

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

IN RE: PERFORMANCE TARGETS FOR LUMA
ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

SUBJECT: Commencement of Proceeding for
the Establishment of a Performance-Based
Incentive Mechanism Targets.

RESOLUTION AND ORDER

I. Introduction

Pursuant to the provisions of Act 57-2014,¹ the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") has jurisdiction over the Puerto Rico Electric Power Authority ("PREPA") and all other electric service companies. Act 57-2014 clearly states it is public policy that all consumers have the right to a reliable and stable electric service.² Based on the current state of the electric system, it is of the utmost importance that PREPA transforms the power grid and its operations to provide a more reliable and stable service to its clients.

Act 17-2019³ broadened the Energy Bureau's authority and reinforced the foregoing public policy by declaring that, "(t)he electric power system should be reliable and accessible, promote industrial, commercial, and community development, improve the quality of life at just and reasonable cost, and promote the economic development of the Island."⁴ Furthermore, Act 17-2019 established certain express mandates to the Energy Bureau including, but not limited to, developing incentive mechanisms to make the enforcement of the energy policy feasible.

II. Energy Bureau Authority

A. Performance Incentive Mechanisms

Act 17-2019 provides the Energy Bureau with the authority to use alternative mechanisms to cost-based regulation for compliance and implementation of the objectives established in the law, including mechanisms for incentives and penalties based on performance metrics for electric service companies and strict compliance with the Energy

¹ Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

² *Id.*, Article 1.2(l).

³ Known as the *Puerto Rico Energy Public Policy Act*.

⁴ *Id.*, Statement of Motives, p. 2.



Bureau orders.⁵ Furthermore, Act 17-2019 empowered the Energy Bureau to develop regulations to establish incentives and penalties based on the electric power companies' performance and compliance with the metrics the Energy Bureau approves, pursuant to the energy public policy.⁶

According to the provisions of Act 17-2019, in developing such performance-based incentives and penalties, the Energy Bureau shall consider the following criteria, among others:

- (a) the volatility and affordability of the electric power service rates;
- (b) the economic incentives and investment payback;
- (c) the reliability of the electric power service; customer service and commitment, including options to manage electric power costs available to customers;
- (d) customers' access to the electric power companies' information systems including, but not limited to, public access to information about the aggregated customer energy and individual consumers' access to the information about their electric power consumption;
- (e) compliance with the Renewable Portfolio Standard and rapid integration of renewable energy sources, including the quality of the interconnection of resources located in consumers' properties;
- (f) compliance with metrics to achieve the energy efficiency standards established in Act 17-2019; and
- (g) infrastructure maintenance.⁷

Regarding the mechanisms to be used, Act 17-2019 states that the Energy Bureau may consider using, but it is not limited to, the following:

- i. Decoupling mechanisms;
- ii. Performance-Based Regulation or PBR;

⁵ *Id.*, Section 1.5(3)(c) and (d).

⁶ *Id.*

⁷ *Id.*, Section 5.21, amending Section 6.25(B) of Act 57-2014.



- iii. Time of Use Rates;
- iv. Prepaid Rates.
- v. Unbundled Rates;
- vi. Formula Ratemaking and rate review mechanism; and
- vii. Reconciliation Mechanisms.⁸

B. Regulatory Framework

In compliance with Act 17-2019 mandates regarding performance-based incentives and penalties, on December 2, 2019, the Energy Bureau adopted Regulation 9137, *Regulation for Performance Incentive Mechanisms*, to establish performance incentive mechanisms and targets for eligible electric service companies. As per the provisions of Regulation 9137, the Energy Bureau will initiate the corresponding proceedings to adopt such performance incentive mechanisms and targets.⁹

It is important to note that performance rewards or incentives should be awarded after confirmation that the performance of an entity is above and beyond the compliance benchmark. Rewarding entities with incentives for achieving required compliance is the antithesis of the performance incentives mechanisms concept and contrary to the public interest.

III. Current Performance and Minimum Performance Compliance Requirements

On December 23, 2020 the Energy Bureau issued a Resolution and Order under Case No. NEPR-MI-2019-0007 ("December 23 Resolution"), through which it commenced a proceeding to establish the baseline (*i.e.*, PREPA's current performance) and the targets or minimum compliance benchmarks with which the Puerto Rico's electric system should comply ("Baseline Proceeding").

