility. The parties to the T&D OMA granted LUMA said operational flexibility in Section 7.3 (c) of the T&D OMA which endows LUMA with discretion to reallocate funds within an approved budget and without need of prior approval by the Puerto Rico Public Private Partnerships Authority ("P3A") or this Energy Bureau, pursuant to a threshold or standard of five percent (5%) of the individual budget where the reallocation is made.<sup>3</sup>

6. In a Resolution and Order dated May 6, 2024 ("May 6<sup>th</sup> Order"), this Energy Bureau considered, among others, a request by LUMA to reallocate \$6 million within the FY2024 Operating Budget to increase funding for Vegetation Management ("VM"). Said reallocation does not exceed 5% of the Operating Budget and thus, falls within the ambit of Section 7.3 (c) of the T&D OMA. Although in the May 6<sup>th</sup> Order this Energy Bureau correctly stated that the five percent (5%) threshold set in Section 7.3 (c) of the T&D OMA shall be followed in connection with evaluating reallocations of funds within an approved T&D Budget, it suggested that the 5% threshold applies to reallocations within "budget lines" or

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<sup>3</sup> Pursuant to Sections 2(f) and 5(g) of Act 120-2018, on June 17, 2020, this Energy Bureau certified that the T&D OMA complies with Puerto Rico's public energy policy and applicable regulatory framework.

“components” of one of the T&D Budgets. *See* May 6<sup>th</sup> Order, pp. 2-4. LUMA requests that this Energy Bureau correct the latter statement.

7. As will be explained, the clear and unambiguous text of Section 7.3 (c) of the T&D OMA provides that LUMA has flexibility to reallocate funds within an approved T&D Budget as long as the reallocation **does not exceed 5% of the approved Budget** and provided that LUMA does not postpone expenditures for more than one year. There is no contractual requirement to apply the 5% threshold on budget reallocations to budget lines within the Budget in which a reallocation is made. Indeed, such a requirement would not be reasonable, as a considerable number of day-to-day operational measures would be inoperable.

8. The correction to the May 6<sup>th</sup> Order sought herein is important to honor the text of the T&D OMA and the principle of certainty of contracts, particularly because there is no evidence, or finding in the May 6<sup>th</sup> Order that the 5% threshold set in Section 7.3 (c) of the T&D OMA is contrary to law or public policy or otherwise contravenes public order or prudent utility practices. Moreover, application to LUMA of a different standard for budget reallocations would be arbitrary and unreasonable and contrary to due process notice requirements.

9. With this Motion, LUMA also submits its response in attention to that portion of the May 6<sup>th</sup> Order whereby this Energy Bureau requested additional information on the provenance of the \$6 million that were reallocated within the Operating Budget for FY2024 to increase funds for VM. *See Exhibit 1.*

## **II. Procedural Background**

10. On May 16, 2023, LUMA submitted to this Energy Bureau the proposed System Budgets for the Puerto Rico Energy System (the “System”) and requested approval of the Proposed budgets of the Transmission and Distribution System (“T&D Budgets”). *See Submission of*

*Consolidated Annual Budgets for Fiscal Year 2024 and Proposed Annual T&D Projections through Fiscal Year 2026* filed in this proceeding.

11. On June 25, 2023, this Energy Bureau approved the FY2024 budgets for the Electric Power System, subject to certain amendments to such budgets, including a reduction to the T&D Budgets (“June 25<sup>th</sup> Order”).

12. On July 10, 2023, LUMA submitted a *Motion for Partial Reconsideration of Resolution and Order of June 25, 2023 on Fiscal Year 2024 System Budgets* requesting that the Energy Bureau reconsider its determination to reduce LUMA’s T&D Budgets and restore the full amount of funding proposed by LUMA for Fiscal Year 2024.

13. On September 22, 2023, the Energy Bureau issued a Resolution and Order (the “September 22<sup>nd</sup> Order”) granting, in part, LUMA’s Motion for Reconsideration and reversing the adjustments to LUMA’s T&D Budget established in the June 25<sup>th</sup> Order.

