

**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**

On June 22, 2020, LUMA Energy, LLC<sup>1</sup> as ManagementCo, LUMA Energy ServCo, LLC<sup>2</sup> as ServCo (collectively, "LUMA"), the Puerto Rico Electric Power Authority ("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").

As a certified electric service company and the operator of the T&D System, LUMA is subject to compliance with Performance-Based Incentives Mechanisms. To that effect the OMA has provisions requiring LUMA to file for the approval of the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a request for the establishment of performance incentive mechanisms applicable to LUMA.<sup>3</sup> 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-2020-0002, 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.<sup>4</sup>

On December 23, 2020, pursuant to the provisions of Act 57-2014<sup>5</sup> and Regulation 9137<sup>6</sup>, the Energy Bureau issued a Resolution and Order opening an adjudicative proceeding under the instant case to evaluate and establish the performance targets and Performance

<sup>1</sup> See In re: Request for Certification LUMA Energy, LLC, Case No. NEPR-CT-2020-0008.

<sup>2</sup> See In re: Request for Certification LUMA Energy ServCo, LLC, Case No. NEPR-CT-2020-0007.

<sup>3</sup> See Section 4.2(f) and Annex I of the OMA.

<sup>4</sup> See Resolution and Order, Case No. NEPR-AP-2020-0002, In re: Certificate of Energy Compliance, June 17, 2020.

<sup>5</sup> Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended.

<sup>6</sup> See *Regulation for Performance Incentive Mechanisms*, Regulation No. 9137, December 2, 2019.



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Incentive Mechanisms (“PIMs”) to be applicable to LUMA (“December 23 Resolution”).<sup>7</sup> The December 23 Resolution states the principles that shall guide LUMA in the preparation of its request for the establishment of PIMs.<sup>8</sup> The Energy Bureau ordered 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 foregoing principles.

Finally, in order to ensure that the referenced filing is aligned with the principles enumerated in Part IV of the December 23 Resolution, the Energy Bureau ordered PREPA and LUMA representatives to attend a Pre-Filing Technical Conference to be held remotely on January 14, 2021 at 10:00 am.<sup>9</sup> It is important to note that, aligned with the expected transparency of the Energy Bureau’s proceedings and the Energy Bureau’s efforts to maintain the public abreast of its proceedings, the Technical Conference held on January 14, 2021 was streamed live via the Energy Bureau’s YouTube Channel. Furthermore, the event was publicized via the Energy Bureau’s Alert System on January 9, 2021<sup>10</sup> and a copy of the Technical Conference’s recording is available in the docket and in the Energy Bureau’s YouTube Channel.<sup>11</sup>

As expressly and specifically stated in the December 23 Resolution, 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.** This clearly means that once LUMA files its request, the Energy Bureau will issue a resolution and order establishing the procedural calendar, which in the case at hand will include the filing of requests for intervention, public hearings, etc.<sup>12</sup>

Also, on December 23, 2020, the Energy Bureau issued a Resolution and Order under existing Case No. NEPR-MI-2019-0007 (“December 23 Order”), publishing the Energy Bureau’s analysis of: (i) a vast array of performance data filed by PREPA for more than a year and (ii) potentially comparable industry performance data. The purpose of the proceeding

<sup>7</sup> In Re: Performance Targets for Luma Energy Servco, LLC, Case No. NEPR-AP-2020-0025, Resolution and Order, December 23, 2020.

<sup>8</sup> *Id.* at Part IV, pp. 5-6.

<sup>9</sup> During the Technical Conference, LUMA made a brief presentation and asked questions regarding the filing compliance requirement established in the December 23 Resolution 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.

<sup>10</sup> See <https://bit.ly/2McprAc>.


<sup>11</sup> See <https://youtu.be/TenDw3EW6d8>.

<sup>12</sup> Since the instant case is an adjudicative proceeding, and with the objective of avoiding confusions as to who is a party to the proceeding, the notification group of the December 23 Resolution only included LUMA and PREPA representatives. Notwithstanding the foregoing, the notification group will be modified, as applicable, to include any parties to whom the Energy Bureau grants intervenor status pursuant to applicable provisions.





under Case No. NEPR-MI-2019-0007 is to establish the current performance of PREPA's electric system (i.e., baselines) and the minimum required performance levels (i.e., benchmarks).<sup>13</sup> In the December 23 Order, the Energy Bureau established a procedural calendar ensuring transparency of the proceeding<sup>14</sup> and fostering ample public participation:



<u>DATE</u>	<u>EVENT</u>
January 19, 2021	Technical Conference for the presentation by the Energy Bureau of the data reported by PREPA regarding its performance
January 29, 2021	Filing of comments by PREPA, LUMA, the general public and stakeholders
February 10, 2021	Filing of replies to comments
February 17, 2021	Technical Conference to provide input regarding the filed comments
February 24, 2021	Filing of comments regarding the information presented during the February 17, 2021 Technical Conference

The foregoing procedural calendar clearly encourages, fosters and acknowledges ample and meaningful participation for stakeholders and the general public.<sup>15</sup>

On January 20, 2021, the Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico ("ICSE") filed a motion titled *Motion Requesting Intervention and Open Adjudicatory Process Concerning Performance Based Incentive Mechanism Targets* ("Motion"). In its Motion, ICSE alleges that "[w]hat these resolutions do is treat this process as a private process, not open, not transparent, not consistent with the mandates of Law 17 of 2019?".<sup>16</sup> Furthermore, ICSE alleges "[u]nder what theory of Law, a process to determine

<sup>13</sup> See In Re: The Performance of the Puerto Rico Electric Power Authority, Case No. NEPR-MI-2019-0007, Resolution and Order, December 23, 2020.

