

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

NEPR

Received:

Nov 1, 2021

10:29 PM

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

CASE NO. NEPR-AP-2020-0025

**SUBJECT: LUMA's Opposition to
LECO's Third Motion to Compel of
October 22, 2021**

**LUMA'S OPPOSITION TO
LECO'S THIRD MOTION TO COMPEL OF OCTOBER 22, 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 22, 2021, the Local Environmental and Civil Organizations' ("LECO") filed a *Motion to Compel LUMA to Respond to LECO's Fourth Request for Information* ("October 22nd Motion to Compel"). LECO claimed that LUMA's responses to Questions 2, 14, 15, 18, 20, and 22 of the *Fourth Discovery Request* were incomplete and unanswered. In particular, LECO claimed that LUMA's answers were deficient because they provided various objections to LECO's discovery requests.

LECO fails to acknowledge that LUMA has already responded to the *Fourth Discovery Request* and has sound legal arguments to object to producing some of the information requested as irrelevant. The data requested is not being considered to approve LUMA's Revised Performance

Metrics Targets, as stated in LUMA's filing of September 24, 2021. LECO has provided no legal support to demonstrate that this information would be material and necessary to this proceeding. For the reasons set forth below, LUMA contends that LECO's October 22nd Motion to Compel must be denied.

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 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.

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 a threshold issue, as stated above, Regulation 8543 does not contemplate a motion by a party carrying out a discovery to compel the production of documents in an adjudicative proceeding as part of the discovery process. LUMA has solid legal arguments to object to the extent that LECO is requesting additional documents in its motion to compel. As discussed above, LECO, in turn, has no basis for requesting assistance from this Energy Bureau to compel the production of documents. Therefore, this Energy Bureau should strike LECO's motion to compel for failure to conform to the provisions of Regulation 8543.

II. LUMA Answered LECO's Fourth Discovery Request.

In the October 22nd Motion to Compel, LECO alleges that LUMA refused to answer Questions 2, 14, 15, 18, 20, and 22 from the *Fourth Discovery Request*. LECO improperly oversimplified and misconstrued to this Energy Bureau the scope of LUMA's objections and answers that LUMA provided to Questions 2, 14, 15, 18, and 22 from the *Fourth Discovery Request*. Conveniently, LECO limited its argument to that portion of LUMA's answers where LUMA stated that the request failed to consider the proposed Performance Metrics Targets were adopted within the competitive negotiated process conducted by the Puerto Rico Public-Private Partnerships Authority ("P3A") that led to the execution of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("T&D OMA"). Also, LECO only refers to LUMA's contention that this proceeding does not involve performance or data for the period 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 conveniently fails to mention the fact that LUMA answered the question and provided the information requested. For ease of reference, we outline the full scope of the questions and LUMA's responses.

LECO's Question 2:

PREB's May Order includes a metric for "Capital expenses vs. Budget – Transmission & Distribution" and sets a baseline for a 9.9% ratio of T&D capital expenses to operating budget. Did LUMA consider including this metric in its proposed Annex IX? If so, why did LUMA choose not to include it? If not, why not?

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

LUMA's Response to Question 2:

LUMA objects to this request as it seeks information that falls beyond the scope of the subject matter of this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Further, LUMA objects to this request as the information sought is irrelevant to the controversy at issue on LUMA's Revised Performance Metrics Targets. The proposed Performance Metrics Targets submitted by LUMA for consideration by the PREB were adopted within the competitive negotiated processes conducted by the P3 Authority that led to the execution of the T&D OMA.

Without waiving the foregoing objections and without acquiescing to the relevance or admissibility of the information, LUMA is using this metric in the revised Annex IX of the T&D OMA. "Capital Expenses vs. Budget – Transmission & Distribution" is the equivalent of LUMA's "Capital Budget: Non-Federally Funded". PREPA previously did not have a metric to report on Federal Funds being spent and consistent with the T&D OMA, LUMA included separate budgets for federal and non-federal capital spending, and correspondingly a metric for performance to budget for Capital Budget: Federally Funded and a separate one for Capital Budget: Non-Federally Funded.

See Attachment 2 to the Motion to Compel LUMA to Respond to LECO's Fourth Request of Information (emphasis added).

