

**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: LUMA's Opposition to
LECO's Motion to Compel of October 7,
2021**

**LUMA'S OPPOSITION TO LECO'S MOTION TO COMPEL OF OCTOBER 7,
2021**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

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

INTRODUCTION

On October 7, 2021, following a meet and confer process manufactured to allow for scant discussion, the Local Environmental and Civil Organizations' ("LECO") filed a *Motion to Compel LUMA to Respond to LECO's Requests for Information* ("October 7th Motion to Compel"). LECO filed the October 7th Motion to Compel to improperly force LUMA into providing discovery on topics irrelevant to the subject matter of this proceeding and which will not lead to admissible evidence that can assist in resolving the topic relevant in this proceeding. LECO's October 7th Motion to Compel does not address issues that will impact the merits of this instant proceeding but instead seeks information and documents on matters that this Energy Bureau is already considering in other specific proceedings, such as Cases Nos. NEPR-MI-2019-0016 (Informes de

Progreso de Interconexión) and NEPR-MI-2019-0006 (Planes de Autoridad de Energía Eléctrica de Puerto Rico para Atender Emergencias).

LECO's motion advances three arguments, one of which is moot. LECO argues that LUMA must answer questions related to all performance areas within its reasonable control, improperly ignoring that the requests for information at issue within LECO's motion were already answered by LUMA. Also, LECO claims that LUMA must provide information related to its current performance. This, despite the fact that said data is not being considered to approve LUMA's Revised Performance Metrics Targets, as stated in LUMA's filing of September 24, 2021 and is data within the scope of the separate proceeding NEPR-MI-2019-007, where LECO has not filed comments on LUMA's filings. Finally, LECO claims that specific questions on the underlying discussions on the Emergency Response Plan ("ERP") should be answered solely because a witness references said document in his direct testimony. This, even though the ERP is being evaluated in another proceeding and conveniently ignoring that it did not avail itself of the opportunity provided by the Energy Bureau for the public and stakeholders to appear at a public hearing or file written comments, Case NEPR-MI-2019-0016.

For the reasons set forth below, LUMA contends that LECO's October 7th Motion to Compel must be denied. The Motion does not meet the requirements set forth by Regulation 8543, and it lacks factual or legal support for LECO's presupposed entitlement to the requested information and documents.

ARGUMENT

I. LECO's Motion to Compel Does Not Meet the Requirements Set Forth by Regulation 8543.

The Puerto Rico Energy Bureau Regulation No. 8543 on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings of December 18, 2014 (“Regulation 8543”), establishes the standards that shall govern adjudicative proceedings before this Energy Bureau. *See* Section 1.03, Purpose. Pursuant to the discovery provisions included in Section VIII of Regulation 8543, a party may serve written interrogatories to any other party. *See* Section 8.03(A), Production of Documents; Site Inspections. If the interrogatory is objected, the grounds for objecting must be presented in place of the answer. *See* Section 8.03(B)(1), Production of Documents; Site Inspections. A party serving an interrogatory may object to the answers on a motion to this Energy Bureau, which shall include a transcript *verbatim* of the question and answer concerned, as well as the grounds for objecting. *See* Section 8.03(F), Production of Documents; Site Inspections.

In the October 7th Motion to Compel, LECO did not comply with the aforementioned requirement. The Motion does not include a transcript *verbatim* of the interrogatories and responses subject to controversy. LECO merely cited some of LUMA’s responses and objections in various footnotes without including the relevant interrogatories. No transcript *verbatim* of the interrogatories and answers concerned were incorporated into the October 7th Motion to Compel. In these circumstances, LECO’s October 7th Motion to Compel LUMA does not conform with the procedural requirements of Regulation 8543 for this Energy Bureau to be able to entertain the request to compel the production of information.

Furthermore, under Regulation 8543, a party is allowed to notify another of a request to produce documents. *See* Section 8.04(A)(1), Production of Documents; Site Inspections. The party

responding to the request can object to the request by indicating the grounds for objection. *See* Section 8.04(C), Production of Documents; Site Inspections. However, within the discovery provisions of Regulation 8543 regarding the production of documents, Regulation 8543 does not envision the filing of a motion compelling production by the requesting party.