As established in the aforementioned resolution, the performance baseline and performance compliance benchmarks to be determined in the Baseline Proceeding will be subsequently used by the Energy Bureau to establish the corresponding targets to be applicable to certified electric service companies. As indicated in the December 23 Resolution, the Energy Bureau will open a separate proceeding to establish performance-based incentives and penalties ("PIMs") for specific certified electric service companies.

⁸ *Id.* Note that, as per the provisions of Act 17-2019, electric power service companies, as determined by the Energy Bureau through regulations, including those organized as energy cooperatives or those other entities determined by the Energy Bureau shall be exempt from this provision.

⁹ See Regulation for Performance Metrics, Regulation No. 9137, December 2, 2019.



IV. Performance-Based Incentives and Penalties Requirements applicable to LUMA

On June 22, 2020, LUMA Energy, LLC¹⁰ as ManagementCo, LUMA Energy ServCo, LLC¹¹ as ServCo (collectively, "LUMA"), PREPA and the Puerto Rico Public-Private Partnerships Authority, entered into an Operation and Maintenance Agreement ("OMA") under which LUMA will manage PREPA's transmission and distribution system ("T&D System").¹²

As a certified electric service company and the operator of the T&D System, LUMA is subject to compliance with Performance-Based Incentives Mechanisms. Regarding Performance Metrics, Section 4.2(f) of the OMA, provides:

(f) Performance Metrics. Promptly (and in any event within sixty (60) days) following the Effective Date, the Parties shall establish a planning team composed of representatives of each of the Parties, and ManagementCo, with input from such team, shall prepare a revised Annex IX (*Performance Metrics*), including (i) proposed baseline, target and minimum performance levels for certain Performance Metrics, (ii) Key Performance Metrics and (iii) Major Outage Event Performance Metrics, with an explanation of the basis for each of the foregoing. ManagementCo shall submit to Administrator the proposed revised Performance Metrics and, within thirty (30) days following its receipt of such proposed revised Annex IX (*Performance Metrics*), Administrator, acting reasonably, shall provide ManagementCo comments on the appropriateness of the proposed Annex IX (*Performance Metrics*) and recommend any changes or modifications it believes are necessary or appropriate. If Administrator does not respond within such thirty (30) day period, Administrator shall be deemed to have no objection to such proposed revised Annex IX (*Performance Metrics*) being submitted by ManagementCo to PREB. The Parties agree that, within thirty (30) days following receipt of Administrator's comments, if any, or the end of Administrator's review period described in the immediately preceding sentence, if Administrator has no comments, Operator shall submit for PREB's review the proposed revised Annex IX (*Performance Metrics*), incorporating or rejecting any of the modifications or changes suggested by Administrator, with an explanation of any of Administrator's comments, as ManagementCo shall reasonably deem appropriate in its sole discretion. PREB shall review, and approve, deny or propose modifications to, such proposed revised Annex IX (*Performance Metrics*) in accordance

¹⁰ See In re: Request for Certification LUMA Energy, LLC, Case No. NEPR-CT-2020-0008.

¹¹ See In re: Request for Certification LUMA Energy ServCo, LLC, Case No. NEPR-CT-2020-0007.

¹² The execution copy of the OMA is available at <https://aafaf.prr.gov/p3/wp-content/uploads/2020/06/executed-consolidated-om-agreement-td.pdf>



with Applicable Law. ManagementCo shall have to respond promptly to any changes or modifications from PREB to the proposed revised Annex IX (*Performance Metrics*) and submit any updates to the proposed revised Annex IX (*Performance Metrics*) to PREB for its approval. If PREB does not respond within ninety (90) days after receipt of the proposed revised Annex IX (*Performance Metrics*) or any update thereto, ManagementCo may proceed for purposes of this Agreement as if PREB had approved such proposed revised Annex IX (*Performance Metrics*). The illustrative Performance Metrics, as identified in Annex IX (*Performance Metrics*) shall be revised and replaced on, or before, the Service Commencement Date.¹³

It is important to clarify that, as expressed in the Energy Bureau's Resolution and Order of June 17, 2020 under Case No. NEPR-AP-2020-0001, neither the time limitations in the foregoing provision regarding the Energy Bureau's review and approval of the Performance Metrics nor the content of Annex IX are binding to the Energy Bureau.¹⁴

As such, and pursuant to the provisions of the December 23 Resolution, the Energy Bureau initiates the instant adjudicative proceeding to evaluate and establish the performance targets and PIMs to be applicable to LUMA. With this initial Resolution and Order, the Energy Bureau publishes the principles that will guide LUMA in preparing its request for the establishment of PIMs. As expressed below, the Energy Bureau will hold a pre-filing technical conference to clarify any questions LUMA might have regarding these principles and other related matters. As the proceeding progresses, the Energy Bureau will publish the procedural calendar, which will include the timeline to submit requests for intervention and the manner in which the general public may participate.