14. On February 14, 2024, LUMA submitted an *Informative Motion Submitting Courtesy Copy of Notice to the Puerto Rico Public-Private Partnership Authority* (“February 14<sup>th</sup> Notice”) through which LUMA provided prompt notice to this Energy Bureau of its intent to submit a budget amendment to the T&D Budgets for FY2024. LUMA submitted as a courtesy, a copy of the notice issued to the P3A pursuant to Section 7.3(e) of the T&D OMA. The notice to this Energy Bureau was provided in compliance with this Energy Bureau’s prior affirmations and directives that budget amendment requests should be timely anticipated and promptly notified to the Energy Bureau. *See e.g.*, Resolutions and Orders issued on August 3, 2022, November 11, 2022, December 14, 2022, and June 29, 2023.

15. On March 28, 2024, LUMA submitted to this Energy Bureau, an amendment of the FY2024 Budgets, which budget amendment was also submitted to the P3A (“March 2024 Budget

Amendment”). The March 2024 Budget Amendment sought to reallocate \$36 million from LUMA’s Operating Budget towards LUMA’s Non-Federally Funded Capital Budget. *See Motion Submitting Amendment to FY2024 T&D Budget, Exhibit 1.*

16. The March 2024 Budget Amendment also included notice of a reallocation of funds within the Operating Budget to increase the Vegetation Management Budget (“VM Budget”) by \$6 million. LUMA explained that said reallocation was made pursuant to LUMA’s contractual right under Section 7.3(c) of T&D OMA, to reallocate funds within its Operating Budget, to address changed operational or commercial circumstances or new legal or regulatory requirements,” given that the reallocation within the Operating Budget did not exceed five percent (5%) of said Budget.

17. The March 2024 Budget Amendment did not result in an increase or change to customer rates.

18. On May 6, 2024, this Energy Bureau issued a Resolution and Order whereby it approved the proposed reallocation of \$36 million from the Operating Budget to the Capital Budget. *See May 6<sup>th</sup> Order, p. 3.*

19. Regarding the reallocation of \$6 million to increase spending for VM, the Energy Bureau recognized that the reallocation amounts to approximately 1% of the approved Operating Budget but granted LUMA ten (10) days, up to May 16, 2024, to explain how it intends to reallocate \$6 million within the Operating Budget to increase the VM Budget. *See id.* This Energy Bureau also stated that, provided that the reallocation does not exceed 5% of the specific budget component, LUMA is not precluded from moving forward with the reallocation. *Id.*, pp. 3-4.

20. The Energy Bureau’s rationale for requesting additional information in connection with the reallocation to the VM Budget is that “LUMA d[id] not specify from which line(s) within

the Operating Budget, the reallocation(s) for Vegetation Management is made; whether from Customer Experience, Operations, Utility Transformation or Support Services.” *Id.*, p. 2. According to this Energy Bureau, said alleged “shortcoming must be remedied as the impact to a specific budget line within the Operating Budget may exceed 5% or otherwise significantly impact that budget line.” *Id.*

**III. The reallocation of \$6 million to fund VM does not exceed 5% of the Operating Budget and is supported by LUMA’s ability to reallocate funds without prior approval, per Section 7.3(c) of the T&D OMA**

21. LUMA appreciates the Energy Bureau’s interest in understanding LUMA’s determination to reallocate funds within the Operating Budget and to confirm that other activities within the Operating Budget will not go unfunded in the fourth quarter for FY2024. In accordance with its expertise and construing the Operating Budget as a whole, throughout the course of FY2024, as shown in the FY2024 quarterly reports<sup>4</sup>, LUMA identified operational savings in labor and non-labor budget line items of the Operating Budget, in aggregate, for all of the components of the organization.

22. As will be explained, LUMA respectfully submits that this Energy Bureau erred in construing that LUMA’s flexibility to reallocate funds within the Operating Budget, Capital Budget Federally Funded, Capital Budget Non-Federally Funded, respectively, as long as the reallocation does not exceed 5% of the Budget in which the reallocation is made, applies to specific budget lines or to the budget allocations to a particular LUMA Department (*i.e.* Customer Experience, Operations, Utility Transformation, and Support Services). That interpretation is contrary to the clear text of Section 7.3(c) of the T&D OMA.

