

**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: LUMA's Request for the Energy Bureau to Disclose those Consultants or Witnesses and Evidence it Intends to Employ at the Evidentiary Hearing and Petition to Allow LUMA to Conduct Discovery

**REQUEST FOR THE ENERGY BUREAU TO DISCLOSE
THOSE CONSULTANTS OR WITNESSES AND EVIDENCE IT INTENDS TO
EMPLOY AT THE EVIDENTIARY HEARING AND
PETITION TO ALLOW LUMA TO CONDUCT DISCOVERY**

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, and the Energy Bureau could participate in the discovery process, according to the provisions of Regulation No. 8543 on

Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings of December 18, 2014 (“Regulation 8543”).

3. On May 14, 2021, the Energy Bureau issued a Resolution and Order amending the procedural calendar established in the April 8 Resolution. This Energy Bureau issued subsequent orders amending the procedural calendar on June 4 and July 2, 2021.

4. 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.

5. On August 18, 2021, LUMA filed a revised version of the Request for Approval of the Revised Annex IX to the OMA (“Revised Request for Approval of the Revised Annex IX to the OMA”). Therein, LUMA petitioned this Energy Bureau to accept and approve the Revised Annex IX to the OMA and the Revised Performance Metrics Targets, set the Performance Metrics and targets to apply for an initial period of three years of operations, and allow periodic review of the performance baselines, metrics, and targets. Then, on September 24, 2021, LUMA filed a further revised version of the Revised Annex IX to the OMA (“Second Amended Revised Annex IX to the OMA”), as included in Section 2.0 of LUMA’s Second Revised Performance Metrics Targets filing also submitted on that date. The Second Amended Revised Annex IX to the OMA reflected revisions to the calculations for the Customer Complaint Rate and the proposed targets in the Customer Complaint Rate metric.

6. On October 20, 2021, this Energy Bureau issued a further Resolution and Order to amend the procedural calendar. It set the calendar to notify any discovery on the intervenors' written testimonies from November 18 to December 28, 2021.

7. As part of the discovery performed on LUMA, the Puerto Rico Local Environmental and Civil Organizations ("LECO"), the Independent Consumer Protection Office ("ICPO"), and this Energy Bureau issued discovery requests to LUMA, covering the totality of LUMA's witnesses' testimonies. In several of them, this Energy Bureau requested information and documents on topics not included in LUMA's Second Revised Performance Metrics Targets filing.

8. Section 8.01 (H) of Regulation 8543 provides that, "[a]t its discretion, the Commission may summon witnesses other than a party's witnesses (including expert witnesses), subject to the conditions the Commission deems appropriate, including the possibility of ordering compensation by one, some or all of the parties involved in the case." That is, the Energy Bureau may summon witnesses in adjudicative proceedings such as this one.

9. Regulation 8543 does not preclude a party from conducting discovery on any potential witness this Energy Bureau may call to testify on its behalf in an adjudicative proceeding. Also, Section 1.07 of Regulation 8543 grants this Energy Bureau discretion to conduct the proceedings in any manner it understands proper if there is no specific provision established in the regulation. As such, this Energy Bureau has the discretion to allow discovery of those witnesses it intends to call to testify on its behalf.

10. Taking into account that this Energy Bureau has been an active participant during discovery, and given that per Section 8.01 (H) of Regulation 8543, the Energy Bureau may summon witnesses, including expert witnesses, it is fair, proper, and reasonable for LUMA to have the opportunity to conduct discovery regarding the evidence that the Energy Bureau may submit in this proceeding through the means of witnesses, experts or consultants. Administrative adjudicative proceedings such as this one are governed by the procedural principle that only evidence subject to discovery will be admissible at the evidentiary hearing in order to avoid unfair surprises. *Rivera y otros v. Bco. Popular*, 152 DPR 140, 152 (2000). The provisions regarding discovery included in Regulation 8543 embody this general principle of law and due process. It bears noting that two of the discovery requests issued by the Energy Bureau involved performance categories such as interconnections and vegetation management that are not included in LUMA's Second Revised Performance Metrics Targets filing. Thus, LUMA understands there is a possibility that the Energy Bureau may consider presenting witnesses or evidence on performance categories that are not covered by LUMA's Second Revised Performance Metrics Targets filing.

11. Absent the possibility to conduct discovery on this Energy Bureau's potential witnesses and any evidence to be considered or utilized by the Energy Bureau and its consultants, LUMA's, and the intervenors' ability to adequately set forth its arguments and defenses at the evidentiary hearing would be materially limited. Only through cross-examination would LUMA and the intervenors be able to inquire about the analyses, opinions, or recommendations the Energy Bureau's witnesses may submit in this proceeding. However, the ability to cross-examine would consequently be limited, as LUMA and the intervenors would not have had the opportunity to

inquire about the basis or data of those witnesses' testimonies to develop their analyses, opinions, or recommendations in advance. In such a scenario, LUMA and the intervenors would be at a procedural disadvantage in violation of basic procedural fairness and due process guarantees that apply in administrative adjudicative proceedings. *See Báez Díaz v. ELA*, 179 DPR 605, 623 (2010) (recognizing that administrative adjudicative proceedings shall observe the guarantees of due process according to the nature of the proceedings and that proceedings must be fair and equitable); *Aut. Puertos v. HEO*, 186 DPR 417, 443 (2012) (stating that due process guarantees apply to both judicial and administrative adjudicative proceedings). It bears noting that principles of due process recognized in our jurisdiction include granting the parties a real opportunity to confront the evidence and witnesses presented against it. *See e.g., Hernández González v. Secretario*, 164 DPR 390, 395-96 (2005).

12. In view of the above, LUMA respectfully requests this Energy Bureau to disclose if it intends to employ any consultant or witness at the evidentiary hearing and provide the following: (1) their names; (2) if they have performed any analyses or studies on LUMA's or the intervenors' witnesses' testimonies that the Energy Bureau will submit for the record in this proceeding; and (3) if they plan to summon- witnesses or submit evidence at the hearing. This, prior to the evidentiary hearing, during the period allotted to conduct discovery on the intervenors' written testimonies.

13. LUMA believes it is in the best interest of all participants involved in this proceeding to have an equal opportunity to conduct discovery on the complete set of evidence and testimonies to be presented at the evidentiary hearing. Disclosing beforehand the information

solicited in this motion regarding this Energy Bureau's consultants and witnesses (or potential witnesses) will allow the parties to cross-examine those potential witnesses on the full scope of their testimonies in an organized manner, making the most of the time allotted. Also, it would place all parties involved in a position to be fully prepared for the evidentiary hearing.

14. LUMA makes this request in good faith to ensure fairness and transparency in presenting evidence and testimonies for all participants involved in this proceeding.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **consider** the aforementioned discussion, **disclose** if it intends to employ any consultant and witness at the evidentiary hearing, and provide the following: (1) their names; (2) if they have performed any analysis or studies on LUMA's or the intervenors' witnesses testimonies that the Energy Bureau will submit for the record in this proceeding; (3) if they plan to introduce any evidence at the hearing; and (4) **allow** discovery on those witnesses that the Energy Bureau intends to utilize at the evidentiary hearing.

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-emmanueli.com, pedrosaade5@gmail.com, jessica@bufete-emmanueli.com; rolando@bufete-emmanueli.com.

In San Juan, Puerto Rico, this 9th day of December 2021.



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