

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

NEPR

Received:

Jul 15, 2021

5:18 PM

IN RE: PERFORMANCE TARGETS FOR
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

SUBJECT: JOINT PETITION FOR
INTERVENTION

JOINT PETITION FOR INTERVENTION

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW, Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc.
- Enlace Latino de Acción Climática, Alianza Comunitaria Ambientalista del Sureste,
Inc., Coalición de Organizaciones Anti-Incineración, Inc., Amigos del Río Guaynabo,
Inc., CAMBIO, Sierra Club and its Puerto Rico chapter, and Unión de Trabajadores
de la Industria Eléctrica y Riego (collectively, "Petitioners"), respectfully petitions
this Honorable Bureau for leave to intervene in this proceeding, in accordance with
the Bureau's July 2nd Resolution and Order.

TABLE OF CONTENTS

I. BACKGROUND..... 3

II. PETITION TO INTERVENE 6

III. ARGUMENT: The Petition to Intervene complies with all applicable requirements and should be granted. 11

 A. Petitioners have legitimate interest in this proceeding that would set penalties and incentives for LUMA’s performance..... 11

 B. The Petitioners meet all seven factors for intervention..... 12

 i. Petitioners’ interests may be adversely affected by penalties and incentives set by this proceeding. 13

 ii. There are no other legal means for the Petitioners to adequately protect their interests. 14

 iii. The Petitioners interests are not already adequately represented by the parties to this proceeding. 14

 iv. The Petitioners’ participation is reasonably likely to help prepare a more complete record in this proceeding. 14

 v. The Petitioners’ participation will not excessively extend or delay the proceeding. 15

 vi. The Petitioners represent other groups or entities in the community..... 15

 vii. The Petitioners can contribute information, expertise, specialized knowledge and technical advice which is otherwise not available in the procedure..... 15

IV. CONCLUSION..... 16

I. BACKGROUND

On December 23, 2020, the Energy Bureau commenced this adjudicative proceeding to establish Performance-Based Incentive Mechanism to be applicable to LUMA Energy.¹ On February 25, 2021, LUMA Energy submitted their proposed Performance Metric Targets.² The Energy Bureau established a procedural calendar, including the filing of requests for intervention.³ On July 2, 2021, the Bureau acknowledged Petitioners' Motion Requesting Access to Information and Opportunity to Informed Participation, Commencement of Investigations, Scheduling of Public Hearings and Other Remedies filed on June 30th, and noted that Petitioners "can, and have the opportunity to, file a request for intervention in the instant case, in accordance with applicable requirements."⁴

Section 4.2(f) of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("Contract") between Puerto Rico Electric Power Authority ("PREPA"), Puerto Rico Public-Private Partnerships Authority ("P3"), LUMA Energy, LLC and LUMA Energy ServCo, LLC ("LUMA Energy"), specifies the following:

¹ See Resolution and Order, *In Re: Performance Targets for LUMA Energy Servco, LLC.*, Docket No. NEPR-AP-2020-0025, December 23, 2020, <https://energia.pr.gov/wp-content/uploads/sites/7/2020/12/20201223-AP20200025-Resolution-and-Order.pdf>.

² See LUMA's Submittal and Request for Approval of Revised Annex IX to the OMA, *In Re: Performance Targets for LUMA Energy Servco, LLC.*, Docket No. NEPR-AP-2020-0025, February 25, 2021, <https://energia.pr.gov/wp-content/uploads/sites/7/2021/02/20210225-AP20200025-Request-for-Approval-of-Revised-Annex-IX-to-the-OMA-Performance-Metrics-Targets-2-files-merged.pdf>.

³ See Resolution and Order, *In Re: Performance Targets for LUMA Energy Servco, LLC.*, Docket No. NEPR-AP-2020-0025, June 4, 2021, <https://energia.pr.gov/wp-content/uploads/sites/7/2021/06/20210604-AP20200025-Resolution-and-Order-Calendar-Mod.pdf>.