The request for the establishment of PIMs required under Section 4.2(f) of the OMA shall be aligned with principles beneficial to the public interest, including but not limited to, the following:

1. ***Go Above and Beyond*** - Targets or Levels for which an incentive may be proposed, shall be subject to and dependent on performance above and beyond the minimum required compliance levels.
2. ***Further the Earlier Compliance with Public Policy*** - Targets or Levels for which an incentive may be proposed, shall encompass the accelerated implementation of public policy such as the renewable energy portfolio, demand response, energy efficiency and other similar mandates.

¹³ See Section 4.2 and Annex IX of the OMA.

¹⁴ See Resolution and Order, Case No. NEPR-AP-2020-0002, In re: Certificate of Energy Compliance, June 17, 2020.



3. **Further Efficiencies and Savings** – As applicable, Targets or Levels for which an incentive may be proposed, shall pursue the highest level of efficiencies and savings.
4. **Impact areas with significant performance issues** - Targets or Levels for which an incentive may be proposed, shall positively impact or address areas of unsatisfactory performance with a direct impact to the electric service user.
5. **Benefits for the Public Interest** - Targets or Levels for which an incentive may be proposed, shall result in a clear benefit for the public interest and the ratepayers.
6. **Incentives Reward Difficult Tasks** - Targets or Levels for which an incentive may be proposed, shall be tied to difficult tasks, and not to easy to fix areas.

V. Conclusion


In light of the foregoing, the Energy Bureau **ORDERS** PREPA and LUMA to ensure that any filing to be presented before the Energy Bureau pursuant to Section 4.2 of the OMA: (i) takes into consideration the outcomes of the proceeding under Case NEPR-MI-2019-0007; and (ii) at a minimum, align its proposal to the principles enumerated in Part IV of this Resolution and Order.

In order to ensure that the above referenced filing is aligned with the principles enumerated in Part IV above, the Energy Bureau **ORDERS** PREPA and LUMA representatives to attend a Pre-Filing Technical Conference to be held remotely on **January 14, 2020 at 10:00 am**. The Technical Conference will be streamed via the Energy Bureau's YouTube Channel. During the Technical Conference, PREPA and LUMA may present its questions regarding the filing compliance requirement established herein and regarding the information and documents that should be included in the filing, in order to place the Energy Bureau in position to timely evaluate the same.


The Energy Bureau **WARNS** PREPA and LUMA that, noncompliance with any provision of this Resolution and Order, may result in the imposition fines under Act 57-2014 and the applicable Energy Bureau's regulations and/or any other appropriate administrative sanctions, as deemed appropriate by the Energy Bureau.




Be it notified and published.



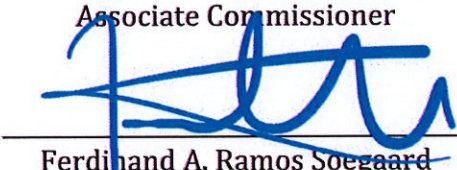
Edison Avilés Deliz
Chairman



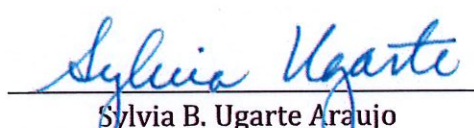
Ángel R. Rivera de la Cruz
Associate Commissioner



Lillian Mateo Santos
Associate Commissioner



Ferdinand A. Ramos Soegaard
Associate Commissioner



Sylvia B. Ugarte Araujo
Associate Commissioner

CERTIFICATION

I certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on December 23, 2020. I also certify that on this date a copy of this Resolution and Order was notified by electronic mail to: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, Legal@lumamc.com, wayne.stensby@lumamc.com, mario.hurtado@lumamc.com, y Ashley.engbloom@lumamc.com.

I also certify that today, December 23, 2020, I have proceeded with filing the Resolution and Order issued by the Puerto Rico Energy Bureau and I have sent a true and exact copy to:

Puerto Rico Electric Power Authority

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LUMA ENERGY, LLC

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San Juan, PR 00907

LUMA ENERGY SERVCO, LLC

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I sign this in San Juan, Puerto Rico, today December 23, 2020.





Sonia Seda Gaztambide
Interim Clerk