

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

NEPR

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IN RE: PERFORMANCE TARGETS FOR
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

SUBJECT: REPLY TO LUMA'S
OPPOSITION TO LECO'S
OCTOBER 7TH MOTION TO
COMPEL

**REPLY TO LUMA'S OPPOSITION TO LECO'S OCTOBER 7TH MOTION TO
COMPEL**

TO THE PUERTO RICO ENERGY BUREAU:

COME NOW, Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc.
- Enlace Latino de Acción Climática, Inc., Alianza Comunitaria Ambientalista del Sureste, Inc., Coalición de Organizaciones Anti-Incineración, Inc., Amigos del Río Guaynabo, Inc., CAMBIO, and Sierra Club and its Puerto Rico chapter, and Unión de Trabajadores de la Industria Eléctrica y Riego (collectively, "LECO"), to respond to LUMA's opposition and reiterate our request that the Energy Bureau compel LUMA to respond to unanswered discovery requests, as set forth in LECO's Motions to Compel and in Attachment A to this Reply.

The Motion to Compel complies with Regulation 8543¹

LUMA acknowledges that LECO's Motion to Compel is permitted under Regulation 8543, Section 8.03(F), and notes the rule's requirement that LECO

¹ Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings, Regulation No. 8543, December 18, 2014, <https://energia.pr.gov/wp-content/uploads/sites/7/2015/09/RE-8543-ES.pdf>.

provide a verbatim transcript of the question and answer concerned, as well as the grounds for objecting.² LECO provided exactly that information through footnotes in the Motion to Compel, and also provided attachments with the full questions and responses.

LUMA next attempts to create irrelevant distinctions between document requests and interrogatories: arguing that parties who request documents are powerless to compel their production.³ LUMA's argument would lead to the absurd and unfair result that a party served with a document request could simply ignore it, leaving the requester with no ability at all to compel production.

In addition we must correct errors in LUMA's description of our discovery requests. LUMA claims that only certain requests sought supporting documentation.⁴ This is incorrect: all of LECO's information requests sought supporting documentation. As detailed by Instruction # 4 in each of our requests: "These discovery requests are to be answered with reference to all information in your possession, custody or control or reasonably available to you."

PREB has already rejected previous LUMA attempts to distinguish between document requests and interrogatories, reiterating the "extremely clear" statement

² See *LUMA's Notice of Intent to File Response and Opposition to LECO's Motion to Compel*, para. 13, *In Re Performance Metrics Targets for LUMA Energy SERVCO, LLC*, NEPR-AP-2020-0025, (October 11, 2021), <https://energia.pr.gov/wp-content/uploads/sites/7/2021/10/Notice-of-Intent-to-File-Response-and-Opposition-to-LECOs-Motion-to-Compel-NEPR-AP-2020-0025.pdf> and LUMA's Opposition to LECO's Motion to Compel of October 7, at 3, *In Re Performance Metrics Targets for LUMA Energy SERVCO, LLC*, NEPR-AP-2020-0025, (October 18, 2021), <https://energia.pr.gov/wp-content/uploads/sites/7/2021/10/Lumas-Opposition-to-LECOs-Motion-to-Compel-of-October-7-2021-NEPR-AP-2020-0025.pdf>.

³ *LUMA's Opposition to LECO's Motion to Compel of October 7, 2021*, at 3-4, *In Re Performance Metrics Targets for LUMA Energy Servco, LLC*, NEPR-AP- 2020-0025, (October 18, 2021).

⁴ *Id.*

in its April 8th Resolution that all information requests, including but not limited to “information requirements, requests for production of documents, interrogatories and any other discovery requirement,” are to be treated the same.⁵

LUMA Must Answer Questions on its Own Testimony and Exhibits

LUMA has created several metrics directly related to the Emergency Response Plan, and LUMA’s witnesses relied on that document heavily in order to create the metrics and attached the Emergency Response Plan as a supporting exhibit. The ERP is evidence admissible at trial, and LUMA relies on it for support - therefore LUMA must answer questions on it.

LECO is not seeking to challenge the Emergency Response Plan through this hearing - rather we are looking to understand how LUMA’s witnesses used the ERP to come up with its proposed metrics, and we look to better understand the Plan to offer emergency response metrics, penalties, and incentives of our own. The ERP informs the performance metrics related to emergency responses. The answers to LECO’s ROIs on the ERP will provide input for crafting the performance metrics on emergency response. The more frequent and intense hurricanes and storms associated with climate change make emergency response a key aspect of the LUMA operation of the T&D system, and therefore, LUMA must answer these questions.