As mentioned above, LECO included several requests for the production of documents in its *Second Discovery Request*. LECO avers that this Energy Bureau should compel LUMA to produce documents related to LUMA's Emergency Response Plan. Specifically, those are requests nos. 16, 19-20, 24, 28, 36, 40, 42-44, 47-48, 50 and 55 of the *Second Discovery Request*. *See* Attachment 2 to the *Motion to Compel LUMA to Respond to LECO's Requests of Information*.

As a threshold issue, as stated above, Regulation 8543 does not contemplate as part of the discovery process, a motion by a party carrying out discovery to compel the production of documents in an adjudicative proceeding. Contrary to what is permitted for interrogatories under Regulation 8543, wherein parties can move to compel an answer, Regulation 8543 does not contain a similar provision for requests for the production of documents. Therefore, LUMA asserts that this Energy Bureau should strike LECO's motion to compel for failure to conform to the provisions of Regulation 8543.

As will be discussed in detail below, LUMA has solid legal arguments to object to the production of the documents requested. LECO, in turn, has no basis for requesting assistance from this Energy Bureau to compel the production of documents related to LUMA's Emergency Response Plan.

II. LUMA Answered LECO's First Discovery Request.

In the October 7th Motion to Compel, LECO alleges that LUMA refused to answer Questions 5(b) and 6 from the *First Discovery Request*. LECO improperly oversimplified to this Energy Bureau the scope of LUMA's objections and answers to Questions 5(b) and 6 from the *First Discovery Request*, limiting LECO's argument to that portion of LUMA's answers where LUMA stated that this proceeding does not involve performance or data after this Energy Bureau set the applicable baselines in the Resolution and Orders of May 21 and July 2, 2021, in Case No. NEPR-MI-2019-0007. LECO's allegation is incorrect, as discussed in detail below.

Question 5 of LECO's *First Discovery Request* stated the following:

Refer to the definition of Major Outage Event on p. 37.

a. Does this definition differ in any way from the definition of Major Outage Event contained within LUMA's Emergency Response Plan?

b. Have any of the outages that occurred since LUMA took over the transmission and distribution system, in June 2021, met the listed criteria?

See Attachment 1 to the Motion to Compel LUMA to Respond to LECO's Requests of Information.

LUMA's responded to Question 5 as follows:

a. The Emergency Response Plan ("ERP") does not define a Major Outage Event. The ERP references a Major Outage Event as defined in Annex IX (Performance Metrics) of the T&D OMA.

b. LUMA objects this request as it seeks information that falls beyond the scope of the subject matter of this proceeding inasmuch as it references performance on outages. As explained at page 8 of LUMA's Revised Performance Metrics Targets filing of August 18, 2021, LUMA's proposed Major Outage Event Performance Metrics only apply during Major Outage Events that are defined as:

an event as a result of which (i) at least two hundred and five thousand (205,000) T&D Customers are interrupted for more than 15 minutes or (ii) at any point in time during the event, there are one thousand five hundred or more ($\geq 1,500$) active outage events for the T&D System, which are tracked in the Outage Management

System (OMS). The major outage event is deemed ongoing so long as the interruptions/outages continue to remain above the stated cumulative amounts, in each case for a period of twenty-four hours or longer (≥ 24) and are caused by an act of God. If such an act of God is a storm, the storm must be designated as a named storm by the U.S. National Weather Service or a State of Emergency declared by the Government of Puerto Rico. The major outage event shall be deemed to have ended when the cumulative number of T&D customers remaining interrupted falls below ten thousand (10,000) for a continuous period of eight (8) hours.

LUMA objects to that portion of the request that seeks information related to outages that have occurred since LUMA took over the transmission and distribution system, in June 2021. This proceeding does not involve performance or data after the Energy Bureau set the applicable baselines in the Resolutions and Orders of May 21, 2021 and July 2, 2021, issued in Case No. NEPR-MI-2019-0007. Thus, the requested information on outages that have occurred after June 1, 2021, is not relevant to this proceeding. **Without waiving the foregoing objections, LUMA responds that there have been no Major Outage Events that meet the specified criteria since June 2021.**

See Attachment 3 to the Motion to Compel LUMA to Respond to LECO's Requests of Information.

(emphasis added).