**A. LUMA’s Position on the May 6<sup>th</sup> Order Regarding LUMA’s Flexibility to Reallocate Funds within a Budget and request to correct statement of May 6<sup>th</sup> Order.**

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<sup>4</sup> See November 14, 2023, Q1 Report, at p. 22; February 15, 2024, Q2 Report, at p. 23; and May 15, 2024, Q3 Report, at p. 23.

Section 7.3 (c) of the T&D OMA reads as follows:

(c) Flexibility to Reallocate. **Operator shall have complete flexibility**, subject to compliance with the Contract Standards and prior consultation with, but not subject to approval by, Administrator or PREB, **to (i) reallocate, accelerate or postpone expenditures within the approved Operating Budget, (ii) reallocate, accelerate or postpone expenditures within the approved Capital Budget – Federally Funded, subject to the Federal Funding Requirements, and (iii) reallocate, accelerate or postpone expenditures within the approved Capital Budget – Non-Federally Funded, in each case, (x) in order to address changed operational or commercial circumstances or new legal or regulatory requirements and (y) in such a manner that the reallocations do not exceed five percent (5%) of the Budget in which such reallocations are made or the expenditures are not postponed for a period longer than one (1) year.** Any such reallocated amounts shall be treated as if initially budgeted in the Budget in which such reallocations are made in all respects, including with respect to the associated Performance Metrics set forth in Annex IX (*Performance Metrics*).

(emphasis added).

23. As illustrated above, Section 7.3(c) of the T&D OMA sets the rules for budget reallocations with the exclusion of the Generation Budget. Per this subsection, LUMA shall have complete flexibility, subject to Contract Standards and those terms set forth in Subsection (c),<sup>5</sup> to reallocate, accelerate or postpone expenditures for the Operating Budget, the Capital Budget – Federally Funded and the Capital Budget – Non-Federally Funded. Reallocations that comply with the limitations set forth in subsection (c) (mainly, those that don't exceed 5% of the approved Budget, or postpone expenditures for more than one year), shall be consulted in advance with, but not subject to approval by, the P3A or this Energy Bureau.

24. Under Puerto Rico applicable law on contract interpretation, contracting parties such as the parties to the T&D OMA, may establish the agreements, clauses and conditions they

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<sup>5</sup> Namely, (i) in order to address changed operational or commercial circumstances or new legal or regulatory requirements and (ii) to be undertaken in such a manner that the reallocations do not exceed five percent (5%) of the Budget in which such reallocations are made or the expenditures are not postponed for a period longer than one (1) year.



deem appropriate, provided that they are not contrary to law, morality or public order. *See* Puerto Rico Civil Code of 1930<sup>6</sup>, Art. 1207, 31 LPRA § 3372 (2020)<sup>7</sup>; *Coop. Sabaneña v. Casiano Rivera*, 184 DPR 169, 173 (2011); *Guadalupe Solís v. González Durieux*, 172 DPR 676, 683 (2007); *Álvarez v. Rivera*, 165 DPR 1, 17 (2005); *C.O.P.R. v. S.P.U.*, 181 DPR 299, 320 (2011) (*citing J.R.T. v. Junta Adm. Muelle Mun. Ponce*, 122 DPR 318, 333 (1988)). Additionally, in Puerto Rico contracts have the force of law. *See* Puerto Rico Civil Code of 1930, Article 1044, 31 LPRA § 2994 (2020)<sup>8</sup>. To determine the nature of the obligation incurred by the parties, the Puerto Rico Civil Code provides: “[i]f the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of their words will apply. If the words appear contrary to the evident intention of the parties, the intention shall prevail.” Puerto Rico Civil Code of 1930, Art. 1233, 31 LPRA § 3471 (2020) (translation ours)<sup>9</sup>.

25. Per the clear and unambiguous terms of Section 7.3 (c) of the T&D OMA, the contractual standard to gauge LUMA’s ability and flexibility to reallocate funds within and approved T&D Budget such as the Operating Budget, is 5% of the T&D Budget from which the reallocation is made.