⁴ See Resolution and Order, *In Re: Performance Targets for LUMA Energy Servco, LLC.*, Docket No. NEPR-AP-2020-0025, July 2, 2021, <https://energia.pr.gov/wp-content/uploads/sites/7/2021/07/20210702-AP20200025-Resolution-and-Order-Procedural-Calendar-Modification-1.pdf>

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, together 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, together 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 with Applicable Law. ManagementCo shall be required 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 accordingly on, or prior to, the Service Commencement Date.⁵

⁵See Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement, pp45-46, June 22, 2020, <https://www.p3.pr.gov/wp-content/uploads/2020/06/executed-consolidated-om-agreement-td.pdf>.

LUMA's performance metrics have not been approved as of this date, a month and a half after LUMA has assumed control of the electrical grid. The "Limited Waiver" recognizes LUMA's non-compliance with the requirement of Bureau's approval of the performance metrics.⁶ According to Section 4.5 of the Contract, the conditions prior to the service start date include performance metrics, among other documents. This lack of compliance and transparency is unacceptable when it comes to the provision of essential electric power service and historical amounts of public funds for the electric system that are at risk.

Sustainability is not defined anywhere in the LUMA Contract; PREB should provide a detailed definition for sustainability through this proceeding, and mechanisms that require LUMA to create a sustainable grid by maximizing deployment of distributed renewable + storage resources. Petitioners can elaborate on sustainable distributed resources if this request for intervention is granted. There is no metric to measure how LUMA would be achieving a more sustainable energy system or a requirement to achieve any sustainability goals. Therefore, according to this Contract, LUMA does not have explicit actions to follow or goals to achieve to comply with Law 267-2004. Art. 20 of Law 33 of May 22, 2019, Puerto Rico Climate Change Mitigation, Adaptation and Resilience Law (amending Law 82-2010), provides that the Renewable Energy Portfolio establishes a "required percentage [that] must be fulfilled". For its part, Article 6.3 u of Law 57-2014 (on Powers and

⁶See "Limited Waiver", section 1b, June 1st, 2021, <https://energia.pr.gov/wp-content/uploads/sites/7/2021/06/20210604-Motion-in-Compliance-with-Request-for-Information-of-June-2-2021-and-Submitting-Executed-Copy-of-Limited-Waiver-1.pdf>.

Duties of the Energy Bureau) (22 LPRA § 1054b) provides that the Bureau shall have the powers and duties, among others, of “[f] overseeing the compliance with any standard or compulsory goal in accordance with the Renewable Energy Portfolio imposed by means of legislation or regulations...” An efficient electric power system should try to reduce the losses of electric transmission and distribution, and this is achieved by locating the generation next to the demand points. Petitioners believe that there is no better alternative to achieve this objective than to promote solar photovoltaic generation on roofs.

The LUMA contract does include a set of indices to measure reliability performance in the Performance Metrics of Annex IX. This section contains five indices that will be used to measure the reliability of electric power service. LUMA will be paid a bonus of up to \$ 3,000,000 per year, if these ratios meet or exceed specific performance thresholds. How are these indices defined? How are they used? Are these ratios adequate to measure reliability performance? If the prescribed thresholds are met, will this ensure that the citizens of Puerto Rico do not suffer service interruptions such as those caused by Hurricane Maria? Are the reliability targets in the contract, or thresholds, demanding or lax? How do these thresholds compare to the values reported by the electrical industry in the US?

II. PETITION TO INTERVENE

The Petitioners now respectfully seek leave of the Energy Bureau to intervene in this Performance Targets proceeding.

