



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

IN RE: PERFORMANCE TARGETS FOR  
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

SUBJECT: Additional Performance Targets

**RESOLUTION AND ORDER**

**I. Relevant Procedural Background**

On December 23, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order ("December 23 Resolution") through which it commenced this adjudicative proceeding to establish performance-based incentive mechanisms for LUMA.<sup>1</sup> The December 23 Resolution laid out the Energy Bureau's authority over performance incentive mechanisms for LUMA, key criteria for review provided by Act 17-2019<sup>2</sup>, and additional public interest principles that must be considered by LUMA in its filing for performance incentives.

On February 25, 2021, LUMA filed a document titled *Submittal and Request for Approval of Revised Annex IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("OMA")*, pursuant to Section 4.2(f) of the OMA ("February 25 Request"). The February 25 Request includes a high-level description of the proposed performance incentive framework for LUMA along with its arguments in support of the proposal and how it is consistent with the OMA, applicable laws, regulations, and orders of the Energy Bureau. The Exhibit 1 of the February 25 Request explains the proposal, while Exhibit 2 provides a comparison of the proposal with the framework in the OMA.

On April 8, 2021, the Energy Bureau issued a Resolution and Order ("April 8 Resolution") through which it established the procedural calendar for the instant case ("Procedural Calendar").<sup>3</sup> The April 8 Resolution establishes in detail how the Energy Bureau will carry out this adjudicative procedure, including, among others: filing of requests for intervention, pre-filing of the proposed witnesses' testimonies, discovery of evidence, evidentiary hearing, public hearing, public comments, and filing of legal briefs. The Energy Bureau also ordered LUMA to file a revised version of the February 25 Request.

On August 18, 2021, LUMA filed document titled *LUMA's Submittal of Request for Approval of Revised Annex IX to the OMA* ("Revised February 25 Request"). Through the Revised February 25 Request LUMA presented its new proposal. On that same day, LUMA submitted a document titled *Motion Submitting Pre-Filled Testimonies* ("LUMA's Pre-filed Testimony").<sup>4</sup>

<sup>1</sup> Luma Energy, LLC as Management Co., and Luma Energy Servco, LLC as ServCo. (collectively, "LUMA") are in charge of the operation and maintenance functions of the Puerto Rico Electrical and Power Authority ("PREPA") Transmission and Distribution System ("T&D System") pursuant to an *Operation and Maintenance Agreement* ("OMA") entered by LUMA, PREPA, and the Puerto Rico Public-Private Partnerships Authority ("P3") on June 22, 2020. Furthermore, LUMA Energy, LLC and LUMA Energy ServCo, LLC have been certified by Energy Bureau as electrical service companies in cases *In Re: Request for Certification LUMA Energy, LLC*, Case No. NEPR-CT-2020-0008 and *In re: Request for Certification LUMA Energy ServCo, LLC*, Case No. NEPR-CT-2020-0007, respectively. As a certified electric service company and operator of the T&D System pursuant to the OMA, LUMA is subject to compliance with Performance-Based Incentives Mechanism.

<sup>2</sup> *Puerto Rico Energy Public Policy Act* ("Act 17-2019").

<sup>3</sup> The Procedural Calendar has been modified several times.

<sup>4</sup> Unless otherwise noted, together the Revised February 25 Request and LUMA's Pre-filed Testimony are referred to as the "Revised Filing".

LUMA's Pre-filed Testimony included direct testimony of several witnesses and supporting documentation for each proposed testimony.<sup>5</sup>

On August 25, 2021, the Energy Bureau issued a Resolution and Order ("August 25 Resolution") through which it determined that the Revised February 25 Request complied with the minimum requirements established by the Energy Bureau to continue its evaluation as part of the instant case. After several procedural incidents, on October 20, 2021, the Energy Bureau issued a Resolution ("October 20 Resolution") through which it established the new Procedural Calendar in the instant case.

Several interested parties have been recognized as intervenors in this case and have been engaged in the discovery process. Likewise, other entities submitted comments as *amicus curie*. As part of the discovery process, in the months of August, September, and October of 2021, the Energy Bureau submitted eight rounds of Requests of Information ("ROI") to LUMA consisting of 248 questions. ICPO<sup>6</sup> and LECO<sup>7</sup> also submitted several ROIs to LUMA. On November 17, 2021, ICPO and LECO submitted pre-filed testimony of their proposed witnesses. LUMA is conducting discovery on ICPO's pre-filed testimonies.<sup>8</sup>

## II. NEED FOR ADDITIONAL PERFORMANCE TARGETS

### A. Energy Bureau's Authority

The Energy Bureau conducted a thorough and detailed review of the filings, including the ROI's and the responses provided by the parties. Based on that review, the Energy Bureau concluded that additional performance-based incentive metrics must be evaluated as part of this procedure. Therefore, the Energy Bureau is ordering LUMA do so.