As shown above, LUMA answered Question 2. The question asked whether LUMA consider including a metric for “Capital expenses vs. Budget – Transmission & Distribution” in its proposed Annex IX. LUMA responded that it included an equivalent metric to the one included in the Energy Bureau’s May Order named “Capital Budget: Non-Federally Funded” to report on non-federal capital spending. Another metric named “Capital Budget: Federally Funded” was included in reporting separately on federal funds’ capital spending. Thus, LUMA fully answered this request.

LECO’s Question 14:

PREB’s Attachment A includes Generation from RPS-eligible PPOAs as a metric, with a baseline of 3% and benchmark of 40% by 2025 (including distributed resources). Did LUMA consider including this metric in its proposed Annex IX? If so, why did LUMA choose not to include it? If not, why not?

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

LUMA’s Response to Question 14:

LUMA objects to this request as the information sought is irrelevant to the controversy at issue on LUMA’s Revised Performance Metrics Targets. The proposed Performance Metrics Targets submitted by LUMA for consideration by the PREB were adopted within the competitive negotiated processes conducted by the P3 Authority that led to the execution of the T&D OMA.

LUMA also objects to this request as it calls for speculation or a hypothetical scenario and because it does not consider that the proposed Performance Metrics Targets submitted by LUMA for consideration by the Puerto Rico Energy Bureau were adopted within the competitive negotiated processes conducted by the Puerto Rico Public- Private Partnerships Authority that led to the execution of the T&D

OMA. LUMA further objects to this request because it is argumentative and includes a legal interpretation by counsel.

Without waiving the foregoing objections, it is clarified that Section 5.1 and Annex 1 to the T&D OMA (Scope of Services) outline LUMA's duty to provide O&M Services. The O&M Services do not include generation-related procurement activities which are managed by the P3 Authority with oversight by the PREB. As stated in Section 5.13 (d) of the T&D OMA, LUMA's role regarding the procurement of generation projects and generation supply contracts includes:

(i) preparation of risk assessments and analysis in support of Resource Adequacy and Generation Project or Generation Supply Contract procurement prioritization and planning, which shall take into account the Integrated Resource Plan and Applicable Law (and which assessments and analyses PREB may request from time to time);

(ii) prepare long and short-range transmission and distribution planning analyses and forecasts to determine the need for Generation Project or Generation Supply Contract procurement, which shall take into account the Integrated Resource Plan to the extent applicable (and which analyses and forecasts PREB may request from time to time);

(iii) meet with PREB on an annual basis to review and assess the prepared analyses, demand projections (prepared in accordance with the Integrated Resource Plan), existing System Power Supply, Legacy Generation Assets and generation assets owned by IPPs related to the supply of Power and Electricity, and determine whether additional power supply sources are needed; and

(iv) coordinate any start-up-related services required from the Owner in connection with any such Generation Project or Generation Supply Contract.

To be clear, while the OMA goes into extensive detail to describe the O&M Services, including those related to Generation, LUMA is not tasked with managing any procurement process for new generation.

Accordingly, LUMA's Revised Performance Metrics Targets filing does not cover performance categories on generation from RPS PPOAs that are not part of LUMA's and, thus, are not under LUMA's control.

See Attachment 2 to the *Motion to Compel LUMA to Respond to LECO's Fourth Request of Information* (emphasis added).

In Question 14, LECO requested if LUMA considered including a metric related to Generation from RPS-eligible PPOAs in its proposed Annex IX. The witness expressly responded that under the T&D OMA, LUMA is not tasked with managing any procurement process for new generation. As such, LUMA's Revised Performance Metrics Targets filing does not cover performance categories on generation from RPS PPOAs, since they are not under LUMA's control. Hence, LUMA provided a complete answer.

LECO's Question 15:

PREB's Attachment A includes several other metrics not included in LUMA's proposed Annex IX:

- a. Customer Average Interruption Duration Index (CAIDI) as a metric, with a baseline of 145 minutes and a benchmark of 101 minutes.
- b. Absenteeism, with a Baseline of 13.1% and a Benchmark of 2.4%.
- c. wait time in commercial offices
- d. % of customer calls answered
- e. average time to resolve billing disputes
- f. percent of customers billed
- g. percent of bills estimated vs. read
- h. average time to respond to service and outage complaints

For each metric: Did LUMA consider including this metric in its proposed Annex IX? If so, why did LUMA choose not to include it? If not, why not?