The Petitioners comprise the following seven groups, the missions and membership of which will be substantially affected by the resources that are ultimately procured as a result of the instant proceeding:

1. Comité Diálogo Ambiental, Inc. (“CDA”) is a community environmental group composed of residents of the Municipality of Salinas and the Guayama Region.⁷ CDA promotes the general welfare of the communities it serves through education and citizen capacity building, focused on the adverse impacts of human activities on the ecologic balance of natural systems and the importance of restoring the environment. CDA works to promote conditions under which humans and the environment can exist in harmony to fulfill the economic, social, and other needs of present and future generations. The Energy Bureau granted CDA’s Petition to Intervene in various dockets, including the last two Integrated Resource Planning proceeding. Energy Bureau Dockets CEPR-AP-2015-0002 and CEPR-AP-2018-0001.
2. El Puente de Williamsburg, Inc. - Enlace Latino de Acción Climática (“El Puente – ELAC”) is a group whose members are Puerto Rico residents concerned about the impacts of climate change on the Island.⁸ El Puente - ELAC promotes multisector discussion on the predictable effects of climate change in Puerto Rico; disseminates studies and information on climate

⁷ Organized as a nonprofit corporation under the laws of the Commonwealth of Puerto Rico since 1997.

⁸ Organized as a nonprofit corporation since 1982 and authorized under the laws of the Commonwealth of Puerto Rico since 2015.

change scenarios; generates discussion of mitigation and adaptation alternatives and their viability for Puerto Rico, and determines optimal parameters for planning for climate change, sea level rise, food security, water availability, and the impacts of power generation on climate change. The Energy Bureau granted El Puente – ELAC’s Petition to Intervene in various dockets, including the last two Integrated Resource Planning proceeding. Energy Bureau Dockets CEPR-AP-2015-0002 and CEPR-AP-2018-0001.

3. Alianza Comunitaria Ambientalista del Sureste, Inc. (“ACASE”) is a non-profit environmental organization whose members are from Humacao, Yabucoa, Las Piedras, Caguas, and Patillas. ACASE was created in response to the disposal of coal ash in the Humacao landfill.⁹ ACASE raises awareness in the communities of Humacao and neighboring towns of the health impacts from coal combustion and coal ash. ACASE also offers talks and conferences on renewable energy, seed harvesting, and the public debt of Puerto Rico.
4. Coalición de Organizaciones Anti Incineración, Inc. (“COAI”) is a coalition of citizens and more than 35 organizations concerned about waste incinerators in Puerto Rico, especially the solid waste incinerator proposed

⁹ Created in 2015 and organized as a nonprofit corporation under the laws of the Commonwealth of Puerto Rico since 2019.

by Energy Answer-Arecibo, LLC, in Arecibo.¹⁰ COAI promotes clean energy and opposes the generation of energy with incineration.

5. Amigos del Río Guaynabo, Inc. (“ARG”) is an environmental and community organization created for the defense of the natural resources of Puerto Rico, especially water resources.¹¹
6. CAMBIO, Inc. (“CAMBIO”) provides services to the community, promotes and conducts research, and implements strategies on energy and other sustainability issues. CAMBIO contributes to the construction of a fairer society that has greater opportunities, capacities and resources.
7. Sierra Club Puerto Rico, Inc. (“Sierra Club PR”) is the local chapter of the biggest, oldest, and most influential environmental organization in the United States. Founded in 1892, the Sierra Club has more than three million members and followers, all inspired by the marvels of nature. Sierra Club’s mission is to explore, enjoy, and protect natural treasures. Sierra Club’s Puerto Rico chapter was founded in 2005. Since its beginning, the chapter has collaborated with different communities and community-based organizations to protect natural areas, promote public policies that protect the public health and environment, mobilize communities to resist pollution projects such as a proposed methane gas pipeline and waste incinerators, among other victories. After Hurricane Maria, the chapter has been helping

¹⁰ Organized as a nonprofit corporation under the laws of the Commonwealth of Puerto Rico since 2017.

¹¹ Organized as a nonprofit corporation under the laws of the Commonwealth of Puerto Rico since 2004.

develop sustainable and self-sufficient projects in communities around the island.

8. The Unión de Trabajadores de la Industria Eléctrica y Riego, (“UTIER” or the Union), is the largest of the four labor unions that represent the Puerto Rico Electric Power Authority (“PREPA”) workers. UTIER is represented in this proceeding by its president, Angel R. Figueroa Jaramillo. The fundamental objective of UTIER is to integrate the active and retired workers of the Puerto Rico Electric Power Authority into the same body; promote the incorporation into the Union of new bonafide members from other instrumentalities of the Commonwealth and other workers from private companies, municipalities and government agencies, and promote the organization, solidarity and unity of the labor and working class.

