

August 5, 2022

**To: Puerto Rico Public-Private Partnerships Authority (P3A)**

Attention: Sheila Sterling Torres

Senior Legal Advisor

PO Box 192018

San Juan, Puerto Rico 00919-2018

**Re: Concerns Regarding PREB's Review of the FY2023 Certified Budget**

LUMA would like to identify its concerns regarding recent developments within the annual budget approval process. LUMA is concerned regarding the time and costs associated with the Puerto Rico Energy Bureau's ("PREB" or the "Energy Bureau") additional reviews of the FY2023 Certified Budget and any implications such reviews may have on LUMA's ability to perform its obligations under the T&D OMA.

As the Puerto Rico Public-Private Partnership Authority ("P3A") is aware, LUMA, Puerto Rico Electric Power Authority ("PREPA"), P3A and the Puerto Rico Financial Oversight and Management Board ("FOMB") spent a significant amount of time and effort within FY2022 to come to a certified and compliant FY2023 budget. For reference, LUMA has provided below a timeline of events and activities in order to achieve a certified and compliant FY2023 budget.

It should be noted that this timeline does not include:

- Activities by PREPA, P3A and FOMB that LUMA is not aware of or directly involved. LUMA understands that there were additional activities to those listed below performed by other parties.
- The significant internal LUMA activities and work required to support the events and activities listed below.

Concurrent to the following events and activities, FOMB conducted its annual fiscal plan and budget processes under PROMESA, which began on February 9, 2022 and concluded on June 30, 2022, and required significant support from LUMA.

- **April 1, 2022:** Pursuant to Section 7.3(a) of the Puerto Rico Transmission & Distribution System Operation and Maintenance Agreement ("T&D OMA"), LUMA submitted to P3A and PREB, pursuant to PREB's request, the budgets for FY2023 and projections for FY2024 and FY2025. In this filing, PREPA submitted a budget that was not in line with the allocation work performed prior to April 1, 2022.
- **April 8, 2022:** In response to PREB's March 25, 2022 Resolution and Order ("R&O"), LUMA submitted supporting working papers for LUMA's FY2023 budget to PREB for PREB's review.



- **May 13, 2022:** In alignment with P3A's obligations, P3A completed its review of the FY2023 budgets and provided LUMA notice that the Proposed FY2023 Budget filed on April 1, 2022, including LUMA's generation allocation, was compliant with the applicable Rate Order.
- **May 19, 2022:** PREB issued a R&O requesting detailed information on the proposed FY2023 Budget.
- **June 3 & 7, 2022:** LUMA provided the information requested within PREB's May 19, 2022 R&O.
- **June 10, 2022:** PREB held a Technical Conference to review the Proposed FY2023 Budgets. Before the Technical Conference Agenda started, PREB requested LUMA and PREPA certify that the combined budgets were compliant with the applicable Rate Order and duly and fully coordinated. Since PREPA's budget, filed in Appendix D, was not aligned with the budget allocation submitted within LUMA's April 1, 2022 and April 8, 2022 filings, LUMA and PREPA could not confirm. As a result, PREB canceled the Technical Conference. LUMA had spent weeks preparing for this conference and had nearly 30 technical experts at the conference prepared to respond to PREB's inquiries. Further, LUMA had nearly 20 support personnel either on-site or that supported the preparation of technical expert witnesses. PREB postponed the Technical Conference to June 17, 2022 and directed LUMA and PREPA to work together to produce a compliant and fully coordinated FY2023 Budget.
- **June 10, 2022:** Immediately after PREB's Technical Conference was postponed, P3A coordinated a meeting for June 13, 2022 between LUMA, PREPA and FOMB to discuss the path to a fully coordinated and compliant FY2023 Budget.
- **June 13, 2022:** The P3A organized meetings with personnel from P3A, FOMB, PREPA and LUMA present. During the week of June 13, 2022, the parties agreed to review the allocation and hold working sessions on the separate budgets. The following meetings were coordinated:
  - **June 14, 2022:** A budget allocation discussion, which was attended by LUMA and P3A but postponed and rescheduled to June 15, 2022 from 5:00pm to 6:00pm at the request of PREPA.
  - **June 15, 2022:** An all-day working session to review HoldCo and GenCo budgets, which was conducted with PREPA, FOMB, P3A and LUMA in attendance.
  - **June 15, 2022:** A budget allocation discussion, in which PREPA presented its revised and draft FY2023 budget allocation (subject to approval by the Executive Director) and the parties provided comment.
- **June 15, 2022:** PREB issued another R&O stating that in the event a coordinated and compliant budget cannot be filed by June 16, 2022, at 1:00pm, then the June 17, 2022 Technical Conference would be automatically postponed, and the default budget would

remain in effect until such time as the FY2023 Consolidated Budget is submitted and approved by PREB.