It bears noting that LECO did not include Question 5(b) on the clarifications letter sent to LUMA on September 27, 2021. *See Attachment 5 to the Motion to Compel LUMA to Respond to LECO's Requests of Information.* The October 7th Motion to Compel is the first occasion LECO has objected to LUMA's response to Question 5(b). Notwithstanding, the aforementioned text of LUMA's response to Question 5(b) shows that LUMA answered the question. LECO asked, referring to the definition of Major Outage Events, if any of the outages that occurred since LUMA took over the transmission and distribution system in June 2021 met the listed criteria. Even though LUMA posed an objection to the question, it answered that there had not been Major Outage

Events that had met the specified criteria since June 2021. Therefore, LUMA indeed answered the question.

In regard to Question 6 of the *First Discovery Request*, LECO asked:

Refer to the Summary of Major Outage Event Performance Metrics in Table 24, p. 38. Please provide a detailed description of LUMA's performance, according to each of these metrics, for all outages that have occurred since LUMA took over the transmission and distribution system, in June 2021.

See Attachment 1 to the Motion to Compel LUMA to Respond to LECO's Requests of Information.

LUMA posited the following response:

As explained at page 8 of LUMA's Revised Performance Metrics Targets filing of August 18, 2021, LUMA's proposed Major Outage Event Performance Metrics only apply during Major Outage Events that are defined as:

an event as a result of which (i) at least two hundred and five thousand (205,000) T&D Customers are interrupted for more than 15 minutes or (ii) at any point in time during the event, there are one thousand five hundred or more ($\geq 1,500$) active outage events for the T&D System, which are tracked in the Outage Management System (OMS). The major outage event is deemed ongoing so long as the interruptions/outages continue to remain above the stated cumulative amounts, in each case for a period of twenty-four hours or longer (≥ 24) and are caused by an act of God. If such an act of God is a storm, the storm must be designated as a named storm by the U.S. National Weather Service or a State of Emergency declared by the Government of Puerto Rico. The major outage event shall be deemed to have ended when the cumulative number of T&D customers remaining interrupted falls below ten thousand (10,000) for a continuous period of eight (8) hours.

LUMA objects to that portion of the request that seeks information related to LUMA's performance for all outages that have occurred since LUMA took over the transmission and distribution system, in June 2021. This proceeding does not involve performance or data after the Energy Bureau set the applicable baselines in the Resolutions and Orders of May 21, 2021 and July 2, 2021, issued in Case No. NEPR-MI-2019-0007. Thus, the requested information on outages that have occurred after June 1, 2021, is not relevant to this proceeding.

Without waiving the foregoing objections, LUMA responds that the Major Outage Event Scorecard (MOE Scorecard) proposed by LUMA, will be used as a tool to specifically measure utility performance during each MOE. Since June 1, 2021, no MOE have taken place. Thus, currently there is no available data on performance during an MOE.

See Attachment 3 to the *Motion to Compel LUMA to Respond to LECO's Requests of Information* (emphasis added).

Similar to Question 5(b), in Question 6, LECO requested a description of LUMA's performance, according to the Major Outage Event Performance Metrics, for all outages that have occurred since LUMA took over the transmission and distribution system in June 2021. LUMA raised a couple of objections but ultimately answered that no events that fall into the definition of Major Outage Events had occurred since June 1, 2021. Accordingly, there was no available performance data of an event that could be classified as a Major Outage Event. Thus, it is evident that LUMA responded to LECO's question.

The purpose of a motion to compel is to ask the court to enforce a request for information if the opposing party continues to deny the discovery request. Such is not the case for LECO's *First Discovery Request*. LUMA was not evasive nor incomplete in its responses. In this regard, LECO's October 7th Motion to Compel as to Questions 5(b) and 6 of the *First Discovery Request* is meritless. LECO improperly summoned the Energy Bureau's intervention. LUMA respectfully requests this Energy Bureau to deny LECO's motion to compel as to Questions 5(b) and 6 of the *First Discovery Request*.

