

**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: Completeness Determination of
LUMA's August 18, 2021 Revised Request.**

RESOLUTION AND ORDER

I. Introduction

On December 23, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("December 23 Resolution") through which it commenced the instant adjudicative proceeding to evaluate and establish performance incentive mechanisms ("PIMs") and corresponding performance targets to be applicable to LUMA¹. In the December 23 Resolution, the Energy Bureau established the following guiding principles to guide LUMA in preparing its request for the establishment of PIMs:²

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.
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 affect or address areas of unsatisfactory performance with a direct impact to the electric service user.

¹ LUMA Energy, LLC ("ManagementCo") and LUMA Energy ServCo, LLC ("ServCo") (collectively "LUMA").

² See In Re: Performance Targets for LUMA Energy Servco, LLC, Case No. NEPR-AP-2020-0025, Resolution and Order, December 23, 2020.



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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.

The Energy Bureau ordered LUMA to ensure that any filing to be presented before the Energy Bureau pursuant to Section 4.2 of the OMA³: (i) considers the outcomes of the proceeding under Case No. NEPR-MI-2019-0007;⁴ and (ii) at a minimum, align its proposal to the foregoing principles.

On February 25, 2021, LUMA filed before the Energy Bureau a document titled *Submittal and Request for Approval of Revised Annex IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (OMA)* ("February 25 Request").

On April 8, 2021, the Energy Bureau issued a Resolution and Order ("April 8 Resolution") through which, among other things, established an initial procedural calendar for the instant case. The Energy Bureau required LUMA to file a revised version of the February 25 Request consistent with the December 23 Resolution and the Energy Bureau's final determination under Case No. NEPR-MI-2019-0007.

After several procedural incidents and amendments to the procedural calendar of the instant case, the Energy Bureau required LUMA to file its revised version of the February 25 Request on or before August 18, 2021.⁵

On August 18, 2021, LUMA filed before the Energy Bureau a document titled *LUMA's Submittal of Request for Approval of Revised Annex IX to the OMA* ("August 18 Revised Request"). Through the August 18 Revised Request, LUMA requested the Energy Bureau to approve the revised Annex IX in Section 2.0 of Exhibit 1 to the August 18 Revised Request. On the same date, LUMA filed a document titled *Motion Submitting Pre-Filed Testimonies* ("Pre-Filed Testimonies Motion").

On August 20, 2021, LUMA filed before the Energy Bureau a document titled *Motion Submitting Redline Version of the Revised Request for Approval of the Revised Annex IX to the*

³ *Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement* dated June 22, 2020, by and among the Puerto Rico Electric Power Authority, the Puerto Rico Public-Private Partnerships Authority, LUMA Energy, LLC and LUMA Energy ServCo, LLC.

⁴ In Re: The Performance of the Puerto Rico Electric Power Authority, Case No. NEPR-MI-2019-0007.

⁵ See In Re: Performance Targets for LUMA Energy Servco, LLC, Case No. NEPR-AP-2020-0025- Resolution and Order, August 9, 2021 ("August 9 Resolution").



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OMA ("August 20 Motion"). LUMA submitted a redline version of the comparison between Annex IX to the OMA executed on June 22, 2020, and the Annex IX in the August 18 Revised Request.

On August 23, 2021, LUMA filed before the Energy Bureau a document titled *Motion Submitting Amended Exhibit to the Revised Request for Approval of the Revised Annex IX to the OMA* ("August 23 Motion"). Through the August 23 Motion, LUMA submitted an amended version of the Revised Annex IX and requested the Energy Bureau to substitute it for the Exhibit 1 in the August 18 Revised Request. LUMA states that the only difference between Exhibit 1 of the August 18 Revised Request and the one filed through the August 23 Motion is in Appendix B, which states the number of associated exhibits for each of LUMA's primary witnesses.⁶

II. The Revised Filing

Through the August 18 Revised Request, further amended by the August 23 Motion, LUMA included as Exhibit 1 a document titled *LUMA's Revised Performance Metrics Targets*. LUMA included a Revised Annex IX to the OMA for which it requested approval by the Energy Bureau. Also, LUMA requested for the Energy Bureau to set the performance metrics and targets to apply for an initial period of three years of operations, and allow periodic review of the performance baselines, metrics, and targets in accordance with the OMA and Regulation 9137.⁷

As part of the Pre-Filed Testimonies Motion, LUMA included direct testimony of the following LUMA employees:

1. Mr. Kalen Kostyk- Manager of Accounting, with five (5) associated exhibits;
2. Ms. Esther C. González- Vice President of Health, Safety and Environmental Quality, with one (1) associated exhibit;
3. Mr. Abner Gómez Cortés- Crisis Management Leader, with one (1) associated exhibit;
4. Mr. Juan Fonseca Rodríguez- Manager, Revenue Protection Department, with one (1) associated exhibit;
5. Mr. Don Cortez- Vice President – Utility Transformation, with two (2) associated exhibits;
6. Mr. Terry Tonsi- Director Lines East;
7. Mrs. Jessica Laird- Vice President of Customer Experience, with four (4) associated exhibits;

⁶ August 23 Motion, p. 2.

⁷ Regulation for Performance Incentive Mechanisms, Regulation No. 9137, December 2, 2019 ("Regulation 9137").



