

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

IN RE: REVIEW OF LUMA'S TERMS OF SERVICE (LIABILITY WAIVER)

CASE NO.: NEPR-MI-2021-0007

SUBJECT: Determination on completeness and Preliminary Procedural Calendar.

RESOLUTION AND ORDER

I. Introduction

On June 22, 2020, the Puerto Rico Electric Power of Puerto Rico ("PREPA"), the Puerto Rico Public-Private Partnerships Authority ("P3A"), LUMA ENERGY, LLC¹ as ManagementCo, and LUMA ENERGY SERVCO, LLC² as ServCo (collectively, "LUMA") entered into an Operation and Maintenance Agreement ("OMA") under which LUMA will manage PREPA's transmission and distribution system ("T&D System").

During the Front-End Transition Period³, LUMA is required to prepare and submit proposed Initial Budgets⁴ for the Energy Bureau to "approve, deny or propose modifications to such proposed Initial Budgets in accordance with Applicable Law."⁵ In connection with the submission of the Initial Budgets to the Energy Bureau, the parties to the OMA agreed to include in the associated tariff or terms of service a waiver of LUMA's liability to customers or any person receiving power and electricity for any losses arising in any way out of or in connection with the operation of the T&D System and the provision of power and electricity.⁶

On February 24, 2021, LUMA filed a document titled *Petition for Approval of Initial Budgets and Related Terms of Service* ("February 24 Petition").⁷ As part of the February 24 Petition, LUMA filed, for the Energy Bureau's review and approval, (i) a document titled *Initial Budgets: First 3 Year of Recovery & Transformation, February 23, 2021* and identified as Exhibit 1 ("Initial Budgets"), and (ii) a document titled *Request for Approval of Terms of Service and Memorandum of Law in Support Thereof*, identified as Exhibit 2 ("Liability

¹ See In re: Request for Certification LUMA ENERGY, LLC, Case No. NEPR-CT-2020-0008.

² See In re: Request for Certification LUMA ENERGY SERVCO, LLC, Case No. NEPR-CT-2020-0007.

³ As defined in Section 1.1 of the OMA.

⁴ *Id.*

⁵ Section 4.2(e) of OMA.

⁶ Section 4.1(g) of the OMA.

⁷ See In Re: Review of Luma's Initial Budgets, Case No. NEPR-2021-MI-0004.



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Waiver”).⁸ In the February 24 Petition, LUMA asked the Energy Bureau to approve the Initial Budgets and the Liability Waiver.⁹

On April 5, 2021, the Energy Bureau issued a Resolution and Order (“April 5 Resolution”) in Case No. NEPR-MI-2021-0004 whereby it determined that it is more appropriate to evaluate the Liability Waiver request in a separate proceeding.¹⁰ On April 22, 2021, LUMA filed a document titled *Informative Motion and Request for Issuance of Procedural Calendar* (“April 22 Motion”).¹¹ In the April 22 Motion, LUMA requests that the Energy Bureau issues a procedural calendar to allow LUMA to present testimonial, expert and/or other evidence, in support of the proposed Liability Waiver.¹²

As anticipated, through this Resolution and Order, the Energy Bureau **OPENS** the instant case to evaluate the Liability Waiver. The Energy Bureau’s Clerk shall include as part of the administrative record of this case the February 24 Petition, including the document identified as Exhibit 2.¹³ Thus, the February 24 Petition together with its Exhibit 2 constitute the petition for the evaluation of the Liability Waiver (“Liability Waiver Petition”). The Energy Bureau’s Clerk shall also include the April 22 Motion as part of the administrative record of the instant case.

II. Determination on Completeness and Procedural Calendar

As with any other proceeding, the Energy Bureau reviewed the Liability Waiver Petition to make a completeness determination. Upon such review, the Energy Bureau found that the Liability Waiver Petition lacked an in-depth discussion of certain matters, supporting data, analysis, and assessments for the Energy Bureau to make an adequate evaluation. Therefore, the Energy Bureau **DETERMINES** that the Liability Waiver Petition is **incomplete**. The Energy Bureau **ORDERS** LUMA, to (i) provide the information identified in Attachment A of this Resolution and Order¹⁴ and if necessary, (ii) modify the Liability Waiver Petition.

⁸ *Id.*

⁹ See In Re: Review of Luma’s Initial Budgets, Case No. NEPR-MI-2021-0004, February 24 Petition, p. 18.

¹⁰ See In Re: Review of Luma’s Initial Budgets, Case No. NEPR-MI-2021-0004, Resolution and Order dated April 5, 2021, p. 2, footnote #6.

¹¹ See In Re: Review of Luma’s Initial Budgets, Case No. NEPR-MI-2021-0004, April 22 Motion.

