

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

NEPR

Received:

Sep 2, 2021

5:03 PM

IN RE: PERFORMANCE METRICS
TARGETS FOR LUMA ENERGY SERVCO,
LLC

CASE NO. NEPR-AP-2020-0025

**SUBJECT: LUMA's Request for an
Extension to Answer and/or object to
LECO's First Discovery Request**

**MOTION REQUESTING A BRIEF EXTENSION FOR LUMA TO ANSWER
LECO'S FIRST DISCOVERY REQUEST**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME now **LUMA Energy, LLC**, and **LUMA Energy ServCo, LLC**, (jointly referred to as the "Operator" or "LUMA"), and respectfully state and request the following:

1. On April 8, 2021, this Honorable Puerto Rico Energy Bureau ("Energy Bureau") issued a Resolution and Order ("April 8 Resolution") through which it established the procedural calendar setting dates for filings in the instant case to evaluate the *Request for Approval of Revised Annex IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (OMA)*. Subsequent Resolutions and Orders amending the procedural calendar established in the April 8 Resolution were issued by this Energy Bureau on May 14, June 4, and July 2, 2021.

2. On July 15, 2021, the Puerto Rico Local Environmental and Civil Organizations ("LECO") filed before this Energy Bureau a *Joint Petition for Intervention*. Their request for intervention was granted by this Energy Bureau by Resolution issued on August 5, 2021.

3. On August 9, 2021, this Energy Bureau issued a Resolution (“August 9 Resolution”) in which it further amended the procedural calendar, setting the discovery period from August 27 to September 27, 2021.

4. On August 27, 2021, LECO served a *First Discovery Request* on LUMA (“LECO’s *First Discovery Request*”), requesting LUMA to forward its responses within the next twenty (20) days in accordance with Section 8.03(C) of Regulation No. 8545¹ of this Energy Bureau.

5. LECO’s *First Discovery Request* is comprised of thirteen interrogatories and one request for production of documents (eleven interrogatories (questions 3 through 13); two interrogatories that also request supporting documentation (questions 4 and 13 (a)); and one request for production of documents (question 2)). *See* LECO’s *First Discovery Request*.

6. On August 30, 2021, LUMA filed a *Motion Requesting the Energy Bureau to Allow LUMA to Answer and/or Object to LECO’s First Discovery Request in 20 Days* (“August 30 Motion”). In its August 30 Motion, LUMA requested this Energy Bureau to clarify the time frame to submit responses to LECO’s *First Discovery Request* given the different time frames provided under Section 8.03 (C) of Regulation No. 8543 for answering interrogatories (that is, twenty (20) days) and answering requests for production of documents (that is, ten (10) days) and to allow for an equal time frame of twenty (20) days to answer both types of requests. *See* September 16 Motion at pages 2-3. Accordingly, LUMA requested that this Energy Bureau allow LUMA to

¹ Energy Bureau’s Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings of December 18, 2014.

submit its responses or objections, if any, to LECO's *First Discovery Request* within twenty (20) days from the date it was served- that is, on or before September 16, 2021.

7. On August 31, 2021, the Energy Bureau issued a Resolution and Order (“August 31 Resolution”) denying LUMA’s August 30 Motion and clarifying that, pursuant to the April 8 Resolution, the time frame to respond to all information requests in the instant proceeding is ten (10) days. *See* August 31 Resolution at page 2. The Energy Bureau invoked its discretion over discovery timelines, to deny application of Section 8.03(C) of Regulation No. 8543, which states that the party served with an interrogatory shall provide a copy of the answers and objections, to the party seeking the interrogatory withing twenty (20) days of service. LUMA appreciates Energy Bureau may, in its discretion, extend or reduce this term and is aware that in a *footnote* in the April 8th Resolution, the Energy Bureau stated that information requests would be answered in ten days. However, that directive was not repeated in the resolutions and orders of May 14, 2021 and August 9, 2021. And the directive stated in the footnote of the April 8th Resolution, did not clearly and fairly state that Section 8.03 (C) of Regulation No. 8543, which is the only on-point regulation available for interrogatories issued by parties in adjudicative proceedings before the Energy Bureau, was superseded. Even LECO construed that the time to answer was twenty (20) days. Fairness and procedural due process guarantees are not fully satisfied where exceptions to applicable regulations are not clearly stated. To the contrary, public interests are safeguarded if regulated entity and parties to adjudicative proceedings are afforded fair and timely warning of the applicable procedural rules and of exceptions to those rules, as well as reasonable time to conduct discovery.

8. Discretion is a form of reasonableness applied to the adjudicator's discernment to reach a just conclusion. *See e.g., Banco Popular de PR v. Mun. de Aguadilla*, 144 DPR 651 657-58 (1997); *Pueblo v. Ortega Santiago*, 125 DPR 203, 211 (1990). Respectfully, LUMA submits that the determination to deny applicability of Section 8.03(C) of Regulation No. 8543 and to shorten the applicable twenty-day period, to ten days, is not justifiably tailored to guarantee a just and fair process. Importantly, as applied to LECO's *First Discovery Request*, the twenty-day period is reasonable and would not delay proceedings as LUMA's answer would be due September 16, 2021, well within the discovery deadline of September 27, 2021. The administrative record does not include any indication that the proper course of proceedings would be affected by applying procedural rules adopted in Regulation 8543 nor are material interests advanced by an abbreviated discovery calendar in this proceeding.