26. Section 7.3 (c) of the T&D OMA does not impose limits on LUMA’s flexibility to reallocate in attention to budget items or “components.” In fact, the terms used by this Energy Bureau in the May 6<sup>th</sup> Order “budget lines” and “budget components” are not mentioned in Section

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<sup>6</sup> We refer to the Puerto Rico Civil Code of 1930, given it in effect at the time that the T&D OMA was executed.

<sup>7</sup> *Cf.* Puerto Rico Civil Code of 2020, Art. 1232, 31 LPRA § 9753 (2024) (Contracting parties may establish any clause, provided it is not contrary to law, morality or public order).

<sup>8</sup> *Cf.* Puerto Rico Civil Code of 2020, Art. 1233, 31 LPRA § 9754 (2024) (Contracts have the force of law between contracting parties and their successors, as well as third parties in the manner provided by law).

<sup>9</sup> *Cf.* Puerto Rico Civil Code of 2020, Art. 354, 31 LPRA § 6342 (2024) (If the terms of a bilateral contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of their words will apply. If the words appear contrary to the evident intention of the parties, the intention shall prevail).

7.3 (c) of the T&D OMA, nor are they defined terms in the T&D OMA in connection with whether LUMA may reallocate funds without need for prior approval.

27. Under Section 8(d) of Act 120-2018, the Energy Bureau has authority to assist the P3A in monitoring a contractor's performance and compliance under a public-private partnership contract, such as the T&D OMA. 22 PR Laws Ann. § 1118 (2024). However, it "shall have no authority to alter or amend the Partnership or Sales Contract, and shall not interfere with operational or contractual matters, except as provided in subsection (f) of this Section." *Id.* Act 57-2014, as amended, grants authority to the Energy Bureau to approve, modify and review the rates that customers pay for electric power service and ensure the reasonableness of those rates in Puerto Rico's electricity system. Section 6.3 (c), (n), (p) of Act 57-2014, 22 PR Laws Ann. § 1054b (2024). However, Section 7.3 (c) of the T&D OMA does not intrude on such authority of the Energy Bureau as its application, including its application in connection with the March 2024 Budget Amendment, does not require that this Energy Bureau review current base rates.

28. An interpretation of Section 7.3 (c) of the T&D OMA that could impose additional limitations on LUMA's flexibility to reallocate funds within an approved Budget would interfere with LUMA's operational budget decisions, in contravention of Section 8(d) of Act No. 120-2018. It would also deprive LUMA of contractual expectations without justification, particularly because the May 6<sup>th</sup> Order does not include a finding or determination, that the clear text of Section 7.3 (c) of the T&D OMA that applies to a Budget and not budget lines or components, is contrary to law, regulations, public policy or prudent accounting, financial or utility practices.

29. LUMA requests that this Energy Bureau correct the May 6<sup>th</sup> Order in as much as this Energy Bureau suggested that the 5% threshold for LUMA's flexibility to reallocate funds

within an approved T&D Budget applies to budget lines or components of an approved T&D Budget.

**B. The Energy Bureau has not issued regulatory guidance on its interpretation of the scope of LUMA's flexibility to reallocate funds within an approved budget nor standards to evaluate reallocations of funds within an approved budget.**

30. Prior to the May 6<sup>th</sup> Order, this Energy Bureau had not issued interpretative guidance or rules regarding Section 7.3 (c) of the T&D OMA nor the standard or threshold that it will apply to evaluate reallocation of funds within an approved Budget. *Ex post facto* imposition of regulatory limitations on LUMA's ability and flexibility to conduct business, operate the T&D System, invest in operational activities and achieve important milestones to remediate the T&D System as required by the T&D OMA and public policy, is contrary to due process requirements of fair notice, reasonable reliance and respect for settled expectations. *See Bowen v. Georgetown University Hosp.*, 488 U.S. 204, 208 (1988) ("Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result. By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.") (internal citations omitted); *see also De Niz Robles v. Lynch*, 803 F.3d 1165, 1173-75 (10th Cir. 2015) (Gorsuch) (holding that presumption of prospectivity applies to agency rulemaking actions that set new policy and stating that due process and equal protection concerns apply to retroactive agency action); *Lima-Rivera v. UHS of Puerto Rico, Inc.*, 476 F.Supp.2d 92, 98 (D.P.R. 2007) ("Generally, 'the law disfavors retroactivity, and courts should not give administrative rules retroactive effect in the absence of an express statutory grant of retroactive rulemaking power by Congress. This general ban on retroactive rulemaking applies with the same force whether the