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8. Ms. Melanie J. Jeppesen- Director of Billing Services, with two (2) associated exhibits; and
9. Mr. Mario Hurtado- Chief Regulatory Officer.

As part of Mr. Juan Fonseca Rodríguez's pre-filed testimony, the witness expressed that one exhibit was attached to its testimony.⁸ However, the pre-filed testimony for Mr. Fonseca lists an Exhibit B titled *Billed Sales vs Collections M-8 2020-2021*.⁹ The Energy Bureau **ORDERS** LUMA to, **on or before August 27, 2021 at 12:00 p.m.**, clarify the exhibits included as part of Mr. Fonseca's direct testimony, and, if necessary, file any additional documents not previously submitted.

Through the Pre-Filed Testimonies Motion, LUMA stated that all pre-filed witnesses' testimonies have been duly notarized by public notaries in Puerto Rico, except for the pre-filed testimony of Mr. Kalen Kostyk, which has been notarized in Canada.¹⁰ LUMA stated that, due to time constraints and the complexity of the process in Canada for the notarization of documents, LUMA was not able to complete the authentication and legalization of Mr. Kostyk's pre-filed testimony in time for the deadline imposed by the Energy Bureau.¹¹ LUMA requested the Energy Bureau to accept Mr. Kostyk's pre-filed testimony notarized in Canada and allow LUMA to supplement the filing by submitting the required evidence of authentication and legalization once the process is completed.¹²

The Energy Bureau **ORDERS** LUMA to, **on or before September 7, 2021 at 12:00 p.m.**, supplement Mr. Kostyk's pre-filed testimony with the appropriate authentication and legalization. The Energy Bureau **WARNS** LUMA that, failure to comply with this order may result in Mr. Kostyk's pre-filed testimony being stricken from the record.

III. Determination on Completeness

Upon review of the documents related to the August 18 Revised Request, the Pre-Filed Testimonies Motion, the August 20 Motion, and the August 23 Motion (collectively, "Revised Filing"), the Energy Bureau **DETERMINES** that the information filed by LUMA **complies** with the minimum requirements established by the Energy Bureau to continue its evaluation as part of the instant case.

⁸ See Direct Testimony, Mr. Juan Fonseca, lines 11-13.

⁹ See Exhibit 1 - Pre-Filed Testimonies and Exhibits, Pre-Filed Testimonies Motion, pdf page 385.

¹⁰ Pre-Filed Testimonies Motion, p. 3.

¹¹ *Id.*

¹² *Id.*, p. 4.



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It is important to note that in the Revised Filing, LUMA introduced a number of performance targets for which a baseline was not established in Case No. NEPR-MI-2019-0007: (i) distribution line inspections¹³; (ii) transmission line inspections¹⁴; (iii) substation inspections¹⁵; (iv) abandonment rate¹⁶; (v) customer satisfaction¹⁷; (vi) capital budget (federal)¹⁸; (vii) capital budget (non-federal)¹⁹; (viii) overtime²⁰; (ix) major outage event performance metrics²¹. LUMA also requested the Energy Bureau's consideration to adjust the baseline values for the following metrics: (i) OSHA incidence rate; (ii) OSHA severity rate; and (iii) OSHA DART.

The Energy Bureau **EMPHASIZES** that, today's determination, *i.e.* that the information filed by LUMA complies with the minimum requirements to continue its evaluation as part of the instant case, should not be construed as an acceptance or approval of such proposal. Nor should it be construed as a determination that such proposal is consistent with the Energy Bureau's orders and directives contained in the May 21, 2021 Resolution and Order in Case No. NEPR-MI-2019-0007, as clarified by the July 2, 2021 Resolution in the same case, or with the provisions contained therein. Moreover, today's determination should not, and does not, create the expectation that such proposal will be approved as part of this proceeding.

The Energy Bureau **WARNS** LUMA that noncompliance with the Energy Bureau's orders or applicable legal requirements may carry the imposition on administrative fines of up to twenty-five thousand dollars (\$25,000.00) per day, per violation and/or other sanction that the Energy Bureau may deem appropriate.

Be it notified and published.

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¹³ See Direct Testimony of Mr. Don Cortez.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See Direct Testimony of Witness Mrs. Jessica Laird.

¹⁷ *Id.*

¹⁸ See Direct Testimony of Witness Mr. Kalen Kostyk. Note that the existing baselines include the metric Capital Expenses vs. Budget.

¹⁹ *Id.*

²⁰ See Direct Testimony of Mr. Kalen Kostyk.


²¹ See Direct Testimony of Witnesses Mssrs. Abner Gómez Cortés and Terry Tonsi.




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 hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on August 25, 2021. President Edison Avilés Deliz did not intervene. I also certify that on August 25, 2021 a copy of this Resolution and Order was notified by electronic mail to the following: margarita.mercado@us.dlapiper.com, jmarrero@diazvaz.law, kbolanos@diazvaz.law hrivera@jrsp.pr.gov, contratistas@jrsp.pr.gov; agraitfe@agraitlawpr.com; rstgo2@gmail.com, pedrosaade5@gmail.com, rolando@bufete-emmanuelli.com; notificaciones@bufete-emmanuelli.com; jessica@bufete-emmanuelli.com. I also certify that today, August 25 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 August 25, 2021.


Sonia Seda Gaztambide
Clerk

