

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

<b>NEPR</b>  <b>Received:</b>  Oct 19, 2021  11:34 AM
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IN RE: PERFORMANCE METRICS  
TARGETS FOR LUMA ENERGY SERVCO,  
LLC

**CASE NO. NEPR-AP-2020-0025**

**SUBJECT: Response to ICPO's and  
LECO's Requests to Modify the Procedural  
Calendar and Request to Modify  
Procedural Calendar**

**MOTION IN RESPONSE TO REQUESTS BY THE ICPO AND LECO TO  
MODIFY THE PROCEDURAL CALENDAR AND REQUEST TO MODIFY  
PROCEDURAL CALENDAR**

**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:

1. On April 8, 2021, this Honorable Puerto Rico Energy Bureau ("Energy Bureau") issued a Resolution and Order ("April 8 Resolution") establishing the procedural calendar 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)* ("LUMA's February 25 Request").

2. As part of the procedural calendar, this Energy Bureau established a discovery deadline. It also set forth that every intervenor would have the right to issue Requests for Information ("ROIs") regarding LUMA's February 25 Request, according to the provisions of Regulation No. 8543 on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings of December 18, 2014 ("Regulation 8543").

3. On May 14, 2021, the Energy Bureau issued a Resolution and Order amending the procedural calendar established in the April 8 Resolution. This Energy Bureau issued subsequent orders amending the procedural calendar on June 4, July 2, and August 9, 2021.

4. On September 27, 2021, this Energy Bureau issued a Resolution and Order to amend the procedural calendar. It set the deadlines and hearing dates as follows:

<b>DATE</b>	<b>PHASE</b>
August 27, 2021 — October 7, 2021	Discovery
October 21, 2021	Filing of Written Testimony by Intervenors
October 22, 2021 — November 12, 2021	Discovery on Intervenors Written Testimony
November 22, 2021	Rebuttal on Intervenors' Written Testimony Due
November 30 — December 1, 2021	Virtual Evidentiary Hearing
December 7 — 8, 2021	Virtual Public Hearings
December 15, 2021	Filing of Comments by General Public
January 11, 2022	Filing of Final Substantive and Legal Briefs by the Parties; Filing of Final Brief by Amicus Curiae
January 21, 2022	Filing of Replies to Final Briefs by the Parties

5. On October 12, 2021, the Independent Consumer Protection Office (“ICPO”) filed a motion styled *Moción en Solicitud de Modificación de Calendario Procesal*, whereas it expressed that multiple discovery issues made it difficult for intervenors to file written testimonies within the current deadline of October 21, 2021. For instance, ICPO stated that several responses

to discovery requests were pending because their due date was beyond the discovery cut-off date. Thus, ICPO requested that this Energy Bureau extend the deadline for intervenors to submit their written testimonies.

6. On October 15, 2021, the Local Environmental and Civil Organizations (“LECO”) filed a *Reply in Support for OIPC’s Motion in Request for Modification of the Procedural Calendar*. LECO claimed that maintaining the current procedural calendar will position intervenors at a grave disadvantage. For that reason, LECO requested that the deadline for intervenors to submit pre-filed testimonies be deferred by at least four (4) weeks. Also, LECO requested that the evidentiary hearing be rescheduled to January 13-14, 2022, because some of their attorneys are unavailable on the current dates set of the evidentiary hearings of November 30<sup>th</sup> and December 1<sup>st</sup>, 2021.

7. LUMA agrees that an amendment of the procedural calendar is warranted, but not just to extend the time for intervenors to submit pre-filed testimonies or to reschedule the evidentiary hearing as requested by LECO, but also to extend discovery on the intervenors’ pre-filed testimonies and the time to submit rebuttal testimonies, to grant LUMA equitable time commensurate to that granted to intervenors to issue discovery requests.

8. Per the current procedural calendar, LUMA has been granted three (3) weeks (October 22 through November 12, 2021) to conduct discovery. It is respectfully requested that said time frame is insufficient and unreasonably short. There is no principled reason to grant LUMA a discovery period that is at least one week shorter than the time frame granted to intervenors and the PREB which was originally set for four (4) weeks. Particularly, because

LUMA will need to issue discovery requests to four (4) parties (ICPO, LECO, PREPA and the Puerto Rico Institute for Competitiveness and Sustainable Economy “ICSE”) and the Energy Bureau.

9. Furthermore, LUMA requests one (1) month after the pre-filed testimonies are submitted, to issue discovery requests that may include requests to the four (4) intervenors that are participating in this proceeding and to the Energy Bureau. LUMA also needs time, within the discovery deadline, to issue follow up requests as needed. It should be noted that this Energy Bureau issued eight (8) requirements for information and LECO issued four (4) discovery requests. The requests issued by the Energy Bureau and LECO were sent to LUMA on different dates. Both the Energy Bureau and LECO were able to receive LUMA’s response to several of the requests to then issue successive and additional requests to LUMA. Thus, they benefited from a rolling discovery process that was scheduled for one month from August 27, 2021 until September 27, 2021 and that later was extended to October 7, 2021. This, in addition to the fact that intervenors had access to LUMA’s Revised Performance Metrics Targets filing since August 18, 2021, while LUMA will receive the pre-filed testimonies on the eve of the start of discovery. In these circumstances, it is reasonable to grant LUMA at least one month to conduct discovery after intervenors submit their pre-filed testimonies. This will place LUMA in similar footing as intervenors and the Energy Bureau regarding discovery.