It is indisputable that the Energy Bureau has authority to establish incentives and penalties based on electric power companies' performance and their compliance with the metrics set forth by the Energy Bureau. Since LUMA is an electric power company, it is bound by the Energy Bureau's determinations in these matters. Such authority has been discussed in previous Energy Bureau's resolutions and orders.<sup>9</sup> Therefore, we need not to state it again.

### B. Additional Performance-Based Incentive Targets

The Energy Bureau and intervenors have propounded ROIs to LUMA regarding performance incentive metric targets not proposed by LUMA in the Revised Filing nor included in LUMA's filed testimonies as summarized below. The Energy Bureau considers that the following three (3) areas must be evaluated in further detail for potential inclusion as performance incentive metric targets for LUMA: (i) Interconnection, (ii) Energy Efficiency/Demand Response, and (iii) Vegetation Management.

#### (i) *Interconnection*

In ROI PREB-LUMA-5-012, the Energy Bureau asked LUMA whether it had considered proposing a performance incentive for improvements in the interconnection process. LUMA did not clearly respond to this ROI, indicating just that it had addressed incentives for energy

---

<sup>5</sup> See also *Motion Submitting Amended Exhibit to the Revised Request for Approval of the Annex IX to OMA*, dated August 23, 2021, which included a minor modification to Exhibits 1 of the Revised February 25 Request.

<sup>6</sup> Independent Consumer Protection Office ("ICPO").

<sup>7</sup> Local and Civil Organizations ("LECO").

<sup>8</sup> Informative Motion on Issuance of Discovery on Intervenor's Written Testimony, December 7, 2021.

<sup>9</sup> See for example, December 23 Resolution.



efficiency in its comments in Case No. NEPR-MI-2021-0005.<sup>10</sup> However, in its response, LUMA acknowledged the potential need for “adjustment or reconsideration of metrics.”<sup>11</sup>

Then, in ROI PREB-LUMA-5-013, the Energy Bureau asked LUMA for its opinion on whether implementing an interconnection performance target would be consistent with Act 17-2019 requirements about accelerating integration of renewable generation. Again, LUMA did not specifically respond to this question, instead generally acknowledging the authority of the Energy Bureau to establish performance-based incentives, and then expounding on the merits of other unrelated performance metrics it had earlier proposed.<sup>12</sup>

In its response to ROI PREB-LUMA-5-002, LUMA provided a breakdown of the historical interconnection backlog for the period June 1, 2021 to August 31, 2021, tabulating applications in the backlog by system size, class, and pendency in the backlog. Regarding ROI PREB-LUMA 5-003, 5-004, 5-005, and 5-006, LUMA responded to several questions aimed at clarifying the interconnection process and technical characteristics of systems in the backlog.

In responses to ROI PREB-LUMA-5-007, and to ROI LECO-LUMA-2-001, LUMA addressed its approach to expediting the interconnection of applications to resolve the backlog. LUMA provided further detail on its process modifications related to interconnection in ROI LECO-LUMA-2-002 and ROI LECO-LUMA2-003.

As it is known, Act 17-2019 commits Puerto Rico's energy public policy, “[t]o facilitate the interconnection of distributed generation to the electric power grid through any available mechanism including, but not limited to, distributed generation, renewable energy sources, net metering, and the use of microgrids by implementing the mechanisms, strategies, and technologies available in the electric power industry for such purposes.”<sup>13</sup> A performance target that could accelerate the process of interconnecting distributed energy resources throughout out Puerto Rico would be consistent with Act 17-2019 and the goals envisioned in the operation of the T&D System by a private operator.

(ii) *Energy Efficiency/ Demand Response*

In response to ROI PREB-LUMA-5-15, LUMA indicated that it did not anticipate incorporating energy efficiency/demand response targets in this proceeding.<sup>14</sup> In the same response, LUMA did indicate that should the Energy Bureau order LUMA to adopt targets for energy efficiency/demand response, then the base points for the LUMA performance targets would need to be adjusted to ensure the appropriate weighting of each metric.<sup>15</sup>

On April 22, 2021, the Energy Bureau issued a Resolution for a proposed Regulation for Energy Efficiency (“Proposed EE Regulation”) as part of Case No. NEPR-MI-2021-0005.<sup>16</sup> Section 3.02C6a of the Proposed EE Regulation stated, in the pertinent part that: *[i]f PREPA's successor is an entity subject to a contract that includes performance metrics, that entity shall propose a performance incentive within the Three-Year EE Plan for approval by the Energy Bureau. Section 3.02D further stated that [t]he performance targets and the amount of performance payment to which a PREPA successor entity is entitled shall be determined by the*

<sup>10</sup> RFI-LUMA-AP-2020-0025-PREB-R5-04OCT21-012.

