

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

NEPR

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

CASE NO. NEPR-AP-2020-0025

**SUBJECT: Request for Remedies on
Written Discovery.**

REQUEST FOR REMEDIES ON WRITTEN DISCOVERY

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, July 2, 2021, and August 8, 2021.

2. Per the current procedural calendar, written discovery begun on August 27, 2021 and is set to conclude on September 27, 2021. *See* Resolution and Order of August 8, 2021.

3. As of the filing of this Motion, LUMA has received six discovery requests; two issued by the Puerto Rico Local Environmental and Civil Organizations (“LECO”) and four issued by the Energy Bureau.

4. LECO's First Discovery Requests includes 13 questions that mostly include interrogatories and a few requests for documents, while LECO's Second Discovery Requests includes sixty-six (66) interrogatories. In total, LECO has issued seventy-nine (79) individual interrogatories or requests for documents to LUMA.

5. On the other hand, this Energy Bureau has issued four requirements for information to LUMA: (1) First Requirement of Information of August 31, 2021 with fifty-four (54) interrogatories or requests for documents, due September 10, 2021; (2) Second Requirement of Information of September 1, 2021 with forty-nine (49) interrogatories or requests for documents, due September 13, 2021; (3) Third Requirement of Information of September 3, 2021 with fifty-three (53) interrogatories or requests for documents, due September 13, 2021; and (4) Fourth Requirement of Information of September 7, 2021 with sixteen (16) interrogatories or requests for documents, due September 17, 2021

6. In sum, the six discovery requests that LUMA has received to date, require LUMA to answer two-hundred and fifty-one (251) individual interrogatories or requests for documents between September 10 and September 17, 2021. Several of the requests, in turn, include subparts.

7. LUMA's responses to LECO's First Discovery Request and the Energy Bureau's First Requirement for Information, spanning sixty-seven (67) individual interrogatories or requests for documents, are due Friday, September 10, 2021, while LUMA's responses to LECO's Second Discovery Request and to the Second and Third Requirements for Information issued by this Energy Bureau, spanning one hundred and sixty-eight (168) individual interrogatories or requests for documents, are due Monday, September 13, 2021.

8. The procedural calendar does not establish a deadline for the parties and the Energy Bureau to issue discovery requests, nor dispositions on the number of cumulative requests that may be issued. Potentially, LUMA could be exposed to answer identical or similar requests issued by different parties who could issue successive request even on September 27, 2021, when discovery is set to close.

9. Because the current procedural calendar provides that LUMA shall answer each request within ten natural days after each is issued, LUMA does not have the opportunity to evaluate all of the requests together to provide answers concurrently for those requests that involve similar subject-matters or request the same data or documentation. For example, LUMA has noticed that five of the six discovery requests include questions on the topic of Major Outage Events Performance Metrics. There is therefore a reasonable justification to allow permitting LUMA to consider and answer those requests in conjunction.

10. Regarding the number of discovery requests and of individual interrogatories or requests for documents that have been issued to date, it bears noting that not only has LUMA received six separate discovery requests that each trigger a period of ten calendar days to submit individual responses, but also that a considerable number of individual interrogatories or requests for documents have been issued to LUMA, to wit, two-hundred and fifty-one (251). Due to the broad scope of the current docket, LUMA is involving individuals across the organization to prepare responses. In reviewing the requests received to date, LUMA notes that there are similar or related requests and will result in responses relating to multiple other responses. To promote quality and consistent responses, and to ensure efficiency in preparation of responses, LUMA

submits that all responses should be provided on the same filing date, since it will be unable to provide responses efficiently across multiple dates.

11. LUMA understands that the Energy Bureau has discretion to issue requests for information within the discovery deadline. It is respectfully submitted, however, that LUMA is currently called upon to answer four separate requests by the Energy Bureau within ten natural days, which imposes a considerable burden on LUMA. LUMA is attending to these requests while attempting to meet other deadlines in multiple Energy Bureau dockets during the same time frame.¹

12. In the interests of procedural fairness and certainty and to streamline discovery requests that other intervenors or the Energy Bureau may issue forthwith, LUMA respectfully requests that the Energy Bureau set a cut-off date, within the current discovery deadline, for issuance to LUMA of discovery requests. LUMA further requests that the Energy Bureau set a uniform deadline for LUMA to answer all the discovery requests, including the four requests issued by the Energy Bureau that are mentioned in paragraph five of this Motion and LECO's

¹¹ During the past days, LUMA has participated in technical conferences on LUMA's Emergency Response Plan, Case No. NEPR-MI-2019-0006 (technical conference held on September 2, 2021), and NEPR-MI-2021-0014 (urgent technical conference held on September 3, 2021 on maintenance a repairs of generation units used by PREPA). Also, LUMA has and is working on several submissions in compliance with orders issued by the Energy Bureau, see e.g 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 filed on September 3, 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); 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); and NEPR-IN-2021-0002 (filing of final Monacillos Incident Report and summary of July 30th Incident Report).

