

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

NEPR Received: Jul 22, 2021 11:08 PM

IN RE:

THE PERFORMANCE TARGETS FOR
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

**SUBJECT: Request to Amend Procedural
Calendar to Allow Discovery on Intervenor
Testimonies and Filing of Rebuttal Testimonies.**

**REQUEST TO AMEND PROCEDURAL CALENDAR TO AUTHORIZE DISCOVERY
ON INTERVENOR TESTIMONIES AND FILING OF REBUTTAL TESTIMONIES**

TO THE PUERTO RICO ENERGY BUREAU:

COME NOW, LUMA ENERGY, LLC as Management Co., and LUMA ENERGY SERVCO, LLC (collectively, LUMA), through the undersigned legal counsel and respectfully state and request the following:

1. This honorable Puerto Rico Energy Bureau (“Bureau”) initiated the captioned proceeding on December 23, 2020, through a Resolution and Order indicating that it would establish Performance Incentive Mechanisms (“PIMs”) applicable to LUMA (“December 23rd Performance Targets Order”).
2. On February 25, 2021, LUMA filed a Petition requesting that the Bureau approve the revised Annex IX to the OMA that includes LUMA’s proposed Performance Metrics Targets (“Request for Approval of a Revised Annex IX to the OMA”).
3. Per the current procedural calendar of July 2, 2021, as modified by a Resolution and Order issued on July 13, 2021, (“July 13th Procedural Calendar”), LUMA is set to file a Revised Request for Approval of a Revised Annex IX to the OMA by August 11, 2021; intervenors will conduct

discovery from August 20th through September 20th, 2021; the parties are set to file pre-filed testimonies by October 4, 2021; and an evidentiary hearing will be held from October 18th through October 19th, 2021. The subsequent schedule also provides for holding a public hearing, receipt of comments by the public, and filing of legal briefs and replies.

4. The July 13th Procedural Calendar does not specify the due date for LUMA to submit pre-filed testimonies. LUMA is aware, however, that in the first procedural calendar issued on April 8, 2021, the Energy Bureau required that LUMA submit pre-filed testimonies on the same date that it would file the Revised Request for Approval of a Revised Annex IX to the OMA.
5. For LUMA and the parties to have certainty regarding procedural requirements, LUMA respectfully requests that the Energy Bureau clarify the due date to submit the pre-filed testimonies of LUMA's witnesses.
6. Secondly, LUMA respectfully requests that the Energy Bureau amend the procedural calendar to:
 - (a) allow LUMA to conduct discovery on the written testimonies to be filed by intervenors on October 4, 2021; and
 - (b) authorize LUMA to file rebuttal written testimonies.
7. Currently, the Energy Bureau has authorized three entities to participate as intervenors: (a) the Puerto Rico Electric Power Authority ("PREPA"), *see* Resolution and Order of May 13, 2021; (b) the Independent Consumer Protection Office, *see* Resolution and Order of May 7, 2021; and (c) the Puerto Rico Institute for Competitiveness and Sustainable Economy, *see* Resolution and Order of May 26, 2021. The due date to file requests for intervention was July 15, 2021. *See* July 13th Procedural Calendar.¹

¹ A joint petition for intervention was filed on July 15, 2021.