<sup>11</sup> *Id.*

<sup>12</sup> RFI-LUMA-AP-2020-0025-PREB-R5-04OCT21-013.

<sup>13</sup> Act 17-2019. Section 1.6.8.

<sup>14</sup> RFI-LUMA-AP-2020-0025-PREB-R5-04OCT21-015.

<sup>15</sup> *Id.*

<sup>16</sup> See Resolution, *In re: Regulation for Energy Efficiency*, Case No. NEPR-MI-2021-0005, April 22, 2021.



*Energy Bureau in its proceedings on performance incentive payments under incentive compensation set forth in the agreement between PREPA and a successor entity. The Energy Bureau shall set performance targets in that proceeding consistent with the approved Three-Year EE Plan and shall utilize the EM&V processes established in the approved Three-Year EE Plan to determine the performance level achieved and shall be compensated.*

On June 28, 2021, LUMA submitted comments to the Energy Bureau on the Proposed EE Regulation. Specific to performance incentives, LUMA recommended that the discussion of such incentives be removed from the Proposed EE Regulation because it duplicates the Energy Bureau's powers under Regulation 9137 and provisions under the OMA. LUMA further recognized that "[b]oth Regulation 9137 and the OMA provide the Bureau with the ability to determine the Performance Metrics, including those metrics subject to targets and incentives. They do not preclude establishing metrics related to EE"<sup>17</sup>

The Energy Bureau believes that a performance target specifically addressing energy efficiency and demand response is within its powers under Regulation 9137 and will support LUMA's achievement of energy efficiency standards as established in Act 17-2019.

(iii) *Vegetation Management*

In response to ROI PREB-LUMA-6-1, LUMA provided the information regarding the approved vegetation management budgets for fiscal year ("FY") 2022, 2023, and 2024. According to LUMA, the approved total vegetation management budgets are \$55.6, \$56.6, and \$56.9 million for the next three fiscal years.<sup>18</sup> In its revised response to ROI PREB-LUMA-6-11, LUMA indicated that it did not have information on the planned number of miles to be trimmed for FY 2022, 2023, and 2024.<sup>19</sup>

In ROI PREB-LUMA-6-009, the Energy Bureau asked if LUMA would support performance targets related to vegetation management outcomes.<sup>20</sup> In response, LUMA indicated that it did not anticipate incorporating additional performance metrics related to vegetation management outcomes during the initial three-year period of operation. LUMA also indicated that vegetation management outcomes are indirectly incorporated into the SAIDI and SAIFI performance targets since vegetation management impacts both SAIFI and SAIDI.

In ROI PREB-LUMA-6-010, the Energy Bureau asked if LUMA's proposed SAIFI and SAIDI targets incorporate improved vegetation management performance.<sup>21</sup> LUMA's response was that the proposed SAIFI and SAIDI targets incorporated improved vegetation management performance. In response to an Energy Bureau's ROI PREB-LUMA-6-008, LUMA indicated that it had included tree-related outages to determine system level metric targets, but that LUMA did not have a summary of historical tree-related outages available.<sup>22</sup> While a historical categorization of outages is unavailable, LUMA has categorized recent outages that provide some information of the contribution of vegetation related outages to overall outages.

In the NEPR-MI-2019-0007 proceeding, LUMA provided an outage cause analysis for the months of June, July, and August 2021 in response to a bench request from the November 4,

---

<sup>17</sup> LUMA Motion Submitting Comments to Proposed Regulation for Energy Efficiency, *In re: Regulation for Energy Efficiency*, Case No. NEPR-MI-2021-0005, June 28, 2021. Exhibit 1, pg. 11.

<sup>18</sup> RFI-LUMA-AP-2020-0025-PREB-R6-04OCT21-001.

<sup>19</sup> RFI-LUMA-AP-2020-0025-PREB-R6-04OCT21-011.

<sup>20</sup> RFI-LUMA-AP-2020-0025-PREB-R6-04OCT21-009.

<sup>21</sup> RFI-LUMA-AP-2020-0025-PREB-R6-04OCT21-010.

<sup>22</sup> RFI-LUMA-AP-2020-0025-PREB-R6-04OCT21-008.



2021, Technical Conference in that proceeding.<sup>23</sup> LUMA's analysis of outage causes indicated that vegetation coded outages represented 28.3%, 27.2%, and 22.7% of the monthly distribution SAIDI for the months of June, July, and August 2021 respectively. During the same period, vegetation coded outages represented 24.9%, 26%, and 25.3% of the number of distribution outages. According to LUMA, vegetation related outages represent approximately a quarter of both the number and duration of total outages for the three months of June, July, and August 2021.