¹² See In Re: Review of Luma’s Initial Budgets, Case No. NEPR-MI-2021-0004, April 22 Motion, pp. 4-5.

¹³ The Energy Bureau clarifies that Exhibit 1 of the February 24 Petition is not part of the record of the captioned case.

¹⁴ The Energy Bureau clarifies that the information required in this Resolution and Order is without prejudice to any additional information that the Energy Bureau may require in the future for its proper evaluation of the Liability Waiver.



Notwithstanding the foregoing, the Energy Bureau deems appropriate at this moment to establish the following preliminary Procedural Calendar for the instant case:

Date	Phase
May 10, 2021	LUMA shall provide the information identified in <u>Attachment A</u> of this Resolution and Order.
	Filing of a Summary of the the Liability Waiver Petition in the Spanish Language to be Available to the Public.
May 12, 2021	Determination on the completeness of the Liability Waiver Petition.
May 14, 2021	Filing of LUMA's Presentation for the Virtual Technical Conference.
May 18, 2021	Virtual Technical Conference ¹⁵ from 8:30 am to 12:00pm.
May 21, 2021	Filing of Any Revised and/or Additional Information Required by the Energy Bureau.
May 25, 2021	Virtual Public Hearing. ¹⁶
May 26, 2021	Filing of Comments by General Public Due.

[Handwritten signatures and initials in blue ink]

During the Virtual Technical Conference, LUMA shall present and discuss thoroughly the Liability Waiver. LUMA representatives and their consultants must be prepared to answer questions from the Energy Bureau, its staff, and consultants, regarding its presentation and all aspects of the proposed Liability Waiver. The Energy Bureau will timely provide additional information, via its website, regarding the Virtual Technical Conference format, the applicable rules of conduct, and the order of the proceedings.

The public will have the opportunity to present their comments and suggestions about the proposed Liability Waiver during the Virtual Public Hearing. Since the Virtual Public Hearing is designed to obtain comments from the public, LUMA or its employees, associates, witnesses or legal representation, and any other party to this proceeding will not be allowed to participate in the Virtual Public Hearing. Any person interested in presenting oral comments during the Virtual Public Hearing shall, **on or before Friday May 21, 2021 at 3:00 p.m.**, contact the Energy Bureau's Clerk at (787) 523-6262 or via email to secretaria@jrsp.pr.gov to request a turn and to obtain instructions and a link to access the Virtual Public Hearing. The Virtual Public Hearing will be streamed live via the Energy

¹⁵ Note that in order to prevent the spread of Covid-19, the foregoing Virtual Technical Conference will be held remotely via the *Microsoft Teams* platform from **8:30 am to 12:00 pm**.

¹⁶ Note that in order to prevent the spread of Covid-19, the foregoing Virtual Public Hearing will be held remotely via the *Microsoft Teams* platform from **9:00 am to 5:30 pm**.



Bureau's YouTube Channel.¹⁷ The Energy Bureau will timely provide additional information, via its website, regarding the Virtual Public Hearing format, the applicable rules of conduct, and the order of the proceedings.

The public may also submit written comments and suggestions to the Energy Bureau regarding the proposed Liability Waiver ("Written Public Comments"). The Written Public Comments to be filed with the Energy Bureau shall: (i) include in their title the following: "Public Comments on LUMA's Liability Waiver Request – Case No. NEPR-MI-2021-0004"; (ii) be addressed to the attention of Edison Avilés Deliz, Chairman; and (iii) be filed by electronic mail at: comentarios@jrsp.pr.gov; through the Energy Bureau's electronic filing tool at: <https://radicacion.energia.pr.gov/>; by postal mail addressed to the Puerto Rico Energy Bureau's Clerk's Office at World Plaza Building, 268 Muñoz Rivera Ave., Plaza Level Suite 202, San Juan, PR 00918-1925; or in person at the Energy Bureau's Clerk's Office, at the referenced address. The hours of operations of the Clerk's Office are Monday through Friday from 8:30 a.m. to 5:30 p.m., excluding holidays.

The Energy Bureau may modify the foregoing Procedural Calendar at its discretion.

III. Conclusion

The Energy Bureau **ORDERS** LUMA to provide the information identified in Attachment A of this Resolution and Order **on or before May 10, 2021, at 12:00 pm**. Furthermore, the Energy Bureau **ORDERS** LUMA (i) to the extent necessary, modify the Liability Waiver Petition accordingly; (ii) ensure that the relevant LUMA personnel and/or consultants to appear during the Technical Conference; and (iii) ensure that the relevant LUMA and/or consultants are duly prepared to answer any questions that the Energy Bureau, its staff, and consultants, may have regarding the Liability Waiver.