9. Based on the August 31 Order, the deadline to respond to both the interrogatories and the requests for production of documents in LECO's *First Discovery Request* is September 7, 2021.

10. LUMA respectfully submits that additional time is required for LUMA to respond to LECO's *First Discovery Request*. The subject matter covered by said request is technical and requires review and consideration by at least the nine witnesses that submitted pre-filed testimonies in support of LUMA's Request for Approval of Revised Annex IX to the OMA, as filed on August 18, 2021. It is time consuming to collect, organize and prepare the necessary documents or information in a comprehensive, responsive and comprehensible manner. The LUMA staff involved in the preparation of these responses/production of documents is simultaneously engaged

in operating the Transmission and Distribution System and is also involved in other proceedings before this honorable Energy Bureau during the time-period established to submit the required responses.

11. It bears noting that LUMA is currently actively participating in several dockets, including preparing for and participating in technical conferences on LUMA's Emergency Response Plan, Case No. NEPR-MI-2019-0006 (technical conference to be held on September 2, 2021), and NEPR-MI-2021-0014 (urgent technical conference convened on September 1, 2021 and scheduled for September 3, 2021, on maintenance a repairs of generation units used by PREPA); and preparation of submissions in compliance with orders issued by the Energy Bureau, *see e.g.*, NEPR-IN-2021-0002 (Investigation on June 10th Incident) (updated report and summary of July 30th report); NEPR-MI-2021-0002 (Ten Year Plan) (request for approvals of Scopes of Works submitted on August 30, 2021); NEPR-MI-2021-0001 (System Operation Principles) (updated Gantt Chart due September 5, 2021 and updated load forecasting procedures, amendments to System Operation Principles due September 13, 2021, compliance hearing scheduled for September 17, 2021 and filing of presentation for compliance hearing due on September 15, 2021); NEPR-MI-2019-0016 (filing of plan to manage interconnections and of information requested by the Energy Bureau, due September 13, 2021 and compliance hearing set for September 20, 2021); NEPR-MI-2020-0001 (filing of quarterly reconciliation of FCA and PPCA rider factors due September 14, 2021); and NEPR-MI-2020-0012 (filing of timeline for completion of Wind Study due September 15, 2021, technical conference scheduled for September 21, 2021 and presentation for technical conference due September 17, 2021). These pending

dockets involve important components of LUMA's operations and thus demand attention and consideration by LUMA and by several officers who are also called upon to address discovery requests in this proceeding.

12. LUMA remains committed to comply with the orders issued by the Energy Bureau. The intensity of the simultaneous orders and requests for compliance that LUMA is receiving, raises the question on the reasonableness of requiring a regulated party to comply with several orders and tasks simultaneously and with overlapping timeframes.

13. LUMA received LECO's *First Discovery Request* on Friday, August 20, 2021 at 4:34 pm. Thus, the ten-day period to answer LECO's *First Discovery Request*, effectively affords LUMA only six business days to prepare its answer, as the time-period spans two weekends and the September 6th Memorial Day Holiday. In these circumstances, LUMA is facing severe time constraints to responsibly address LECO's *First Discovery Request*. The allotted six business days to answer LECO's *First Discovery Request*, places LUMA in an unfair position detrimental to its interests in this proceeding and deprives LUMA of a fair process. Considering the foregoing, LUMA respectfully submits that it will need at least three additional business days from the deadline of September 6, 2021 to submit its answers to LECO's *First Discovery Request*.

14. This extension request is not intended to cause unnecessary delay and should not cause any inconvenience to the parties given that LECO expressly requested LUMA to forward its responses within twenty (20) days of and LUMA's responses (or objections, if any) would be issued within fifteen (15) days of service. In addition, LUMA's responses would be submitted

well before the end of discovery set for September 27, 2021- that is, seventeen (17) days before such date.

WHEREFORE, LUMA respectfully requests that the Energy Bureau, in its discretion grant LUMA an extension of three business days to submit its responses or objections, if any, to LECO's *First Discovery Request*- that is, on or before September 10, 2021.

RESPECTFULLY SUBMITTED.

We hereby certify that we filed this motion using the electronic filing system of this Energy Bureau and that I will send an electronic copy of this motion to the attorneys for PREPA, Joannely Marrero-Cruz, jmarrero@diazvaz.law; and Katuska Bolaños-Lugo, kbolanos@diazvaz.law, the Office of the Independent Consumer Protection Office, Hannia Rivera Diaz, hrivera@jrsp.pr.gov, and counsel for the Puerto Rico Institute for Competitiveness and Sustainable Economy ("ICSE"), Fernando Agrait, agraitfe@agraitlawpr.com, counsel for the Colegio de Ingenieros y Agrimensores de Puerto Rico ("CIAPR"), Rhonda Castillo, rhoncat@netscape.net, and counsels for 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 (jointly, Puerto Rico Local and Environmental Organizations), larroyo@earthjustice.org, rstgo2@gmail.com, notificaciones@bufete-emmanuelli.com, pedrosaade5@gmail.com, jessica@bufete-emmanuelli.com; rolando@bufete-emmanuelli.com.

In San Juan, Puerto Rico, this 2nd day of September 2021.



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