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

LUMA's Response to Question 15:

LUMA objects to this request as the information sought is irrelevant to the controversy at issue on LUMA's Revised Performance Metrics Targets.

LUMA also objects to this request as it calls for speculation or a hypothetical scenario and because it does not consider that the proposed Performance Metrics Targets submitted by LUMA for consideration by the Puerto Rico Energy Bureau were adopted within the competitive negotiated processes conducted by the P3 Authority that led to the execution of the T&D OMA. LUMA further objects to this request because it is argumentative and includes a legal interpretation by counsel.

Without waiving the foregoing objections, the metrics selected for the revised Annex IX of the T&D OMA represent a broad list of activities across the utility that fairly represent a utility's performance. Furthermore, the metrics listed above are reported on a quarterly basis as part of Case No. NEPR-MI-2019-0007. As ordered by PREB, LUMA will continue to file reports on each quarter. Lastly, LUMA would like to clarify that while Annex IX contains only Performance Metrics as defined in the OMA, the list of items that will be reported on quarterly is not exclusive of the other key indicators that may be tracked, utilized throughout the utility's operations, and provided to the PREB.

As relates specifically to CAIDI, it was eliminated by LUMA as explained in table 1-1 of LUMA's Revised Performance Metrics Targets filing on page 7 and in the pre-filed testimony of Don Cortez at lines 212 -232, filed in this proceeding Case No. NEPR-AP-2020-0025.

See Attachment 2 to the Motion to Compel LUMA to Respond to LECO's Fourth Request of Information (emphasis added).

LECO asked in Question 15 if LUMA had considered including the list of metrics described above in its proposed Annex IX. LUMA responded that the proposed Performance Metrics Targets submitted to the Energy Bureau were adopted within the competitive negotiated

processes conducted by the P3A that led to the execution of the T&D OMA. Thus, Annex IX contains only those performance-based incentives included in the T&D OMA. Notwithstanding, LUMA submits quarterly reports of the metrics listed by LECO as part of Case No. NEPR-MI-2019-0007, and as ordered by the Energy Bureau. As to the CAIDI metric, LUMA decided not to include it. This decision was explained in table 1-1 of LUMA's Revised Performance Metrics Targets filing on page 7 and in the pre-filed testimony of Don Cortez at lines 212 -232, filed in this proceeding Case No. NEPR-AP-2020-0025. Accordingly, LUMA answered Question 15.

LECO's Question 18:

Do the SAIDI and SAIFI calculations that LUMA presented for the months of June through August reflect the same methodology used to calculate the SAIDI and SAIFI values that LUMA presented for months prior to June 2021? If not, please specify all changes to methodology.

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

LUMA's Response to Question 18:

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

Without waiving the foregoing objections nor acquiescing to the relevance of the information requested, LUMA's commencement of T&D Operations began on June 1, 2021. LUMA did not present any SAIFI or SAIDI values for the months prior to the month of June 2021. PREPA presented the monthly metrics prior to June 1, 2021. In the Resolution and Order in Case No. NEPR-MI-2019-0007 dated May 21, 2021, the PREB ordered PREPA to resubmit recalculated values for the reliability metrics consistent with the IEEE Guide for Electric Power Distribution Reliability Indices IEEE Std 1366™-2012. For

a discussion of LUMA’s pre-commencement analysis and findings of PREPA’s historical methodology, please refer to Exhibit 2 - LUMA’s Comments on Performance Metrics Baselines dated February 5, 2021, in LUMA’s filing in Case No. NEPR-MI-2019-0007 and based on data published by the Energy Bureau and presented during the technical conference held on January 19, 2021: Technical discussion beginning on page 12. PREPA recalculated reliability metrics for March 2021 going forward based on the Energy Bureau’s order. While the current quarterly report to the PREB breaks the T&D SAIFI and SAIDI into T SAIFI and SAIDI and D SAIFI and SAIDI, LUMA’s proposed SAIFI and SAIDI metrics are for the combined T&D system as is considered a common industry practice for T&D utilities. Requiring the inclusion of performance for generation operations—which are explicitly excluded from LUMA’s O&M Services—in the reliability metrics would mean evaluating an item that LUMA does not control.

See Attachment 2 to the Motion to Compel LUMA to Respond to LECO’s Fourth Request of Information (emphasis added).