Second Discovery Request, and those that may be issued in the coming days by the Energy Bureau or intervenors. LUMA suggests that it be granted ten business days from the suggested cut-off period for issuance of discovery requests, to submit its responses.

13. A uniform deadline to issue discovery requests to LUMA will allow intervenors and the Energy Bureau to evaluate the requests that have been issued by other parties to avoid repeating questions or requests on subject-matters that have been issued by other parties and/or the Energy Bureau and will allow the parties to ensure that they cover relevant topics that other parties have not included in their requests. This will also avoid the duplication of efforts that ensues if LUMA is called upon to answer repetitive or similar requests on different due dates.

14. Furthermore, a uniform date to answer discovery requests will protect LUMA's procedural rights as it would have the benefit of answering requests in a consistent manner. Given that at least nine witnesses have participated to date in providing testimonies and information, it would be efficient to allow those witnesses to review all the requests involving the subject-matters of their respective testimonies, and work on answers to all the requests simultaneously to promote quality and consistent responses.

15. Importantly, the discovery requests are technical in nature, require consideration of operational and historical data, and oftentimes involve calculations and explanations regarding business, contractual and public policies. Thus, the discovery requests involve complex tasks that go beyond clarifications of LUMA's filing. In these circumstances, procedural fairness and a meaningful discovery process decisively counsel in favor of setting uniform deadlines for issuance of discovery requests and for LUMA to answer the requests within a reasonable timeframe.

16. LUMA further proposes that intervenors and PREB be afforded ten days to review LUMA's responses and a deadline to request leave from the Energy Bureau to obtain clarifications. This will allow the parties and the Energy Bureau the opportunity to review LUMA's responses and justify the need for clarifications, if any are needed.

17. This request is filed considering the scope and breadth of the discovery requests and individual interrogatories or requests for documents that LUMA has received as of the date of this filing, given the contingency that LUMA may continue to receive additional discovery requests up until September 27, 2021. It bears noting that the Energy Bureau authorized participation in this proceeding of four intervenors (the Office of the Independent Consumer Protection Office ("OPIC"); the Puerto Rico Institute for Competitiveness and Sustainable Economy ("ICSE"); the Puerto Rico Electric Power Authority ("PREPA"); and LECO), and three of those intervenors (ICPO, ICSE and PREPA) have not yet issued discovery requests to LUMA. Thus, intervenors could issue tens or hundreds of additional requests within the discovery period which would elevate considerably the number of individual requests that LUMA may be called upon to answer in the coming days. More importantly, this request seeks to protect LUMA's procedural rights and to further procedural uniformity and fairness in discovery for the parties.

18. LUMA is committed to a transparent and fulsome discovery process. LUMA hereby requests fair and adequate opportunity to answer discovery requests in this proceeding.

19. Although LUMA is not currently raising a discovery dispute, it is informed that the undersigned counsel shared this Motion with counsels for the parties, in a good faith effort to

apprise them of the remedies requested herein that could work and alteration to the discovery schedule and to the timeframe to answer pending discovery requests.

WHEREFORE, LUMA respectfully requests that the Energy Bureau, in its discretion, **set** a uniform deadline within the current discovery period, for issuance of discovery requests to LUMA and **grant** LUMA ten business days after said deadline, to answer the four requests issued by the Energy Bureau that are mentioned in paragraph five of this Motion and LECO's Second Discovery Request, as well as to answer any additional discovery requests that may be issued by the Energy Bureau or intervenors within the uniform deadline for issuance of discovery requests. LUMA also requests that the Energy Bureau amend the procedural calendar in its discretion and issue any order that it deems proper to conduct discovery proceedings in light of this request.

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 Katiuska 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-emmanueli.com, pedrosaade5@gmail.com, jessica@bufete-emmanueli.com; rolando@bufete-emmanueli.com.

In San Juan, Puerto Rico, this 9th day of September 2021.



DLA Piper (Puerto Rico) LLC
500 Calle de la Tanca, Suite 401
San Juan, PR 00901-1969
Tel. 787-945-9107
Fax 939-697-6147

/s/ Margarita Mercado Echegaray
Margarita Mercado Echegaray
RUA NÚM. 16,266
margarita.mercado@us.dlapiper.com

/s/ Yahaira De la Rosa Algarín
Yahaira De la Rosa Algarín
RUA NÚM. 18,061
yahaira.delarosa@us.dlapiper.com