The Energy Bureau **ORDERS** PREPA to ensure (i) that the relevant PREPA personnel and/or consultants, including but not limited to the personnel from the Risk Management Directorate, appear during the Technical Conference; and (ii) that the relevant PREPA personnel and/or consultants are duly prepared to answer any questions that the Energy Bureau, its staff, and consultants, may have regarding the Liability Waiver.

The Energy Bureau **WARNS** LUMA and PREPA that, noncompliance with this Resolution and Order, may result in the imposition of fines pursuant to Act 57-2014¹⁸ and applicable Energy Bureau's regulations and/or any other appropriate administrative sanctions, as deemed appropriate by the Energy Bureau.

¹⁷ The Energy Bureau's YouTube channel may be accessed through the following link: <https://www.youtube.com/channel/UCxZYn-qt1k0Lu9TX37-11oA>.

¹⁸ Known as the *Puerto Rico Energy Transformation and RELIEF Act*, as amended.



Be it notified and published.


Edison Avilés Deliz
Chair


Lillian Mateo Santos
Associate Commissioner


Ferdinand A. Ramos Soegaard
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 May 4, 2021. Associate Commissioner Ángel R. Rivera de la Cruz concurred with a written opinion. I also certify that on May 4, 2021 a copy of this Resolution and Order was notified by electronic mail to the following: margarita.mercado@us.dlapiper.com, kbolanos@diazvaz.law and jmarrero@diazvaz.law. I also certify that today, May 4, 2021, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today May 4, 2021.


Sonia Seda Gaztambide
Clerk



Attachment A

1. Analyze and discuss any potential impact of the Liability Waiver on LUMA's proposed Initial Budgets, including without limitation, the impact on the cost of the Required Insurances. Provide all workpapers and supporting materials used by LUMA for the analysis and discussion.
2. Analyze and discuss the legal and procedural implications of the Liability Waiver on the 2017 Final Rate Order. Provide all workpapers and supporting materials used by LUMA for the analysis and discussion.
3. Analyze and discuss the impact of the Liability Waiver on LUMA's proposed insurance cost and coverage regarding the operation of the T&D System. Provide all workpapers and supporting materials used by LUMA for the analysis and discussion.
4. If available, provide any risk analysis related to the type(s) of liability(ies) that the proposed Liability Waiver seeks to waive.
5. Provide for the three (3) previous years data about the cost incurred by PREPA in connection with the liability that the proposed Liability Waiver seeks to waive. The requested cost data shall identify the amounts incurred directly by PREPA and the amounts incurred by PREPA's insurance companies. Provide all workpapers and supporting materials used by LUMA for the analysis and discussion.
6. Submit supporting material documenting LUMA's internal controls, policies, procedures or other measures that protect consumers from the liability that the proposed Liability Waiver seeks to waive.
7. Analyze and discuss the potential positive and negative considerations regarding limiting the Liability Waiver among PREPAs' customer classes. Provide all workpapers and supporting materials used by LUMA for the analysis and discussion.



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**SUBJECT: Determination on completeness
and Preliminary Procedural Calendar.**

Associate Commissioner Ángel R. Rivera de la Cruz, concurring

Today, the Puerto Rico Energy Bureau ("Energy Bureau") issued a Resolution Order through which initiated a proceeding to evaluate the *Request for Approval of Terms of Service and Memorandum of Law in Support Thereof*,¹ ("Liability Waiver") filed by LUMA ENERGY, LLC² as ManagementCo, and LUMA ENERGY SERVCO, LLC³ as ServCo (collectively, "LUMA") on February 24, 2021. The Energy Bureau also determined that the Liability Waiver Petition is incomplete and ordered LUMA to provide the information identified therein. The Energy Bureau also established a procedural calendar to evaluate LUMA's Liability Waiver Petition. Although I concur with today's determination, I must issue these additional comments regarding public participation.

* * *

Currently, the Puerto Rico Electric Power Authority ("PREPA") does not enjoy the type of waiver LUMA is requesting. As such, LUMA's Liability Waiver Petition represents a substantial shift in the rights of PREPA customers. Although I agree that a technical and public hearing should be included as part of the procedural calendar of this case, based on the impact LUMA's Liability Waiver Petition will have on PREPA customers, I would have allowed interested parties to file petitions to intervene. As such, I would have adjusted the procedural calendar to provide an appropriate timeframe for the evaluation of such petitions and the evaluation of LUMA's Liability Waiver Petition.


Ángel R. Rivera de la Cruz
Associate Commissioner



In San Juan, Puerto Rico, on May 4, 2021.

¹ *Petition for Approval of Initial Budgets and Related Terms of Service*, Exhibit 2, February 24, 2021.

² See In re: Request for Certification LUMA ENERGY, LLC, Case No. NEPR-CT-2020-0008.

³ See In re: Request for Certification LUMA ENERGY SERVCO, LLC, Case No. NEPR-CT-2020-0007.