NEPR

Received:

Oct 25, 2024

7:29 PM

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

IN RE: PUERTO RICO ELECTRIC POWER AUTHORITY'S PERMANENT RATE	**CASE NO.:** NEPR-MI-2020-0001 **SUBJECT:** Motion in Compliance with Resolution and Order of October 16, 2024

MOTION IN COMPLIANCE WITH RESOLUTION AND ORDER OF OCTOBER 16, 2024

TO THE HONORABLE ENERGY BUREAU:

COMES NOW, **the PUERTO RICO ENERGY POWER AUTHORITY** (PREPA) through its undersigned legal counsel and respectfully States and Prays as follows:

1.1 On October 16, 2024, the Puerto Rico Energy Bureau (PREB or the Bureau) issued a *Resolution and Order* directing PREPA to address specific inquiries (RFI) regarding its obligations under the Transmission and Distribution Operation and Maintenance Agreement (T&D OMA) and the Legacy Generation Assets Operation and Maintenance Agreement (LGA OMA). The Bureau provided PREPA with a ten-day (10) period to submit its responses, which are due on or before October 26, 2024.

1.2 PREPA has carefully reviewed the Bureau's inquiries, as well as the assertions made by LUMA Energy, LLC (LUMA) in its October 8, 2024, response to the Bureau’s October 1, 2024, Resolution and Order. As will be detailed in its responses to the RFI, with an extensive written record to substantiate its position[1],

[1] See Exhibit A and the supporting documents in the following link NEPR-MI-2020-0001 Exhibits -

PREPA has been significantly impacted by liquidity constraints resulting from LUMA's inefficiencies in critical operational areas. While PREPA recognizes that it holds certain funding obligations under the T&D OMA and LGA OMA, these obligations are not absolute or unconditional. Rather, they are contingent upon the availability of sufficient liquidity, which is dependent on effective revenue generation and federal reimbursement processes now managed by LUMA. In other words, PREPA's financial capacity to meet its obligations under the T&D OMA is inseparably linked to LUMA's effectiveness in managing the revenue streams that sustain system liquidity.

1.3 Since LUMA assumed operational control of Puerto Rico's Transmission and Distribution system, it has been entrusted with the direct management of PREPA's billing and collections systems, including eradicating or limiting power theft, guarantee proper operation of power meters, collection and suspension of power service to delinquent customers, collection of poll attachments fees, among others, as well as the administration of T&D system federally funded capital projects. LUMA's nonsuccess in performing these functions proficiently in key operational areas have directly affected PREPA's liquidity.

1.4 PREPA acknowledges that Section 7.5 of the T&D OMA and Section 7.6 of the LGA OMA detail PREPA's obligations related to funding the Service Accounts. However, PREPA respectfully clarifies that these obligations are

---

Motion in compliance with Resolution and order of October 16, 2024.

contingent on the availability of sufficient liquidity within PREPA's accounts, sourced primarily from revenues generated through billing and collections and federal reimbursements for federally funded projects. Notably, control over these revenue-generating processes, as well as certain expenditures, now lies predominantly with LUMA under the T&D OMA framework. Under the T&D OMA, LUMA is responsible for generating sufficient revenues both from collection for power services and obtention of federal reimbursements.

1.5 Since the Commencement Date, LUMA has been ineffective with both of its revenue generation obligations, while incurring unnecessary and/or unreasonable spending (e.g. LUMA's Seconded Employees Program). LUMA spends over $200M on employees seconded from the companies that comprise the LUMA consortium. The salaries, wages, and benefits paid to the Seconded Employees far exceed those of local LUMA employees. Moreover, 20% of the total allocation for the Seconded Program is used to cover miscellaneous expenses such as plane tickets, hotel stays, and car rentals for the Seconded Employees.

1.6 By refusing to acknowledge its responsibility on this matter, LUMA displays a lack of understanding, not only of its obligations but of the business model created by the T&D OMA. By doing so, LUMA has rendered the T&D OMA business model unsustainable. As a result, PREPA's liquidity shortfall is a direct consequence of LUMA's deficient collection for power services, collection and suspension of power service to delinquent customers, collection of poll attachments fees, among others, as well as the administration of T&D system federally funded capital projects and substantial delays in federal reimbursements.

1.7 LUMA's desire to have a full replenishment of the Service Accounts can only be achieved by addressing its deficiencies and shortfalls. With a budget that has exceeded $730 million each fiscal year since Commencement Date, and over 4,500 employees, LUMA should outperform PREPA's reimbursement rate by a longshot. Regrettably, that is not the case. With significantly less economic and human resources, from the Commencement Date to the present PREPA has outshined LUMA in each reimbursement category. Faced with insufficient funds in its operational accounts due to budget limitations, PREPA implemented an aggressive plan to request reimbursements from FEMA. This strategy allowed PREPA to secure approximately $1.2 billion in reimbursement funds, ensuring the availability of funds to meet its cost-share obligations. However, since 2021, PREPA has been required to transfer over $445 million to LUMA. While PREPA is proud of its achievements on this matter, LUMA's underperformance is no cause for celebration.

