

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

NEPR

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

CASE NO. NEPR-AP-2020-0025

**SUBJECT: Response to LECO's Request
for an Extension of Time to Submit
Responses to Discovery Requests and
LUMA's Request to Modify the Procedural
Calendar**

**MOTION IN RESPONSE TO LECO'S REQUEST FOR AN EXTENSION OF
TIME TO SUBMIT RESPONSES TO DISCOVERY REQUESTS AND LUMA'S
REQUEST TO MODIFY THE 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)*. In its April 8th Resolution, this Energy Bureau also established the period of ten (10) days to respond to any discovery requests issued in this proceeding.

2. As part of the procedural calendar, this Energy Bureau established a discovery deadline. This Energy Bureau issued subsequent orders amending the procedural calendar on May 14, June 4, and July 2, 2021.

3. On August 9, 2021, this Energy Bureau issued a Resolution amending the procedural calendar. In response to a request filed by LUMA, this Energy Bureau also determined that it was prudent to include as part of the procedural calendar the opportunity for LUMA to (i) conduct discovery on written testimony filed by intervenors and (ii) file rebuttal testimony to any intervenor pre-filed testimony. Thus, this Energy Bureau set the period from October 12 to November 1, 2021, to conduct discovery on the intervenors' written testimonies, and November 8, 2021, as the deadline to file any rebuttal on the intervenors' written testimonies. This Energy Bureau amended the procedural calendar, further extending the set deadlines in a Resolution and Order issued on September 27, 2021.

4. On October 12, 2021, the Independent Consumer Protection Office ("ICPO") filed a *Moción en Solicitud de Modificación de Calendario Procesal*, whereas it expressed that multiple discovery issues difficult filing the intervenors' written testimonies by the current deadline. For instance, many responses to already issued discovery requests were pending because their due date was beyond the discovery cut-off date. Thus, ICPO requested this Energy Bureau to extend the deadline for intervenors' to submit their written testimonies.

5. On October 15, 2021, the Puerto Rico 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 intervenors' testimony be deferred by at least four (4) weeks. Also, LECO requested the evidentiary hearing be

rescheduled to January 13-14, 2022, due to some of their attorneys being unavailable on the original dates.

6. On October 19, 2021, LUMA filed a *Motion in Response to Requests by the ICPO and LECO to Modify the Procedural Calendar and Request to Modify Procedural Calendar*. LUMA agreed that an amendment to the procedural calendar was warranted since it needed equitable time during the discovery period to conduct discovery on intervenors’ written testimony and submit rebuttal testimonies.

7. Upon the Parties’ request, on October 20, 2021, the Energy Bureau issued a Resolution (“Resolution”) amending the procedural calendar in this case (“October 20th Resolution”). It set the deadlines and hearing dates as follows:

DATE	PHASE
August 27, 2021 — October 7, 2021	Discovery
November 17, 2021	Filing of Written Testimony by Intervenors
November 18, 2021 — December 28, 2021	Discovery on Intervenors Written Testimony
January 14, 2022	Pre-Hearing Conference
January 18, 2022	Rebuttal on Intervenors’ Written Testimony Due
January 31-February 4, 2022	Virtual Evidentiary Hearing
February 10-11, 2022	Virtual Public Hearings
February 18, 2022	Filing of Comments by General Public
February 25, 2022	Filing of Final Substantive and Legal Briefs by the Parties; Filing of Final Brief by Amicus Curiae
March 11, 2022	Filing of Replies to Final Briefs by the Parties

8. On November 17, 2021, LECO and ICPO submitted their witnesses’ written testimonies. LECO provided the written testimonies of two (2) expert witnesses, Dr. José Alameda

and Dr. Agustín Irizarry. In turn, ICPO provided the testimonies of two witnesses, Attorney Beatriz P. González Álvarez and Engineer Gerardo Cosme Núñez.

9. On December 3, 2021, LUMA started the discovery phase on the intervenors' written testimonies by providing Attorney González Álvarez from ICPO a *First Set of Interrogatories and Request for Production of Documents*.

10. On December 9, 2021, this Energy Bureau provided LECO's witnesses with discovery requests. Then, on December 16, 2021, this Energy Bureau issued a discovery request to the OIPC.

11. On December 16, 2021, LECO filed an *Urgent Motion Requesting Extensions of Time for LECO to Answer Requirements for Information* ("LECO's December 16th Request for Extension"). In its request, LECO petitioned this Energy Bureau to grant an extension until December 23, 2021, for Dr. Alameda to submit responses to the discovery request provided by this Energy Bureau. Further, LECO requested an extension up to January 13, 2022, to answer those discovery requests that may be issued during the timeframe allotted to conduct discovery on the intervenors' written testimonies, given the upcoming holiday season.