LECO can set forth a few examples of why LUMA’s answers to these questions are so critical. First: several of LECO’s requests sought information on how LUMA

⁵ *In Re* Performance Targets for LUMA Energy Servco LLC, Resolution and Order, NEPR-AP-2020-0025 at 2-3 (August 31, 2021), <https://energia.pr.gov/wp-content/uploads/sites/7/2021/09/20210831-AP20200025-Resolution-and-Order.pdf>.

had reached agreements with other emergency response agencies through Mutual Aid Assistance Agreements, or incorporated other emergency response resources like the National Incident Management System, the National Response Framework, and the Comprehensive Preparedness Guide.⁶ If LUMA had reached agreements or incorporated these resources, they could be useful sources for emergency response metrics, baselines, and benchmarks - and if not, PREB could impose a penalty or incentive for LUMA to take these steps.

In addition, several LECO requests also sought information on whether LUMA had used tools to improve emergency response, like risk assessments, Damage Prediction Modeling, Field Labor Resource Predictions, and Material Requirement Predictions.⁷ Again, the parties can craft metrics and baselines based on the inclusion or omission of those tools.

A final example is that several LECO requests sought information on whether LUMA had sought input from local authorities or Local Emergency Planning Committees.⁸ If so, that would inform metrics on LUMA's communication with local authorities during an emergency – and if not, PREB could impose a penalty or incentive for LUMA to take this important step.

LUMA Must Provide Information Related to the Company's Current Performance

⁶ LECO 2nd ROI questions 17, 23, 28, 36, 46

⁷ LECO 2nd ROI questions 19, 20, 22, 25, 26

⁸ LECO 2nd ROI questions 18, 35

PREB and LECO have both requested data and information on LUMA's performance after June 1st: including data related to the current electricity crisis and the interconnection backlog that is exacerbating the crisis. LUMA has refused to answer LECO's questions on this topic, arguing that it is "not being considered to approve the proposed performance metrics targets at issue." PREB's October 7th Resolution and Order ruled this objection is invalid, and required LUMA to provide several pieces of information related to LUMA's current performance and the ongoing crisis.

One key example of data important to this proceeding is LECO's sixth question in our First Request of Information: requesting a detailed description of LUMA's performance for all outages that have occurred since LUMA took over the transmission and distribution system in June 2021, using LUMA's own proposed metrics for performance during outages. LUMA refused to provide any information on data on the constant outages that have plagued the island's grid since LUMA's takeover.

Information from June 2021 onward is important because outages have become more common and have lasted longer than they did when PREPA was in charge of the transmission and distribution of energy. According to the Customer Average Interruption Duration Index (CAIDI), the average time taken by LUMA to attend interruptions in June, July, and August of 2021 was 323 minutes. This is twice as long as it took PREPA to administer the system and repair interruptions, which took

155 minutes⁹. This is just one example of the issues with LUMA's performance that have resulted in an unprecedented energy crisis in the Archipelago, which has been exacerbated by an increase in electric bills while also having an unstable grid. Thus, information from June 2021 onwards is unquestionably relevant because LUMA is clearly failing to fulfill its obligation to provide a dependable electric service to its customers.

LUMA Must Answer Questions Related To All Performance Areas Within Its Reasonable Control: Including The Quality Of Interconnection Of Resources Located In Consumers' Properties. Intervenors may propose - and PREB may impose – metrics, penalties, and incentives on all performance areas within LUMA's Reasonable Control, including interconnections

Law 17-2019 and Regulation 9137 require PREB to consider metrics, penalties, and incentives on all performance areas within LUMA's reasonable control, explicitly including interconnection of distributed resources like rooftop solar + storage systems. For this exact reason, PREB asked several questions about LUMA's plan to reduce the backlog of interconnection requests – and struck LUMA's objection to those questions as invalid in its October 7th Resolution and Order.