III. LECO's Requests on Interconnections are Irrelevant and Beyond the Scope of this Proceeding.

LECO's Second Discovery Request included eight interrogatories on interconnection procedures. The interrogatories made reference to a motion filed by LUMA in another proceeding, Case No. NEPR-MI-2019-0016 (Informes de Progreso de Interconexión) and the questions were based on said motion, not on evidence submitted within this adjudicative proceeding. *See Attachment 2 to the Motion to Compel LUMA to Respond to LECO's Requests of Information.* LUMA objected to those interrogatories because interconnections procedures are beyond the scope of the subject matter of this proceeding, and it is irrelevant to the controversy on LUMA's Revised Performance Metrics Targets Submission and Proposed Annex IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement filed on September 24, 2021. Moreover, the interconnections procedures are currently under consideration by this Energy Bureau in another proceeding, and information on the management of interconnections after June 1, 2021, is irrelevant to the setting of baselines and targets. *See Attachment 4 to the Motion to Compel LUMA to Respond to LECO's Requests of Information.*

As mentioned before, LECO notified a clarification letter in which it objected to LUMA's responses and objections. *See Attachment 5 to the Motion to Compel LUMA to Respond to LECO's Requests of Information.* In its clarifications letter, LECO alleged that interconnections are relevant due to Law 17-2019's requirements on rapid integration of renewable energy sources. *See Id.* LUMA responded that none of the proposed Performance Metrics Targets submitted by LUMA for the consideration of this Energy Bureau relate to said subject matter and that it is pursuant to LUMA's petition filed on February 25, 2021, that this Energy Bureau authorized discovery in this proceeding and LECO has not established the relevance of the requested information to LUMA's

Revised Performance Metrics Targets filing. *See* Attachment 6 to the *Motion to Compel LUMA to Respond to LECO's Requests of Information*.

In the October 7th Motion to Compel, LECO argues that Act No. 17-2019 and Regulation 9137 “set the scope of performance-based penalties and incentives to be considered in this proceeding: not LUMA’s Annex IX.” Since those norms allow this Energy Bureau to set performance-based incentives and penalties, LECO claims that this proceeding is “the ideal place to set metrics, baselines, and benchmarks” for progress towards improving LUMA’s performance on interconnections since Section 5.21(e) of Act No. 17-2019 requires it. Specifically, LECO asserts that LUMA must answer Questions 1-8 of the *Second Discovery Request*.

This Energy Bureau commenced this adjudicative proceeding to evaluate and establish performance-based incentive mechanisms for LUMA and corresponding performance targets. *See* Resolution and Order dated December 23, 2020 (“December 23rd Order”). Therein, this Energy Bureau established guiding principles to assist LUMA in preparing its request to develop performance incentive mechanisms. *Id.* The principles listed by this Energy Bureau required that targets for which an incentive may be proposed shall: (1) be subject to and dependent on performance above and beyond the minimum required compliance levels; (2) encompass the accelerated implementation of public policy; (3) pursue the highest level of efficiencies and savings; (4) positively affect or address areas of unsatisfactory performance with a direct impact on the electric service user; (5) result in a clear benefit for the public interest and the ratepayers; and (6) be tied to difficult tasks, and not to easy to fix areas. *Id.*

In compliance with the instruction set by this Energy Bureau, LUMA initially filed a *Submittal and Request for Approval of Revised Annex IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement* (“OMA”). LUMA requested that this Energy Bureau set the performance metrics and targets to apply for an initial three years of operations and allow periodic review of the performance baselines, metrics, and targets following the OMA and Regulation 9137. Later, LUMA filed a *Submittal of Request for Approval of Revised Annex IX to the OMA*, in which it submitted a revised version of Annex IX for approval of this Energy Bureau. LUMA also filed a *Motion Submitting Pre-Filed Testimonies*, whereas it tendered the direct testimonies and accompanying exhibits of nine (9) witnesses in support of the above-described request. This Energy Bureau determined that the information filed by LUMA complied with the minimum requirements established to continue the evaluation of this instant proceeding. *See* Resolution and Order dated August 25, 2021.