12. LECO's December 16th Request for Extension to answer any future discovery requests that may be issued until December 28, 2021, will grant its witnesses a minimum 7-day extension if any discovery request is issued on that date. For discovery requests provided before December 28th, the extension for LECO witnesses to submit their responses would be longer.

13. LUMA does not oppose LECO's request for an extension of time to submit their responses to discovery requests. However, the timeframe set to conduct discovery on the intervenors' testimonies and file rebuttal testimonies should also be extended.

14. First, LUMA requests an extension of time to submit discovery requests. This, to grant LUMA an equitable period commensurate to the time granted to intervenors to prepare and issue discovery requests. It should be noted that LUMA filed its witnesses' written testimonies on August 18, 2021 and discovery by intervenors was open from August 27 until October 7, 2021. To wit, intervenors had fifty (50) days to prepare and issue their discovery on LUMA's witnesses' written testimonies. In turn, by allowing LUMA from November 18 until December 28, 2021 to conduct discovery, LUMA has forty (40) days to prepare and issue its discovery on the intervenors' written testimonies since ICPO and LECO filed their witnesses' written testimonies on November 17, 2021. It bears noting that the discovery period on intervenor testimony coincides with both the Thanksgiving and Christmas holidays, which has reduced the business days available to conduct discovery by four business days.

15. Second, LUMA requests an extension of time to submit rebuttal testimonies. This is warranted given that LECO's December 16th Request for Extension would have the effect of reducing by six days the period LUMA has to review and analyze any responses and documents produced by the intervenors' witnesses in order to submit any rebuttal testimonies.

16. Additionally, during this holiday season, LUMA personnel and counsels will be enjoying a few days off to observe the festivities. In good faith, we understand that intervenors and their legal representatives may also be enjoying time off during the holidays. Although LUMA

will continue to work on discovery-related matters, observance of legal holidays coupled with previously scheduled vacation time limit LUMA's ability to complete discovery requests and review responses to determine if follow-up requests are needed and finalize rebuttal testimonies.

17. LUMA respectfully requests this Energy Bureau to extend the timeframe for discovery requests on the intervenors' written testimonies to January 20, 2022. Accordingly, the deadline for LUMA to submit rebuttal testimonies on the intervenors' testimonies should be extended until February 10, 2022.

18. LUMA understands that extending the aforementioned schedule will entail rescheduling the Pre-Hearing Conference, the evidentiary hearing date, and subsequent procedural events. As for the Pre-Hearing Conference, section 9.01 of the Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures, Regulation No. 8543 establishes that whenever this Energy Bureau convenes a Pre-Hearing Conference, the parties must meet before and prepare a report to be filed at least ten days before the conference, unless otherwise ordered. At present, this Energy Bureau has not ordered the parties to file a Pre-Hearing Conference Report in this proceeding. Since a requirement to file such a report can affect the procedural calendar, LUMA requests this Energy Bureau to clarify if a Pre-Hearing Conference Report will be required. If this Energy Bureau orders the filing of such a report, LUMA requests it allows its filing five days before the Pre-Hearing Conference and schedules said conference fifteen days after the proposed end of the discovery phase. This would allow the parties ten days to meet and prepare the report ahead of the Pre-Hearing Conference.

19. Accordingly, LUMA also requests the continuance of the evidentiary hearing for late February 2022. The extension sought delays only by one week the hearing. LUMA proposes that all subsequent procedural events after the hearing be extended for one week to provide the equal benefit of time to the remaining participants in this proceeding and the public in general in any filings and submissions they may have.

20. LUMA's request for extension of time is made in good faith, solely seeking to benefit from the same timeframes the intervenors have enjoyed while preparing for and issuing discovery requests. Moreover, it is filed considering the holiday season and that LECO's request for extension will affect the procedural calendar by reducing LUMA's period to prepare its rebuttal testimonies based on the discovery obtained from intervenors. Further, at this moment, LUMA and counsel are evaluating the possibilities of new constraints for in-person meetings due to the recent increase in COVID-19 cases in Puerto Rico that will affect our ability to conclude discovery and prepare rebuttal testimonies.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take** notice of the above and **amend the procedural calendar** to grant until January 20, 2022, for LUMA to issue discovery requests on intervenors witnesses' testimonies; extend the deadline to submit rebuttals on intervenors' testimonies to February 10, 2022; reschedule the Pre-Hearing Conference; clarify if a Pre-Hearing Conference Report needs to be filed; re-schedule the evidentiary hearing for late February 2022; and that all subsequent procedural events be extended for one week.

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 Climática, Alianza Comunitaria Ambientalista del Sureste, Inc., Coalición 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 22nd day of December 2021.



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