8. Per the current procedural calendar intervenors would be allowed to conduct discovery not only on the Revised Request for Approval of a Revised Annex IX to the OMA, but also regarding LUMA's pre-filed testimonies (if LUMA filed written testimonies on or before August 11, 2021). However, because discovery is set to end on September 20, 2021, LUMA does not currently have the opportunity to conduct relevant discovery on the testimonies that intervenors will file on October 4, 2021; two weeks prior to the evidentiary hearing.
9. It must be noted that the intervenors are not required to file comments or any written submissions prior to October 4, 2021. Thus, the pre-filed testimonies are the only submissions whereby intervenors will inform their positions, opinions, and recommendations in this proceeding.
10. Without opportunity to conduct discovery on the subject-matter of the pre-filed testimonies, LUMA's ability to present and defend its position in support of the proposed Revised Request for Approval of a Revised Annex IX to the OMA would be materially limited. LUMA would only have the tool of cross-examination to inquire about the positions, recommendations, or opinions that intervenors present in their pre-filed testimonies. In turn, the ability to conduct cross-examination would be limited as LUMA would not have had opportunity to inquire about the basis of the testimonies nor request information and data used by intervenors to develop their positions, recommendations, and opinions. In short, LUMA would be in a procedural disadvantage.
11. Absent discovery, proceedings during the evidentiary hearing may be protracted as LUMA would have to use cross-examinations to pose questions on the data and supporting basis for the pre-filed testimonies and the need may arise to recall witnesses. The scheduled processes may thus be disrupted.

12. It is respectfully submitted that LUMA has not been able to identify a provision in the Regulation on Adjudicative, Notice of Non-Compliance, Rate Review and Investigation Proceedings, Regulation Number 8543 (“Regulation 8543”), Section VIII (establishing discovery procedures in adjudicative proceedings that apply to the “parties”), that precludes discovery on written testimonies filed by intervenors. LUMA appreciates that the Energy Bureau has discretion to establish the conduct of discovery. Given that intervenors have been authorized to conduct discovery on LUMA’s filing and pre-filed testimonies, LUMA respectfully requests that the Energy Bureau grant it a similar, opportune, and meaningful opportunity to conduct discovery on the written testimonies that intervenors will file by October 4, 2021.
13. Relatedly, the July 13th Procedural Calendar does not allow a timeframe to file rebuttal testimonies by LUMA. LUMA respectfully requests that the Energy Bureau authorize LUMA to submit pre-filed rebuttal testimonies prior to the evidentiary hearing. This will benefit proceedings as all the parties would have equal opportunity to file evidence and testimonies regarding the complete set of evidence to be presented at the hearing and the parties would be able to conduct cross-examinations on the full scope of the testimonies, thereby limiting the need to call rebuttal witnesses for live testimonies.
14. It is respectfully noted that in the adjudicative phase of proceedings for consideration and approval of the Integrated Resource Plan, Case No. CEPR-AP-2018-0001, the Energy Bureau issued a procedural calendar that afforded PREPA opportunity to conduct discovery on intervenors’ pre-filed testimonies and set a date for filing of rebuttal testimonies. *See* Resolution and Order of August 21, 2019, Case No. CEPR-AP-2018-0001 at page 5. LUMA respectfully

requests that the July 13th Procedural Calendar be amended in this proceeding to follow a process similar to that set forth in Case No. CEPR-AP-2018-0001.

15. This request is made in good faith, to ensure fairness and transparency to the parties in connection with discovery and presentation of evidence.
16. Opportunity to conduct discovery would place LUMA in similar procedural footing with intervenors and in position to fully and meaningfully prepare for the evidentiary hearing. As explained, the opportunity to file rebuttal testimonies would benefit the parties and enhance the proper course of proceedings in the evidentiary hearing.

WHEREFORE, LUMA respectfully requests this Honorable Bureau to **consider** the aforementioned and **amend** the procedural calendar to allow for discovery of intervenors' written testimonies and the filing by LUMA of rebuttal testimonies, as requested in this Motion and within the Bureau's discretion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 22nd day of July 2021.

I hereby certify that I filed this motion using the electronic filing system of this Energy Bureau and that I will send an electronic copy of this motion to intervenors: PREPA, through Joannely Marrero-Cruz, jmarrero@diazvaz.law; and Katiuska Bolaños-Lugo, kbolanos@diazvaz.law, Office of the Independent Consumer Protection Office, Lcda. Hannia Rivera Diaz, hrivera@jrsp.pr.gov, and the Puerto Rico Institute for Competitiveness and Sustainable Economy ("ICSE"), through Fernando Agrait, agraitfe@agrailawpr.com.

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