agency issues a ‘legislative rule’ pursuant to a specific statutory directive or an ‘interpretive rule’ construing the meaning of authorizing legislation.”) (internal citations omitted).

31. “A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of the conduct that is forbidden or required.” *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). The fair notice requirement furthers two due process concerns: “first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.” *Id.*; *see also Asoc. Fcias. Com v. Depto. De Salud*, 156 DPR 105, 136 (2002) (holding that agencies cannot act arbitrarily when they change their regulations or adopt new rules); *see also Benítez Nieves v. ELA*, 202 DPR 818, 828 (2019) (same and citing *Asoc. Fcias. Com.*). Due process concerns have been applied to an agency’s exercise of delegated legislative authority, to protect regulated parties and entities from agency interpretations and rules that apply to conduct or actions that took place before the interpretation or rule was announced or that amount to unfair surprise to the regulated party. *See Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 156 (2012) (*explaining that “[t]o defer to the agency’s interpretation in this circumstance would seriously undermine the principle that agencies should provide regulated parties ‘fair warning of the conduct [a regulation] prohibits or requires.’”*) *Health Ins. Ass’n of America v. Shalala*, 23 F.3d 412, 422-424 (D.C. Cir. 1994) (declining to apply interpretative rules retroactively to transactions that occurred before the agency adopted the interpretative rules); *Asoc. Fcias. Com*, 156 DPR at 136 (stating that the requirement that agencies adopt proper regulations avoid arbitrary decisions and ensures that agencies comply with due process of law requirements regarding notice to the public of the law and explaining that absent

standards that govern the exercise of the discretion that the law delegates to an administrative agency, arbitrary and discriminatory applications of the law are possible).

32. Regarding the requirement to afford fair warning to regulated parties, the United States Supreme Court has held that a court may not defer to a new interpretation, that creates “unfair surprise” to regulated parties. *Kisor v. Wilkie*, 139 S. Ct. 2400, 2418 (2019) (holding that “an agency’s reading of a rule must reflect ‘fair and considered judgment’ . . . And a court may not defer to a new interpretation, whether or not introduced in litigation, that creates “unfair surprise” to regulated parties . . . .”); *see also Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 170 (2007).

33. The Energy Bureau has not approved regulations, standards or guidelines for LUMA to know in advance, what are the regulatory criteria and standards that guide the determination of the Energy Bureau on budget reallocations. In fact, in the May 6<sup>th</sup> Order the Energy Bureau states, without further explanation or support in law or regulations, that although at this time it is applying the 5% standard, in the indefinite future it may apply a different standard that it has not yet announced. *See* May 6<sup>th</sup> Order, p. 3. LUMA takes issue with that statement given that it exposes LUMA to the risk of a requirement to comply with standards that this Energy Bureau has not announced, in violation of due process, and foreshadows potential impairment of its rights under the T&D OMA. LUMA reserves its procedural and substantive rights in connection with future decisions that may stem from said statement and in response to the potential application of standards for reallocations that differ from the standard set in the T&D OMA.

34. Given the lack of substantive and procedural regulations by this Energy Bureau on budget reallocations, the regulated entities that participate in this process, including PREPA and LUMA, as PREPA’s agent, are uncertain about what the applicable decision parameters and

standards will be. In these circumstances, the May 6<sup>th</sup> Order sets the stage for administrative arbitrariness. *See Sánchez et al. v. Dept. Housing*, 184 DPR 95, 122 (2011) (delegation of powers to administrative agencies requires that appropriate rules be established to guide their determinations).