The preceding discussion clearly illustrates that this Energy Bureau initiated this proceeding to evaluate and establish performance-based incentive mechanisms for LUMA. The December 23rd Order does not state the possibility of instituting performance-based penalties nor does it require LUMA to propose a performance incentive on interconnections procedures. Moreover, this Energy Bureau addressed the December 23rd Order to LUMA and the Puerto Rico Electric Power Authority (“PREPA”). *See* December 23rd. The Energy Bureau further stated that as the proceeding progressed, it would publish a procedural calendar including a timeline to submit requests for intervention and how the general public may participate. *Id.* It is evident that this Energy Bureau only envisioned intervenors’ participation **after** the proposal of performance-based

incentives was submitted by LUMA and/or PREPA. Notably, the Energy Bureau did not provide that intervenors may propose performance-based incentives or penalties. As such, LECO's argumentation based on the idea that it can suggest penalties and incentives for interconnections is not supported by any order issued by the Energy Bureau nor by Regulation 8543. Its unilateral interpretation, if entertained favorably by the Energy Bureau, will breach LUMA's right to due process of law and will substantially alter the nature and scope of this proceeding without prior notice, two months after LUMA filed its Revised Performance Metrics Targets Filing on August 18, 2021.

On October 14, 2021, LUMA submitted supplemental responses to this Energy Bureau's *Fifth Requirement for Information* as ordered by a Resolution and Order of October 7, 2021. *See LUMA's Supplemental Responses to the Energy Bureau's Fifth Requirement for Information.* Therein, LUMA provided, with reservations, information related to the interconnection procedures. LECO can refer to the information provided by LUMA concerning the current status of the interconnection procedures.

The information sought by LECO refers specifically to the arguments made by LUMA in a pleading in another proceeding. For example, interrogatories 1 through 3 are related to a presentation LUMA made in Case No. NEPR-MI-2019-0016 on August 13, 2021. *See Attachment 2 to the Motion to Compel LUMA to Respond to LECO's Requests of Information.* Specifically, they request information on the modifications to expedite interconnections procedures, the technical review of interconnection cases, and the plan to reduce the number of interconnection cases in sequential order. *Id.* Those interrogatories do not consider LUMA's subsequent filings in

said proceeding, particularly the Action Plan to Improve Net Metering Process that was filed on September 13, 2021, Case No. NEPR-MI-2019-0016.

Furthermore, the interrogatories request details on the operational plan already discussed with this Energy Bureau in Case No. NEPR-MI-2019-0016 and that the Energy Bureau has accepted. Finally, the interrogatories request information that is beyond what even this Energy Bureau requested in Case NEPR-MI-2019-0016 and, ultimately are not even relevant to performance baselines or targets.

Interrogatories 5, 6, and 8 are about the Net Metering Portal and the availability of net-metering capable meters. *See Attachment 2 to the Motion to Compel LUMA to Respond to LECO's Requests of Information.* However, LECO has not demonstrated the material relevance of the information sought. Especially considering that this Energy Bureau did not include discovery requests on those topics and a performance metric on the net metering portal has not been proposed in this proceeding.

LUMA respectfully affirms that the interrogatories posed by LECO go beyond what this Energy Bureau itself requested and ordered on interconnections procedures in Case No. NEPR-MI-2019-0016, and the intervenor has not justified the relevance of the information sought. Absent a proposal of a particular performance metric on interconnections to be considered in this proceeding, interrogatories on the topic are outside the realm of permissible discovery. Unreasonably, LECO purports to compel LUMA to prepare and provide data that has not been considered by LUMA or its announced witnesses in submitting the Revised Performance Metrics Targets filing of September 24, 2021, which is the only request on the record capable of guiding

discovery at this juncture. This exposes LUMA to an undue burden not supported by Regulation 8543. The lack of notice on the possibility of intervenors proposing new performance metrics on interconnections deprives LUMA of basic procedural due process guarantees. Hence, LUMA requests this Energy Bureau sustain the objections stated to interrogatories 1-8 of LECO's Second Discovery Request.

IV. LECO's Requests on LUMA's Emergency Response Plan are Irrelevant and Beyond the Scope of this Proceeding. LECO has not Established the Relevance or Need for the Detailed Information Requested on LUMA's Emergency Response Plan.

The purpose of discovery is to clarify the issues in controversy. It is an auxiliary mechanism to the pleadings that facilitates gathering evidence and the search for truth, avoid surprises at trial, and perpetuates the evidence. *García Rivera et al. v. Enriquez*, 153 DPR 323, 333 (2001). In Puerto Rico, the scope of discovery is limited to any nonprivileged matter relevant to any party's claim or defense. *Ponce Adv. Med. v. Santiago González et al.*, 197 DPR 891, 898-899 (2017). **This means that the scope of discovery is not unlimited.** The concept of relevance has to be interpreted in a manner consonant with the guiding principle: to resolve disputes in a fair, expeditious, and economic manner. *General Electric v. Concessionaires, Inc.*, 118 DPR 32, 40 (1986).