<sup>14</sup> Note that this is not an adjudicative procedure.

<sup>15</sup> It is important to note that since Case No. NEPR-MI-2019-0007 is not an adjudicative process, a group of over forty (40) interested persons and entities were included in the notification as a courtesy.

<sup>16</sup> See Motion Requesting Intervention and Open Adjudicatory Process Concerning Performance Based Incentive Mechanism Targets, January 20, 2021, ¶ 4.

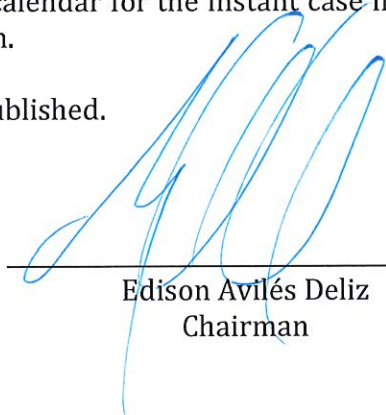


“performance-based incentive mechanisms targets on LUMA-PREPA relations, which encompasses each and every PREPA function, save production of energy, which specifically places on LUMA the responsibility for consumer relation, can be run as a private matter of LUMA and PREPA without consumer participation?”<sup>17</sup> ICSE also alleges that “[w]hat happens is that PREB, PREPA and LUMA decided, once again, to ignore Puerto Rico’s Law 17 Mandate for transparency and jointly decided, without any real meaningful public participation to consider LUMA’s performance case in the tradition of “closed rooms”.<sup>18</sup> Lastly, in the Motion ICSE discusses the merits of its request for intervention.<sup>19</sup>

These inflammatory and unsupported allegations come as an utter surprise to the Energy Bureau given that ICSE is a frequent and arguably experienced participant in our proceedings. As such, ICSE should know that in the instant case the **only event that has taken place was a Pre-Filing Technical Conference** that was streamed live for the benefit of the public. Furthermore, on the December 23 Resolution the Energy Bureau unambiguously and specifically stated that, as the proceeding progresses (*i.e.*, LUMA files its request), **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.** This evidently means that once LUMA files its request, the Energy Bureau will issue a resolution and order establishing the procedural calendar, which in the case at hand will include the filing of requests for intervention, public hearings, etc. The only reasonable explanation of ICSE’s allegations and request is that they inadvertently missed the Energy Bureau’s statements regarding the procedural calendar of the instant case.

In light of the foregoing, the Energy Bureau **DETERMINES** that ICSE’s allegations of lack of transparency are unfounded, mistaken and unwarranted and that at this moment ICSE’s request for intervention is premature. As with other stakeholders and interested groups, the Energy Bureau encourages ICSE to pursue participation in the instant case once LUMA has filed its request for the establishment of PIMs and the Energy Bureau has published the procedural calendar for the instant case indicating the timeline for the filing of requests for intervention.

Be it notified and published.

  
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Edison Avilés Deliz  
Chairman

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<sup>17</sup> *Id.* at ¶ 5.

<sup>18</sup> *Id.* at ¶ 7.

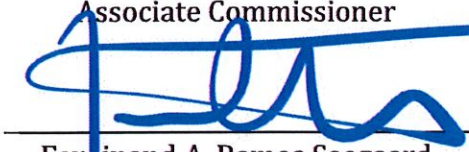
<sup>19</sup> *Id.* at pp. 3-5.







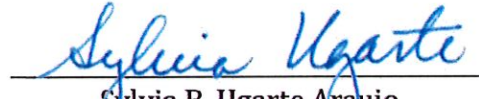
Ángel R. Rivera de la Cruz  
Associate Commissioner



Ferdinand A. Ramos Soegaard  
Associate Commissioner



Lillian Mateo Santos  
Associate Commissioner



Sylvia B. Ugarte Araujo  
Associate Commissioner

### CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on January 22, 2021. I also certify that on January 22, 2021 a copy of this Resolution and Order was notified by electronic mail to the following: kbolanos@diazvaz.law, jmarrero@diazvaz.law, astrid.rodriguez@prepa.com, Legal@lumamc.com, wayne.stensby@lumamc.com, Ashley.engbloom@lumamc.com, mmercado@mercado-echegaray-law.com, margarita.mercado@us.dlapip er.com, mario.hurtado@lumamc.com, and agraitfe@agraitlawpr.com. I also certify that today, January 22, 2021, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today January 22, 2021.

  
Sonia Seda Gaztambide  
Clerk