35. Although the Energy Bureau has ruled that LUMA shall submit budget amendments requests, it has not issued a prior ruling nor guidance to reasonably apprise LUMA of the standard that the Energy Bureau may apply that honors LUMA's flexibility to reallocate funds within an approved T&D Budget per Section 7.3 (c) of the T&D OMA. Nor has the Energy Bureau established the basis and scope of its delegated authority to adopt a standard that differs from the one set in Section 7.3 (c) of the T&D OMA in connection with reallocations within an approved T&D Budget. In at least one prior order in this proceeding, issued on March 20, 2023, this Energy Bureau honored and applied Section 7.3 of the T&D OMA, stating, in the context of a budget amendment, "that it can rely upon the OMA's terms and conditions," and explaining that its reliance on the T&D OMA "is further supported by the Energy Bureau's issuance of a Certificate of Energy Compliance in accordance with Act 120-2018 and Act 29-2009 in determining that the OMA, pursuant to which the private operator would provide services, complies with the Puerto Rico Energy Public Policy and regulatory framework." *See* Resolution and Order of March 20, 2023, p. 3. Thus, the suggestion in the May 6<sup>th</sup> Order that the Energy Bureau may apply standards for reallocations that do not follow the strictures of the T&D OMA, is a surprising ruling that is contrary to a prior ruling of this Energy Bureau.

36. LUMA is mindful of the Energy Bureau's delegated authority to ensure that rates are reasonable and protect customers from bearing the burden of imprudent expenses that may require an increase to the base rate. LUMA also appreciates the Energy Bureau's authority to

regulate, oversee, and enforce public policy on energy pursuant to Act 57-2014, as amended, and Act 19-2017. However, the Energy Bureau's authority over rates and energy public policy, does not invalidate on its face, clear and unambiguous provisions of the T&D OMA that have not been ruled to be contrary to law or energy public policy. Nor does it annul LUMA's right to fair and reasonable notice of the interpretative rules and regulatory requirements that the Energy Bureau seeks to apply to reallocations of funds within an approved T&D Budget, particularly where, as here, the reallocation does not lead to a rate increase.

#### **IV. Information in attention to request for information of the May 6<sup>th</sup> Order**

37. In attention to the Energy Bureau's order to obtain additional information on how LUMA will reallocate funds within the FY2024 Operating Budget to increase the VM Budget and the corresponding impact of the reallocation on other components of the Operating Budget, LUMA submits as *Exhibit 1*, an illustration of the reallocation that further explains that lower operating costs rendered available additional monies that LUMA determined, within its expertise, should be allocated for VM.

38. Budgets are based on projections made by LUMA and its personnel with the information that is available at the time that the budget is designed and adopted. Budget preparation processes involve forecasting activities and assumptions made using information and conditions occurring at the time that the budgets are prepared and with the expertise and experience of subject-matter experts. As part of LUMA's financial reporting processes, variances from those projections are analyzed on a reoccurring basis. LUMA's management makes determinations on the reallocation of available funds in order to address the needs of the T&D System and LUMA's customers. In connection with the March 2024 Budget Amendment, LUMA's management

determined that there were savings in the Operating & Maintenance Budget specifically within the Operations Department, which could be reallocated to VM activities.

39. The reallocation of \$6 million was drawn from operational savings or lower than projected spending in the Operations Department. The reallocation is not expected to impact activities of the Operations Department in Q4 of FY2024.

**WHEREFORE**, LUMA respectfully requests that the honorable Bureau **take notice** of the aforementioned for all purposes; **correct and amend** the May 6<sup>th</sup> Order as requested in this Motion and **deem** that LUMA complied with the May 6<sup>th</sup> Order.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 16<sup>th</sup> day of May 2024.