Relevant evidence has been defined as (a) evidence that is admissible at trial; (b) facts that may serve to discover admissible evidence; (c) facts that may facilitate the conduct of the trial; (d) admissions that may limit the issues actually in dispute between the parties; (e) facts that may serve to impeach the credibility of witnesses; (f) facts that may be used to cross-examine the witnesses of the other party; (g) names of witnesses that the party being examined expects to use

at trial. *McNeil Healthcare, LLC v. Municipio de Las Piedras*, 206 DPR ____ (2021); 2021 TSPR 33.

In the *Second Discovery Request*, LECO included **forty-five questions** and requests for the production of documents (“Questions 16-61”) concerning LUMA’s Emergency Response Plan (“ERP”). The questions and requests on LUMA’s ERP addressed the considerations taken when drafting and implementing the plan itself. See Attachment 2 to the *Motion to Compel LUMA to Respond to LECO’s Requests of Information*. LUMA objected to Questions 16-61 of LECO’s Second Discovery Request because it sought information on LUMA’s ERP that fell beyond the scope of the subject matter of this proceeding. Also, the information is irrelevant to the controversy on LUMA’s Revised Performance Metrics Targets Submission and Proposed Annex IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement filed on September 24, 2021. Moreover, LUMA’s ERP is already under consideration by this Energy Bureau in another proceeding. See Attachment 4 to the *Motion to Compel LUMA to Respond to LECO’s Requests of Information*.

In its letter requesting clarifications, LECO alleged that since Mr. Abner Gómez, LUMA’s witness, relied upon LUMA’s ERP to prepare his testimony, discovery questions on that document must be answered. See Attachment 5 to the *Motion to Compel LUMA to Respond to LECO’s Requests of Information*. Thus, LECO claimed without specificity, that information on LUMA’s ERP is relevant to evaluate the metrics, baselines, and benchmarks related to the ERP. Also, it argues that it needs answers on the document to cross-examine Mr. Gómez at the hearing. See Attachment 5 to the *Motion to Compel LUMA to Respond to LECO’s Requests of Information*.

LUMA reiterated its objections and responded that at issue in this proceeding is LUMA's Performance Metrics Targets on Major Outage Event: Preparation Phase and whether the proposed metric target presented and supported by Mr. Abner Gómez's testimony warrants approval by this Energy Bureau. LUMA further stated that a collateral discovery that sidesteps procedures in Case No. NEPR-MI-2019-0006 is improper and imposes an undue burden on LUMA. *See Attachment 6 to the Motion to Compel LUMA to Respond to LECO's Requests of Information*

In his pre-filed direct testimony, Mr. Gómez indicated that he considered LUMA's ERP to develop the Preparation Phase performance metrics. The plan utilizes the National Incident Management System to guide a comprehensive approach to incident management across functional disciplines and at all levels. *See Pre-Filed Testimony of Mr. Abner Gómez dated August 18, 2021.* It should be noted that LUMA's ERP applies to LUMA personnel, staff, affiliate company employees, contractors, mutual aid resources, and any other personnel working at the direction or under the authority of LUMA. *See Motion Submitting LUMA's Emergency Response Plan at p. 10, filed in Case No. NEPR-MI-2019-0006 on May 28, 2021.* Thus, the Emergency Response Plan is an organizational protocol intended to be used by all within LUMA, including Mr. Gómez. Mr. Gómez referenced the ERP as an operating manual applicable in the organization in which he is employed. That mention does not provide an opportunity for extensive discovery on the ERP and other related matters. Particularly, because the Energy Bureau is considering the ERP in a separate proceeding where LECO could have participated in the public hearing of September 27, 2021, and had until September 30, 2021, to file public comments. LECO, however, did not partake in the public process in Case No. NEPR-MI-2019-0006. LECO cannot use this

proceeding to weigh a collateral attack on the public process conducted by this Energy Bureau to consider LUMA's ERP.