These organizations are active stakeholders on energy issues in Puerto Rico. Their members are concerned citizens that promote the development of renewable energy in Puerto Rico, and are impacted by pollution from fossil fuel power plants in Puerto Rico. Their members are also customers of PREPA, subject to PREPA’s billing for electric power service. For all of these reasons, these organizations and their members will be substantially affected by the economic, social, and environmental consequences of the decisions made in this docket.

The majority of the Petitioners’ members are laypersons that strongly prefer Spanish as the main language for the proceeding. The Petitioners will make every effort to provide summaries, in Spanish, of the core concepts of their presentations to

nontechnical audiences, using visual elements where appropriate. Petitioners request the Energy Bureau to take into account that reality and provide the information in Spanish as well and offer as much as possible the opportunity to conduct the proceeding in Spanish.

III. ARGUMENT: The Petition to Intervene complies with all applicable requirements and should be granted.

Puerto Rico law emphasizes “[t]ransparency and citizen participation in every process related to electric power service”. 22 L.P.R.A. §§ 1051(o), 1051a(hh). Consistent with the stated importance of public involvement, Puerto Rico law directs agencies to construe this statute “liberally” in order to “facilitate” public participation. 3 L.P.R.A. § 9645; *Comisión Ciudadanos v. G.P. Real Property*, 173 D.P.R. 998, 1011 (2008) (“Agencies are obliged to facilitate the participation of such citizens whose interests may be affected by the administrative action, to avoid applying [agency] expertise to information that does not reflect the real situation of said citizens.”) (translated from the original Spanish). The Petitioners meet the substantive and procedural requirements for intervention, especially considering the mandate on agencies to facilitate public participation; therefore, this Honorable Bureau must grant the Petition to Intervene.

A. Petitioners have legitimate interest in this proceeding that would set penalties and incentives for LUMA’s performance.

Any person with a “legitimate interest in an adjudicatory procedure before an agency” may seek to intervene in that proceeding through a “duly grounded application” to that agency. 3 L.P.R.A. § 9645. The Puerto Rico Supreme Court has

determined that a “legitimate interest” in an administrative proceeding embraces a “wide spectrum of possibilities” including “environmental, social, and economic interests.” *San Antonio Maritime v. P.R. Cement Co.*, 153 D.P.R. 374, 392-393 (2001) (translated from the original Spanish).

The Petitioners have several legitimate environmental, social, and economic interests in this docket. First, the Petitioners and their members have a significant interest in ensuring that PREPA provides safe, affordable, and disaster-resilient power to the people of Puerto Rico, as required by Law 57-2014 and Law 17-2019. Second, many of Petitioners’ members live and work close to the infrastructure and power plants that PREPA owns and LUMA now operates. These members will be exposed to contaminants from fossil fuel combustion. Finally, the Petitioners have an interest in the wider impacts on emissions of disaster-intensifying greenhouse gases and the pollution of Puerto Rico’s air, soil, and water. These environmental impacts will be imposed on the citizens of Puerto Rico for generations. The legitimate interests of Petitioners and their members merit full intervention in this proceeding.

B. The Petitioners meet all seven factors for intervention.

Where a party seeking intervention has demonstrated a legitimate interest, Act 38-2017 identifies seven factors the agency must consider when evaluating whether to grant a petition for intervention, including:

- (a) Whether the petitioner’s interests may be adversely affected by the adjudicatory procedure.
- (b) Whether there are no other legal means for the petitioner to adequately protect his interests.
- (c) Whether the petitioner’s interests are already adequately represented by the parties to the procedure.

- (d) Whether the petitioner's participation may help, within reason, to prepare a more complete record of the procedure.
- (e) Whether the petitioner's participation may extend or delay the procedure excessively.
- (f) Whether the petitioner represents or is the spokesperson of other groups or entities in the community. [and]
- (g) Whether the petitioner can contribute information, expertise, specialized knowledge or technical advice which is otherwise not available in the procedure.