**I HEREBY CERTIFY** that this motion was filed using the electronic filing system of this Energy Bureau. I also certify that copy of this motion will be notified to the Puerto Rico Electric Power Authority, through its attorneys of record: Mirelis Valle-Cancel, [mvalle@gmlex.net](mailto:mvalle@gmlex.net); Alexis G. Rivera Medina, [arivera@gmlex.net](mailto:arivera@gmlex.net); and to Genera PR LLC, through its counsel of record: Jorge Fernandez-Reboredo, [jfr@sbgblaw.com](mailto:jfr@sbgblaw.com), Alejandro López Rodríguez, [alopez@sbgblaw.com](mailto:alopez@sbgblaw.com).



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*Exhibit 1*



# FY2024 Budget Reallocation Additional Details

NEPR-MI-2021-0004

Response to May 6, 2024, R&O

May 16, 2024

## List of Responses and Attachments

Response ID	Document Type	Response Subject
ROI-LUMA-MI-2021-0004-20240616-PREB001	Response in PDF	<b>FY2024 Budget reallocation additional details</b>

## Initial Budget

### FY2024 Budget Reallocation Additional Details

NEPR-MI-2021-0004

**Response: ROI-LUMA-MI-2021-0004-20240506-PREB001**

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#### SUBJECT

FY2024 Budget Reallocation Additional Details

#### REQUEST

The Energy Bureau orders LUMA to show how it intends to reallocate \$6 million within its operating budget to increase the vegetation management budget, i.e., how it intends to move funds between the different operating budget components – Customer Experience, Operations, Utility Transformation, and Support Services.

#### RESPONSE

As part of LUMA's financial reporting processes, variances are analyzed on a recurring basis. As part of this process, LUMA management evaluates variances to determine if reallocations are necessary in order to align with real-time needs of the electric system and customers while confirming that any reallocation of funds does not negatively impact LUMA's ability to operate the T&D System.

After conducting a variance analysis, LUMA management determined there were savings in the Operating Budget that could be reallocated to the Vegetation Management budget. The \$6 million will be reallocated entirely from the Operations department budget of \$264 million, specifically from the salaries, wages, benefits, materials and supplies budget<sup>1</sup>. This favorable year-to-date variance is a result of increased emergency response and outage restoration efforts including an increase in field activities, and LUMA resources being dedicated to support these efforts.

See Below an Excerpt of Exhibit 1, submitted on March 28 Motion Submitting Amendment to FY2024 T&D Budget, LUMA\_FY2024\_Budget\_Reallocation\_Schedules, referenced herein and related areas highlighted for ease of reference.

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<sup>1</sup> March 28 Motion, Exhibit 1 LUMA\_FY2024\_Budget\_Reallocation\_Schedules

## Initial Budget

### 2.2 Transmission & Distribution Operating Budget

(\$ in 000s)

	1	12	13	14	15	16
		Customer Experience	Operations	FY2024 Variance (\$) Utility Transformation	Support Services	2024
<b>Labor<sup>1</sup></b>						
1 Salaries, Wages and Benefits		-	(10,867)	-	-	(10,867)
2 <b>Total Labor</b>		-	(10,867)	-	-	(10,867)
<b>Non-Labor</b>						
3 Materials & Supplies		-	(15,800)	-	-	(15,800)
4 Transportation, Per Diem, and Mileage		-	-	-	-	0
5 Property & Casualty Insurance		-	-	-	-	0
6 Security		-	-	-	-	0
7 IT Service Agreements		-	(2,436)	-	-	(2,436)
8 Utilities & Rents		-	-	-	-	0
9 Legal Services		-	2	-	-	2
10 Communications Expenses		-	2	-	-	2
11 Professional & Technical Outsourced Services		630	(8,443)	-	-	(7,813)
12 Vegetation Management		-	6,000	-	-	6,000
13 Other Miscellaneous Expenses		-	(5,158)	-	-	(5,158)
14 <b>Total Non-Labor / Other Operating Expense</b>		630	(25,833)	-	0	(25,203)
15 <b>Subtotal Labor and Non-Labor/Other Operating Expenses</b>		630	(36,700)	-	0	(36,070)
16 2% Reserve for Excess Expenditures						(721)
17 <b>Total Operating Budget</b>		630	(36,700)	-	0	(36,791)

**Notes:**

<sup>1</sup> Figures may not add due to rounding.