The questions as to which LECO seeks an order to compel on LUMA's ERP pertain to LUMA's underlying considerations when drafting the ERP. *See* Attachment 4 to the *Motion to Compel LUMA to Respond to LECO's Requests of Information* (Questions 16-61). Those questions may be appropriate for Case No. NEPR-MI-2019-0006 (Planes de la Autoridad de Energía Eléctrica para Atender Emergencias), where this Energy Bureau set dates for a public virtual hearing and the filing of comments from the general public. Although LECO admits the ERP is evaluated in a different proceeding, it hints that this Energy Bureau has not authorized it to intervene or submit discovery. Hence, it is plain that LECO's real purpose in discovering information on LUMA's ERP is to challenge the ERP rather than obtaining information on the proposed Preparation Phase performance metric targets.

Questions 16-61 request very detailed information on LUMA's ERP without LECO stating the material relevance of those requests to Mr. Gómez's pre-filed direct testimony on the Preparation Phase performance metrics. LECO also fails to indicate how the information would be relevant to determining performance targets. For instance, questions 16, 18, 19, and 20 request information and documents on scenario-specific plans, risk assessments performed by LUMA, risk mitigation, and why the ERP omits to discuss the Local Emergency Planning Committees. *See* Attachment 2 to the *Motion to Compel LUMA to Respond to LECO's Requests of Information*. None of those topics and documents are referenced in Mr. Gómez's pre-filed direct testimony, thereby lacking relevancy. Questions 21, 27, 29, 31-32, 34-35, 37-39, 45-46, and 49-58 request

clarifications on LUMA's ERP which are more suitable for Case No. NEPR-MI-2019-0006, than for this instant proceeding where the plan is not at issue. *Id.*

In turn, questions 30, 33, and 40 request details on the priority matrix system concerning outages, the Employee Staffing Roster, and actions and resources required in mountainous terrain to provide workers access to lines and other infrastructure. *See Attachment 2 to the Motion to Compel LUMA to Respond to LECO's Requests of Information.* LECO has not provided a discussion on the relevancy of the information sought in connection with the Preparation Phase performance metrics. LECO merely states that because those concepts are mentioned in LUMA's ERP, they are relevant to this proceeding. That is an insufficient argument as it would open the door to discovery on LUMA's ERP, turning this proceeding into a parallel case in which the ERP would also be discussed. As a result, discovery in this instant proceeding would become unmanageable and would never conclude.

Questions 24-25, 28, 36, 42-44, and 47-48 request documents this Energy Bureau has not even requested in Case No. NEPR-MI-2019-0006 nor in its discovery requests in this instant proceeding. *Id.* They include technical topics such as Damage Prediction Modeling, Field Labor Resource Predictions, Material Requirement Predictions, copies of the Mutual Aid Assistance Agreements, and the classification of emergency events. LECO, however, has not provided any justification for the relevance for that detailed information and documentation nor shown how or to what extent they are necessary to evaluate the performance metrics targets at issue. Similarly, LECO has not shown that those documents are relevant or necessary to consider Mr. Gómez's pre-

filed direct testimony in support of the Preparation Phase performance metric and cross-examine him.

LECO has not established how each of Questions 16-61 to its *Second Discovery Request* will aid in discovering admissible evidence for the evidentiary hearing or facts that may serve to discover admissible evidence. Information and documents on the underlying considerations of LUMA's ERP are of a minimum probative value for evaluating the Preparation Phase performance metrics. Further, LECO has not shown how each of the questions will assist in discovering facts that may serve to impeach the credibility of Mr. Gómez. The information sought cannot be used against a witness who has not been announced in this proceeding to discuss the development of the ERP. Finally, the information pursued will not help to discover the names of witnesses that LUMA expects to use at the evidentiary hearing since all of them have already been disclosed. Therefore, this Energy Bureau should sustain LUMA's objections to Questions 16-61 of LECO's Second Discovery Request.

WHEREFORE, LUMA respectfully requests that this Energy Bureau denies LECO's *Motion to Compel LUMA to Respond to LECO's Requests of Information*, filed on October 7, 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@agrailawpr.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

Climatica, Alianza Comunitaria Ambientalista del Sureste, Inc., Coalicion 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 18th day of October 2021.



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