10. LUMA also respectfully requests that if the Energy Bureau grants intervenors additional time to submit pre-filed testimonies, LUMA be granted an equivalent time after discovery on intervenor testimonies ends, to file rebuttal testimonies. As per the current calendar,

intervenors had two (2) weeks to submit pre-filed testimonies after discovery closed (from October 7 until October 21, 2021). Importantly, according to the pending motions and opened-ended requests filed by LECO and the ICPO, they may be granted additional time to submit pre-filed testimonies. However, per the current procedural calendar, LUMA has only been granted five (5) business days after discovery ends to submit rebuttal testimonies (from Friday, November 12, 2021 until Monday, November 22, 2021). Said abbreviated timeline to file rebuttal testimonies is unreasonably short and places LUMA in a material procedural disadvantage. It also does not consider the possibility that the time for intervenors to answer discovery requests may expire after the date for conclusion of discovery (currently November 12, 2021), and that LUMA may not have the responses to its discovery requests prior to or on the current due date for submitting rebuttal testimonies (November 22, 2021). In the alternative, LUMA requests at least three (3) weeks after discovery on intervenors' pre-filed testimonies ends, to submit rebuttal testimonies.

11. LUMA agrees that extending the schedule will entail rescheduling the date of the evidentiary hearings. LUMA joins the request by LECO to continue the hearing in January 2022. However, LUMA respectfully proposes that it be scheduled for the week of January 24, 2022. Several of LUMA's witnesses and counsels for LUMA will be taking a Christmas break and will not be back to work until potentially January 10<sup>th</sup> (given January 3<sup>rd</sup> and 6<sup>th</sup> are holidays). Thus, LUMA will need the weeks of January 11<sup>th</sup> and January 18<sup>th</sup> to prepare witnesses and the evidence to be submitted. It is respectfully submitted that these two weeks of January will also allow the parties to meet and confer on stipulations, among other procedural matters, which will allow for an efficient conduct of the evidentiary hearings.

12. Furthermore, LUMA understands that more than two (2) days may be needed to conduct the evidentiary hearing. As of today, there are nine (9) LUMA witnesses. Furthermore, the record does not currently reflect the number of witnesses that intervenors may announce in the coming weeks. Thus, the number of witnesses will surely increase upon conclusion of discovery. From prior experiences, testimonies may take a few hours per witness and at least a day or half a day may be needed for final arguments by the parties. Accordingly, LUMA understands that two (2) full days will not be sufficient to conduct the evidentiary hearing.

13. It bears noting that this proposal to amend the procedural calendar is based on the current scenario whereby additional or revised performance metrics targets have not been proposed nor submitted for consideration by the Energy Bureau. LUMA will require additional time to perform requisite analysis and calculations if additional or revised performance metrics targets are proposed or may be considered during the evidentiary hearings.

14. Finally, LUMA proposes that the Energy Bureau schedule a pre-hearing conference to discuss case management and calendaring options for the evidentiary hearing. LUMA proposes that this hearing be set for a date after discovery on testimonies filed by intervenors closes when the parties and the Energy Bureau will have a more accurate idea of the number of witnesses to be presented and thus, of how many days may be needed for the evidentiary hearing.

**WHEREFORE**, LUMA respectfully requests that the Energy Bureau **amend the procedural calendar** to allow one (1) month of discovery after the intervenors submit their pre-filed testimonies; and two (2) weeks after discovery ends to file rebuttal testimonies. LUMA also requests that the evidentiary hearing be rescheduled for the week of January 24, 2022, and that a

pre-hearing conference be set for a date within the discretion of the Energy Bureau after discovery on intervenor testimonies, concludes.

**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](mailto:jmarrero@diazvaz.law); and Katuska Bolaños-Lugo, [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law), the Office of the Independent Consumer Protection Office, Hannia Rivera Diaz, [hrivera@jrsp.pr.gov](mailto:hrivera@jrsp.pr.gov), and counsel for the Puerto Rico Institute for Competitiveness and Sustainable Economy (“ICSE”), Fernando Agrait, [agraitfe@agraitlawpr.com](mailto:agraitfe@agraitlawpr.com), counsel for the Colegio de Ingenieros y Agrimensores de Puerto Rico (“CIAPR”), Rhonda Castillo, [rhoncat@netscape.net](mailto: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](mailto:larroyo@earthjustice.org), [rstgo2@gmail.com](mailto:rstgo2@gmail.com), [notificaciones@bufete-emmanuelli.com](mailto:notificaciones@bufete-emmanuelli.com), [pedrosaade5@gmail.com](mailto:pedrosaade5@gmail.com), [jessica@bufete-emmanuelli.com](mailto:jessica@bufete-emmanuelli.com); [rolando@bufete-emmanuelli.com](mailto:rolando@bufete-emmanuelli.com).

In San Juan, Puerto Rico, this 19th day of October 2021.



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