LUMA also alleged that “the information sought is irrelevant to the controversy at issue on LUMA's Revised Performance Metrics Targets Submission...” Upon review of the objections made by LUMA in

⁹ See: *Motion Submitting Quarterly Performance Metrics, Requesting Leave to Defer Reporting on Specified Metrics and Request for Clarification, In Re the Performance of the Puerto Rico Electric Power Authority*, , NEPR- 2019-0007 (Sept. 20, 2021); See also: Elivan Martinez Mercado, *Apagones empeoraron desde la entrada de LUMA, reconoce un documento de la empresa*, Centro de periodismo investigativo (Sept. 30, 2021) <https://periodismoinvestigativo.com/2021/09/apagones-empeoraron-desde-la-entrada-de-luma-reconoce-un-documento-de-la-empresa/>.

its Responses, the Energy Bureau DETERMINES that the questions issued by the Energy Bureau are warranted and discoverable to the instant proceeding and require suitable responses by LUMA.¹⁰

LUMA's opposition is silent on this clear PREB decision striking LUMA's objection as invalid. In addition, LUMA now claims that not only does the company not have to answer any questions related to the current performance – but also that no party may suggest, and PREB may not impose, any penalty or incentive that LUMA itself has not proposed – merely because the parties' intervention occurred later in time than LUMA's original proposal (since amended several times).¹¹ LUMA does not, and cannot, cite any legal support in Law 17-2019 or Regulation 9137 for this argument. LUMA's failure to include performance metrics, penalties, or incentives related to interconnections hardly shield LUMA from answering questions in this performance area. Under Law 17-2019 and Regulation 9137 PREB is compelled to consider “the quality of interconnection of resources located in consumers' properties”, among other criteria, when setting metrics, penalties, and incentives for LUMA. Those laws give PREB authority to impose metrics and penalties on any performance area within LUMA's control.

LUMA has already made several requests to have PREB approve its proposed metrics, or have this proceeding limited just to consideration of those proposed

¹⁰ *In Re* Performance Targets for LUMA Energy Servco LLC, Resolution and Order, NEPR-AP-2020-0025 at 2-3 (October 7, 2021), <https://energia.pr.gov/wp-content/uploads/sites/7/2021/10/20211007-AP20200025-Resolution-and-Order.pdf>.

¹¹ LUMA Opposition pp. 11-12

metrics – and all of those requests have been rejected.¹² PREB’s August 25, 2021 completeness determination emphasized that this proceeding would not be limited in any way by that proposal:

The Energy Bureau EMPHASIZES that, today’s determination, i.e. that the information filed by LUMA complies with the minimum requirements to continue its evaluation as part of the instant case, should not be construed as an acceptance or approval of such proposal. Nor should it be construed as a determination that such proposal is consistent with the Energy Bureau’s orders and directives contained in the May 21, 2021 Resolution and Order in Case No. NEPR-MI-2019-0007, as clarified by the July 2, 2021 Resolution in the same case, or with the provisions contained therein. Moreover, today’s determination should not, and does not, create the expectation that such proposal will be approved as part of this proceeding.¹³

¹² See *LUMA’s Submittal and Request for Approval of Revised Annex IX to the OMA, In Re Performance Targets for LUMA Energy Servco LLC*, NEPR- AP-2020-0025 (February 25, 2021), <https://energia.pr.gov/wp-content/uploads/sites/7/2021/02/20210225-AP20200025-Request-for-Approval-of-Revised-Annex-IX-to-the-OMA-Performance-Metrics-Targets-2-files-merged.pdf>;

See *LUMA’s Submittal and Request for Approval of Revised Annex IX to the OMA, In Re Performance Targets for LUMA Energy Servco LLC*, NEPR- AP-2020-0025 (August 18, 2021), <https://energia.pr.gov/wp-content/uploads/sites/7/2021/08/Request-for-Approval-of-Revised-Annex-IX-to-the-OMA-NEPR-AP-2020-0025-1.pdf>;

Motion Submitting Redline Version of the Revised Request for approval of the Revised Annex IX to the OMA, *In Re Performance Targets for LUMA Energy Servco LLC*, NEPR- AP-2020-0025 (August 20, 2021), <https://energia.pr.gov/wp-content/uploads/sites/7/2021/08/Motion-Submitting-Redline-of-Revised-Annex-IX-to-the-OMA-NEPR-AP-2020-0025.pdf>

These three motions requested PREB’s approval of the proposed metrics; PREB rejected all requests.

¹³ *In Re Performance Targets for LUMA Energy Servco LLC*, Resolution and Order, NEPR-AP-2020-0025 at 2-3 (August 25, 2021), <https://energia.pr.gov/wp-content/uploads/sites/7/2021/08/20210825-AP20200025-Resolution-and-Order.pdf>.

Wherefore, LECO respectfully requests that the Energy Bureau compel responses from LUMA and deny LUMA's opposition to LECO's motions to compel.

Respectfully submitted. In San Juan Puerto Rico, October 28, 2021.

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CERTIFICATION OF SERVICE

I hereby certify that on October 28, 2021, I caused this Reply to be served upon the following parties:

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