- **June 16, 2022:** LUMA submitted a motion in compliance with PREB's June 15, 2022 R&O indicating that despite the work performed in the days since the Technical Conference, revised budgets are not available for submission.
- **June 17, 2022:** FOMB coordinated a GridCo working session with LUMA and P3A.
- **June 17, 2022:** PREPA shared with LUMA, P3A and FOMB its proposed FY2023 revenue allocation.
- **June 20, 2022:** LUMA shared with PREPA, the P3A and FOMB LUMA's counterproposal for the FY2023 revenue allocation.
- **June 28, 2022:** P3A submitted a letter to LUMA that summarized the FY2023 budget process, including various submittals from LUMA and PREPA, and the multiple working sessions between PREPA, LUMA, P3A and FOMB. The letter provided P3A and FOMB's determination on an allocation and requested LUMA to submit to P3A a revised budget in compliance with such allocation.
- **June 30, 2022:** FOMB certified the consolidated FY2023 Budget and allocation.
- **July 12, 2022:** LUMA submitted the Certified FY2023 Budget to P3A, in response to P3A's request in its June 28, 2022 letter to LUMA. LUMA concurrently refiled the Certified FY2023 Budget with PREB for informative purposes only on July 13, 2022.

As P3A is aware, LUMA, PREPA, P3A and FOMB have collaborated continuously on the FY2023 Budget since April 2022, and as noted above, very intensely during June 2022, in order to meet the requirements set forth within Section 7.3 of the T&D OMA, and to meet requirements under the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA").

According to the terms set forth in Section 7.3 of the T&D OMA and the terms set forth in Section 202 of PROMESA, PREB does not have budget approval rights for annual budgets. Section 7.3(a) of the T&D OMA states that the "Operator shall ... 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". Since the FY2023 Budgets did not require a rate adjustment, the budgets are not required to be approved by PREB.

In addition, Section 202(a) of PROMESA states that "the Oversight Board shall deliver a notice to the Governor and Legislature providing a schedule for developing, submitting, approving, and certifying Budgets ... as determined by the Oversight Board in its sole discretion". This provides the FOMB sole discretion over PREPA (and LUMA) Budgets.



Within the 2017 Rate Order, PREB indicated that it would like to perform annual “budget examinations”; however, since the issuance of the Final Resolution and Order on March 8, 2017, PREB has not reviewed annual budgets in detail. Only as a response to LUMA’s filed Initial Budgets (as required under Section 4.2(e) of the T&D OMA) in February 2021 did PREB review an annual budget.

Despite PREB’s comment in its 2017 Resolution and Order and its request within its May 31, 2021 Resolution and Order, within docket NEPR-MI-2021-0004, to review the FY2023 budget, PREB has largely removed themselves from budgeting processes prior to 2021 and in June 2022. As such, this year the process was conducted by P3A and FOMB in line with their obligations defined in the T&D OMA and PROMESA. This process required a significant amount of time and effort by all parties involved (LUMA, PREPA, P3A and FOMB) and resulted in a budget that was certified pursuant to PROMESA and compliant with the applicable Rate Order.

Furthermore, on July 16, 2022, the Energy Bureau deemed the Certified FY2023 Budget compliant with the applicable Rate Order. Specifically, PREB states that it “**determined that the Certified FY2023 Budget filed on July 13, 2022, was in compliance with the revenue requirements of the 2017 Rate Order**”, the standard required in the T&D OMA for annual budgets. However, also within the July 16, 2022 R&O, PREB initiated the “Commencement of Review Process FY2023 Budgets” and ordered LUMA to file detailed information pertaining to the FY2023 Budget on or before July 29, 2022, at noon, including a detailed comparison of the FY2023 Certified Budget with that of the May 31, 2021, PREB Approved FY2022 Budget.

On July 29, 2022, after LUMA responded to PREB’s July 16, 2022, R&O, PREB issued an additional R&O establishing a procedural calendar in relation to its review of the July 13, 2022 submission of the Certified Budget, including:

- Filing a presentation for a Virtual Technical Conference by August 12, 2022
- Participating in the Virtual Technical Conference on August 17, 2022
- Filing any additional information requested by the PREB on August 22, 2022

LUMA has not budgeted any time or costs to defending the FY2023 budget within the Certified FY2023 Budget and views these actions as duplicative of those taken in advance of June 30, 2022.

The time spent preparing written responses, preparing for and attending the Technical Conference and providing written follow-ups to questions in the Technical Conference is significant. PREB proceedings require commitment across the LUMA organization from technical experts and personnel that are directly responsible for advancing the Recovery and Transformation of the Puerto Rico T&D System.

These additional reporting requirements imposed by PREB will cause delays and additional costs that ultimately affect the advancement of the Puerto Rico Recovery and Transformation Improvement Programs. Further, this will affect other T&D OMA, PROMESA and PREB approved





plans including the Certified FY2023 Budget, the System Remediation Plan, the Certified Fiscal Plan and other operational plans.

If PREB should decide to make changes to the currently certified and deemed rate compliant FY2023 budget, these will result in a change to the existing Certified FY2023 Budget and will have an impact on LUMA's ability to meet the goals of the Certified Fiscal Plan, the System Remediation Plan, other operational plans and the currently planned activities within the Certified FY2023 Budget. Depending on the changes requested by PREB, such changes could potentially impact LUMA's funding and staffing levels to a place where LUMA cannot reasonably assure that it is able to carry out the related O&M Services in accordance with the Contract Standards as set forth in Section 7.4 of the T&D OMA.

LUMA is currently complying with PREB's request for review and will continue to provide P3A with updates, however it would like to extend its deep concerns about this duplicative ongoing effort and the impact on the progress of the T&D System's Recovery and Transformation.

Please do not hesitate to reach out with any questions.

Sincerely,



**Ashley Engbloom**

Vice President, Regulatory

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