The Energy Bureau believes that a performance target specifically addressing vegetation management would highlight efforts to reduce vegetation related outages and will directly contribute to the safety and reliability of the Puerto Rico Electric System.

### III. CONCLUSION

The Energy Bureau **DETERMINES** that the establishment of performance targets for Interconnection, Energy Efficiency/Demand Response, and Vegetation Management will encourage LUMA to undertake the needed work needed for the implementation of important goals of the Puerto Rico energy public policy. Therefore, the Energy Bureau **ORDERS** LUMA to:

- (a) no later than **January 18, 2022**, file a revised Annex IX to the OMA including targets and supporting metrics for the following: (i) Interconnection, (ii) Energy Efficiency/Demand Response, and (iii)Vegetation Management.
- (b) on or before **January 18, 2022**, provide a supplemental or revised direct pre-filed testimony for targets and supporting metrics for the performance metric targets described in the preceding paragraph.

The Intervenors may conduct additional discovery and provide revised testimony limited to matters relating to Interconnection, Energy Efficiency/Demand Response, and Vegetation Management. LUMA may also conduct limited additional discovery only on testimony submitted by the Intervenors on matters related to Interconnection, Energy Efficiency/Demand Response, and Vegetation Management.

For all the above, the Energy Bureau **AMENDS** the procedural calendar for the instant case as follows:

Date	Phase
December 28	Discovery Requests on Intervenors Written Testimony Due
January 18, 2022	Filing Revised Annex IX to the OMA by LUMA
January 18, 2022	Filing Supplemental Written Testimony by LUMA (Limited to Additional Performance Targets)
January 18, 2022	Rebuttal on Intervenors' Written Testimony Due
January 18 - February 8, 2022	Discovery on LUMA's Supplemental Written Testimony (Limited to Additional Performance Targets)
February 22, 2022	Filing of Supplemental Written Testimony by Intervenors (Limited to Additional Performance Targets)
February 22 - March 15, 2022	Discovery on Intervenors Supplemental Written Testimony
March 29, 2022	Rebuttal on Intervenors' Supplemental Written Testimony Due
March 31, 2022	Pre-Hearing Conference
April 19 - 22 2022	Virtual Evidentiary Hearing
April 26-27, 2022	Virtual Public Hearings
May 7, 2022	Filing of Final Substantive and Legal Briefs by the Parties,
May 17, 2022	Filing of Replies to Final Briefs by the Parties
May 23 2022	Filing of Comments by General Public Due, Filing of Final Brief by <i>Amicus Curiae</i>

<sup>23</sup> NEPR MI 2019-0007. TC-RFI-LUMA-MI-19-0007211104-PREB-4.



Be it notified and published.

  
\_\_\_\_\_  
Edison Aviles Deliz  
Chairman

  
\_\_\_\_\_  
Ángel R. Rivera de la Cruz  
Associate Commissioner

  
\_\_\_\_\_  
Lillian Mateo Santos  
Associate Commissioner


*Not Available for Signature*  
\_\_\_\_\_  
Ferdinand A. Ramos Soegaard  
Associate Commissioner

  
\_\_\_\_\_  
Sylvia B. Ugarte Araujo  
Associate Commissioner

#### CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on December 22, 2021. I also certify that on December 22, 2021 a copy of this Resolution and Order was notified by electronic mail to the following: [margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com), [yahaira.delarosa@dlapiper.com](mailto:yahaira.delarosa@dlapiper.com), [jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law), [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law), [hrivera@jrsp.pr.gov](mailto:hrivera@jrsp.pr.gov), [contratistas@jrsp.pr.gov](mailto:contratistas@jrsp.pr.gov), [agraitfe@agraitlawpr.com](mailto:agraitfe@agraitlawpr.com), [rstgo2@gmail.com](mailto:rstgo2@gmail.com), [pedrosaade5@gmail.com](mailto:pedrosaade5@gmail.com), [larroyo@earthjustice.org](mailto:larroyo@earthjustice.org), [flcaseupdates@earthjustice.org](mailto:flcaseupdates@earthjustice.org), [rolando@bufete-emmanuelli.com](mailto:rolando@bufete-emmanuelli.com), [notificaciones@bufete-emmanuelli.com](mailto:notificaciones@bufete-emmanuelli.com), [jessica@bufeteemmanuelli.com](mailto:jessica@bufeteemmanuelli.com), [rhoncat@netscape.net](mailto:rhoncat@netscape.net). I also certify that today, December 22, 2021, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today December 22, 2021.

  
\_\_\_\_\_  
Wanda I. Cordero Morales  
Interim Clerk