In Question 18, LECO requested to know if LUMA used the same methodology to calculate SAIDI and SAIFI values for the months prior to June 2021, like the one presented for June through August. LUMA answered that it did not present any SAIFI or SAIDI values for the months prior to June 2021. The monthly metrics prior to June 2021 were presented by the Puerto Rico Electric Power Authority (“PREPA”). The Energy Bureau ordered PREPA to resubmit recalculated values for the reliability metrics consistent with the IEEE Guide for Electric Power Distribution Reliability Indices IEEE Std 1366™-2012, in the Resolution and Order dated May 21, 2021, in Case No. NEPR-MI-2019-0007. PREPA recalculated reliability metrics for March 2021 going forward based on the Energy Bureau’s order. LUMA also explained that it performed some analysis and findings on PREPA’s historical methodology, as reflected in Exhibit 2 - LUMA’s Comments on Performance Metrics Baselines dated February 5, 2021, in LUMA’s filing in Case No. NEPR-MI-2019-0007. Question 18 was answered thoroughly.

LECO's Question 22:

Provide monthly SAIDI and SAIFI values by region for June 2020 through August 2021 without excluding Major Event Days.

See Attachment 1 to the Motion to Compel LUMA to Respond to LECO's Fourth Request of Information (emphasis added).

LUMA's Response to Question 22:

LUMA objects to that portion of the request that seeks information related to data since LUMA took over the T& D System in June 2021. This proceeding does not involve performance or data after the Energy Bureau issued the Resolutions and Orders of May 21, 2021, and July 2, 2021, in Case No. NEPR-MI-2019-0007. Thus, the requested information on data after June 1st, 2021, is not relevant to this proceeding. **LUMA is not required to perform these calculations for this proceeding.**

See Attachment 2 to the Motion to Compel LUMA to Respond to LECO's Fourth Request of Information (emphasis added).

Question 22 requested LUMA to produce monthly SAIDI and SAIFI values by region for June 2020 through August 2021. SAIDI and SAIFI values by region are part of the specific metrics reported each quarter to the Energy Bureau in Case No. NEPR-MI-2019-0007 (In Re: The Performance of the Puerto Rico Electric Power Authority). As part of the electronic public docket accessible to anyone, SAIDI and SAIFI values by region can be found up to August 31, 2021. Thus, the information is readily available to the general public. There is no need to compel the production of said information.

III. LECO's Request on Raw Outage Data is Irrelevant and Beyond the Scope of this Proceeding. LECO has not Established the Relevance or Need for the Detailed Information Requested on the Raw Outage Data.

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, avoids 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). **However, this does not mean that the scope of discovery is 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 economical 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 *Fourth Discovery Request*, LECO included a question concerning raw outage data since LUMA took over the transmission and distribution system in June 2021, as seen below:

LECO's Question 20:

Please provide the raw outage data from January 1, 2021 through August 31, 2021. Data from the system after LUMA's June 1st takeover is relevant because PREB's orders in Docket # NEPR-MI-2019-0007 have made it clear that baselines and benchmarks must be informed by ongoing collection of data on LUMA's performance.

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

LUMA's Response to Question 20:

LUMA objects to this request because it seeks information that falls beyond the scope of the subject matter of this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. LUMA objects to the request because it seeks information related to performance 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. The requested information on outage data after June 1st, 2021, is not relevant to this proceeding. LUMA also objects to this request because it is argumentative and includes legal interpretations by counsel.

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

LECO argues that data after the June 1st takeover is relevant because establishing performance metrics and benchmarks are ongoing. However, LECO has not established how the information requested in Question 20 to its *Fourth Discovery Request* will aid in discovering admissible evidence for the evidentiary hearing or facts that may serve to discover admissible evidence. Information on the raw outage data since LUMA took over the transmission and distribution system in June 2021 is of a minimum probative value for evaluating any proposed performance metrics. 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, in Case No. NEPR-MI-2019-0007. Therefore, this Energy Bureau should sustain LUMA's objections to Question 20 of LECO's Fourth Discovery Request.

Finally, 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 *Fourth Discovery Request*. LUMA was not evasive nor incomplete. In this regard, LECO's October 22nd Motion to Compel as to Questions 2, 14, 15, 18, 20, and 22 of the *Fourth 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.

WHEREFORE, LUMA respectfully requests that this Energy Bureau denies LECO's *Motion to Compel LUMA to Respond to LECO's Fourth Request of Information*, filed on October 22, 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@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 1st day of November 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