3 L.P.R.A. § 9645. Act 38-2017 further directs the agency to “apply the above criteria liberally” when making its determination. *Id.* The Puerto Rico Supreme Court has held that this statute “obligate[s] [agencies] to facilitate the participation of such citizens whose interests may be affected by administrative action.” *Comisión Ciudadanos v. G.P. Real Property*, 173 D.P.R. 998, 1011 (2008) (translated from the original Spanish).

The factors for evaluating petitions for intervention in an adjudicative proceeding strongly support granting the petition, particularly considering the legislative, judicial, and regulatory mandates under Puerto Rico law to ensure public involvement in this proceeding.

- i. Petitioners' interests may be adversely affected by penalties and incentives set by this proceeding.*

Petitioners represent Puerto Rican citizens and communities who will be subject to the full weight of the environmental, social, and economic consequences of this proceeding. Any outcome which does not address the Petitioners' interests, testimony and arguments will have a harmful economic and environmental impact on the Petitioners, and on Puerto Rico.

ii. There are no other legal means for the Petitioners to adequately protect their interests.

Petitioners have no other legal means to fully protect their interests in the performance of the Puerto Rico electric grid, including through the ability to sponsor expert testimony, propound discovery, and cross examine witnesses from PREPA and LUMA, to ensure that these resources adequately protect the interests of their organizations and membership. Participating in this proceeding is the best means for Petitioners to protect their interests in assuring a transformation to an affordable, disaster-resilient grid powered entirely by renewable energy. This transformation is necessary to achieve energy independence, and is required by Law 17-2019.

iii. The Petitioners interests are not already adequately represented by the parties to this proceeding.

Petitioners have longstanding and unique interests on several relevant issues in this proceeding. Those interests are not adequately represented by any other party to this proceeding.

iv. The Petitioners' participation is reasonably likely to help prepare a more complete record in this proceeding.

Because Petitioners speak for numerous community and citizen groups, their full participation as intervenors will lead to a significantly better representation of public input in the final record. By providing an independent analysis, Petitioners will enrich the record and enhance this Bureau's capacity to approve performance metrics that fully comply with the policies of Laws 57-2014, 38-2017, and 17-2019, and the public interest.

- v. *The Petitioners' participation will not excessively extend or delay the proceeding.*

Petitioners have legal representation, are organized, and are prepared to proceed in compliance with all schedules and rulings made by the Energy Bureau. Petitioners will work with all parties to ensure an efficient process, and avoid duplicate of efforts, confusion or any delays.

- vi. *The Petitioners represent other groups or entities in the community.*

Petitioners represent a broad coalition of citizens, labor groups, and communities spanning Puerto Rico and are firmly committed to protecting the interests of the general public in this proceeding.

- vii. *The Petitioners can contribute information, expertise, specialized knowledge and technical advice which is otherwise not available in the procedure.*

Petitioners have been actively involved in energy and environmental issues in Puerto Rico for years, if not decades. Many of Petitioners' members live close to Puerto Rico's existing fossil fuel plants and infrastructure, and therefore can provide the Bureau with first-hand descriptions of the impacts of these plants. Petitioners will contribute information, expertise, knowledge and advice essential for the Bureau to evaluate LUMA's performance targets and overall performance.

Taken together, these seven factors strongly support intervention by the Petitioners.

IV. CONCLUSION

For the foregoing reasons, the Energy Bureau should permit intervention into this proceeding, in order to provide input on these critical issues.

RESPECTFULLY SUBMITTED this July 15, 2021, in San Juan, Puerto Rico.

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CERTIFICATE OF SERVICE

We hereby certify that, on July 15, 2021, we have filed this Motion to Intervene via the Energy Bureau's online filing system, and sent to the Puerto Rico Energy Bureau Clerk and legal counsel to: secretaria@energia.pr.gov; margarita.mercado@us.dlapiper.com; jmarrero@diazvaz.law; kbolanos@diazvaz.law; hrivera@jrsp.pr.gov; contratistas@jrsp.pr.gov; and agraitfe@agraitfe@agraitlaw.com.

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