

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

NEPR Received: Oct 11, 2021 6:15 PM
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IN RE: PERFORMANCE METRICS
TARGETS FOR LUMA ENERGY SERVCO,
LLC

CASE NO. NEPR-AP-2020-0025

**SUBJECT: LUMA's Notice of Intent to
File Response and Opposition to LECO's
Motion to Compel**

**LUMA'S NOTICE OF INTENT TO FILE
RESPONSE AND OPPOSITION TO LECO'S MOTION TO COMPEL**

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.

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

4. On August 27, 2021, LECO served a *First Discovery Request* on LUMA (“LECO’s First Discovery Request”). LECO’s *First Discovery Request* contained 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*.

5. On August 31, 2021, the Energy Bureau issued a Resolution and Order (“August 31 Resolution”) clarifying that, according to the April 8 Resolution, the time frame to respond to all information requests in the instant proceeding is ten (10) days.

6. On September 3, 2021, LECO served a *Second Discovery Request* on LUMA (“LECO’s Second Discovery Request”). This set of requests comprised fifty-three interrogatories and thirteen requests for the production of documents (forty-seven interrogatories (questions 1-8, 10-12, 15, 17-18, 21-23, 25-27, 29-35, 37-39, 41, 45-46, 49, 51-54, 56-62, and 64-65); six interrogatories that also request supporting documentation (questions 16, 19-20, 24, 50 and 55); and thirteen requests for production of documents (questions 9, 13-14, 28, 36, 40, 42-44, 47-48, 63 and 66)). *See* LECO’s *Second Discovery Request*.

7. On that same day, September 3, 2021, the Energy Bureau granted LUMA an extension until September 10, 2021, to provide its responses to LECO’s First Discovery Request. LUMA submitted its responses and objections to LECO’s First and Second Discovery Requests

on September 10 and 13, 2021, respectively. Along with the answers, LUMA also produced a series of documents.

8. On September 27, 2021, this Energy Bureau issued a Resolution and Order to amend the procedural calendar. It extended the discovery period to October 7, 2021.

9. On that same day, September 27, 2021, LECO notified some clarifications and responses to specific LUMA's objections to LECO's First and Second Discovery Requests ("LECO's Clarifications"). LECO claimed throughout six generic bullet points, that LUMA omitted answering requests nos. 2-3 and 6-7 of the First Discovery Request, and requests 1-8 and 16-61 of the Second Discovery Request. LECO requested that LUMA respond on or before October 1, 2021. Although LUMA, in good faith, requested LECO until October 7, 2021, to reply to said communication, LECO denied the request and reiterated the deadline of October 1st.

10. On October 1, 2021, LUMA notified its reply to LECO's Clarifications. In regard to LECO's First Discovery Request, LUMA stated it already had responded to requests nos. 2-3. As for requests nos. 6-7, LUMA contended that LECO's clarifications and responses concerning what appeared to be LUMA's answers, were confusing. However, LUMA restated its responses and provided some additional explanations. With respect to LECO's Second Discovery Requests nos. 1-8 and 16-61, on LUMA's Emergency Response Plan and interconnections of resources located in consumer's properties, LUMA affirmed its objections. It also asserted that any collateral discovery that sidesteps already established proceedings of the Energy Bureau was improper and imposed an undue burden upon LUMA. Those requests covered matters that are currently the

subject of separate proceedings before this Energy Bureau, under specific procedures established for exchanging information and documents.

11. On October 7, 2021, LECO filed a *Motion to Compel LUMA to Respond to LECO's Requests of Information* before this Energy Bureau. LECO alleges that LUMA must provide information related to its current performance, although said data is not being considered to approve the proposed performance metrics targets at issue. Also, LECO argues that LUMA must answer questions related to all performance areas within its reasonable control irrespective of whether there are no proposed metrics on those areas in the instant proceeding. Finally, it claims that specific questions on the underlying matters on the Emergency Response Plan should be answered even though the plan is being evaluated in another proceeding, NEPR-MI-2019-0006, solely because a witness considered the document for his direct testimony.

12. Regulation No. 8543 allows a party to whom a discovery request has been served, to seek a protective order. It does not authorize the moving party to file a motion to compel a party to produce documents nor provide a procedure for this Energy Bureau to rule upon such a motion. Therefore, LECO's *Motion to Compel LUMA to Respond to LECO's Requests of Information* runs afoul of the applicable norms in this proceeding on production of documents.

13. To the extent that LECO has treated its Discovery Requests as only involving interrogatories that are ruled by Section 8.03 of Regulation 8543, LECO did not comply with the requirements of Section 8.03 (F) which requires that “[a] party serving an interrogatory may object the answers on motion to the [Energy Bureau], which shall include a transcript, verbatim, of the question and answer concerned, as well as the grounds for objecting.” *See* Energy Bureau

Regulation 8543, Section 8.03 (F). LECO, however, did not include a transcript of each of the requests and of LUMA's answers, nor the grounds for its objections to each of the answers provided by LUMA. Instead, LECO included generalized objections, cited LUMA's answers in footnotes and appended the whole of the requests and answers as exhibits to the Motion to Compel, thereby placing the burden on this Energy Bureau to parse dozens of requests and answers included on one hundred and twenty-eight (128) pages, to pair them with LECO's arguments and objections in the body of the Motion to Compel.

14. LUMA submits this notice of intent to file an opposition to LECO's *Motion to Compel LUMA to Respond to LECO's Requests of Information*. LUMA requests that this Energy Bureau concede it ten (10) days to expire on October 18, 2021, to submit its opposition to LECO's motion to compel. A ten-day period is reasonable considering that such a timespan is the one set by this Energy Bureau to answer any written discovery request. This petition is not intended to cause unnecessary delay and should not cause any inconvenience to the parties.

WHEREFORE, LUMA respectfully requests that the Energy Bureau, in its discretion, grant LUMA ten days to expire on October 18, 2021, to file an opposition to LECO's *Motion to Compel LUMA to Respond to LECO's Requests of Information*.

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

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 11th day of October 2021.



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