1.8 For over two years, PREPA has repeatedly alerted LUMA, the Puerto Rico Public-Private Partnerships Authority (P3A), the Financial Oversight and Management Board for Puerto Rico (FOMB), and this very Bureau, of the detrimental impact LUMA's inefficiencies have had on PREPA's liquidity. Both, PREPA and LUMA, have exchanged multiple communications regarding Service Account funding. PREPA has responded accordingly and has (i) expressly rejected all explicit or implicit allegations of non-compliance or breach of the OMA as applicable to Service Account funding; (ii) reminded LUMA that in all instances, PREPA has funded the pertinent T&D Service Accounts in compliance with Section 14.3(f) of the OMA in an amount that is 2/3 of the requisite funding notified by LUMA, as contemplated under that provision of the OMA; (iii) properly explained to LUMA the underlying management and cashflow reasons for exercising the option to fund 2/3 of the accounts as necessary to preserve minimum liquidity to address the growing funding obligations, (iv) further apprised LUMA that even with the 2/3 funding, with the exception of August and September 2024, its Service Accounts had over 3 to 4 months of liquidity available to LUMA; (v) invited LUMA to discuss in good faith the remedial measures that PREPA urgently recommends, as system owner and subgrantee for federal funding purposes.

1.9 PREPA's liquidity is significantly influenced by federally funded capital expenditures and reimbursements. Under Section 5.5 of the T&D OMA, LUMA is tasked with the management of federally funded projects, including contracting, compliance with procurement standards, and timely reimbursement processes with entities such as COR3 and FEMA. Effective administration in these areas is crucial to PREPA's financial health, as reimbursement delays or inefficiencies directly impact the availability of funds required to meet Service Account obligations. LUMA has spent more than $1.1 billion of federally funded expenditures but obtained less than $550 million in Federal Emergency Management Agency ("FEMA") reimbursements and Working Capital Advances ("WCA"), resulting in a net negative liquidity impact to PREPA of over **$550 million**.

1.10 To provide some context, if LUMA had obtained the $550 million in reimbursements – of which a significant portion is outstanding since Hurricane Fiona – PREPA could have fully funded the Service Accounts. LUMA's underperformance has necessitated PREPA to draw down its Reimbursement Account by over $445 million to cover gaps that should have been addressed through efficient reimbursement efforts. PREPA's liquidity shortfall is directly linked to LUMA's substantial delays in federal reimbursements.

1.11 Since LUMA assumed control of billing and collections, PREPA has observed persistent inefficiencies in these processes. This has resulted in a significant shortfall in the revenues required to fund the service accounts in compliance with the T&D and LGA OMAs. LUMA's inability to adequately manage these essential revenue streams has directly impeded PREPA's ability to meet its funding obligations. PREPA's reliance on these revenue sources for liquidity has been repeatedly underscored in communications with both LUMA and the Bureau, yet collections remain insufficient.

1.12 PREPA has made consistent efforts to address these liquidity challenges by working closely with the relevant stakeholders to mitigate the impacts of LUMA's underperformance. However, LUMA's failure to implement necessary corrective measures has exacerbated the financial strain on PREPA, resulting in a depletion of PREPA's federal reimbursement accounts by over $445 million. PREPA's ability to fund the Service Accounts, Outage Event Reserve Account, and other accounts referenced in the Bureau's RFI, has therefore been severely compromised by factors outside its direct control, specifically stemming from LUMA's operational inefficiencies, mismanagement, and apparent lack of expertise in critical areas such as revenue collection and federal funding administration.

1.13 Notwithstanding these challenges, and in the face of substantial liquidity constraints resulting from LUMA's documented inefficiencies, PREPA has diligently fulfilled its obligations to the extent possible. PREPA has exercised responsible cash flow management by implementing the two-thirds funding option provided under Section 14.3(f) of the T&D OMA and has maintained open communication with LUMA, the FOMB, and P3A to collaboratively address its financial challenges. PREPA affirms that it remains in compliance with the T&D OMA to the fullest extent feasible under the current conditions and that it cannot be deemed as having defaulted on its funding obligations which are explicitly conditional and reliant on the availability of sufficient liquidity and LUMA's ability to adequately perform it revenue-generating activities.

1.14 PREPA remains committed to fulfilling its obligations under the T&D and LGA OMAs notwithstanding its current financial constraints. PREPA will continue to work with LUMA, the Bureau, and other stakeholders to find sustainable solutions to the ongoing liquidity crisis and ensure that the people of Puerto Rico receive reliable and affordable energy services. In this regard, LUMA must exercise greater restraint and efficiency in the use of the assigned budget and also undertake the necessary internal reengineering to sustain a less costly operation. PREPA emphasizes that a rate increase should be the last alternative.

1.15 Enclosed with this motion are PREPA's responses to the Bureau's RFI, complete with supporting documentation to substantiate PREPA's position.

Should the Bureau require any additional information or documentation, PREPA remains at the Bureau's disposition to provide further assistance.

WHEREFORE, PREPA respectfully submits this Motion in Compliance with the Bureau's October 16, 2024, Resolution and Order and requests that the Bureau deem its Order as complied with and take notice of PREPA's efforts to address the financial challenges it faces, which are rooted in factors outside of PREPA's direct control.

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, Yahaira.delarosa@us.dlapiper.com and to Genera PR, LLC through its counsels of record at jfr@sbgblaw.com; alopez@sbgblaw.com.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 25th day of October 2024.

GONZÁLEZ & MARTÍNEZ
1509 López Landrón, Bldg. Seventh Floor
San Juan, PR 00911-1933
Tel.: (787) 274-7404

f/ Alexis G. Rivera Medina
TSPR No.: 18,747
Email: arivera@gmlex.net