

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

**NEPR**

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**IN RE:**

THE PERFORMANCE TARGETS FOR  
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

**SUBJECT: Response in Opposition to Request to Amend  
Procedural Calendar to Authorize Discovery on LUMA  
Rebuttal testimonies**

**RESPONSE IN OPPOSITION TO LECO'S "REQUEST TO AMEND PROCEDURAL  
CALENDAR TO AUTHORIZE DISCOVERY ON LUMA REBUTTAL TESTIMONIES"**

**TO THE HONORABLE PUERTO RICO ENERGY BUREAU:**

COME NOW LUMA Energy, LLC ("ManagementCo"), and LUMA Energy ServCo, LLC ("ServCo"), (jointly "LUMA"), and respectfully state and request the following:

1. On July 22, 2021, LUMA filed a *Request to Amend Procedural Calendar to Authorize Discovery on Intervenor Testimonies and Filing of Rebuttal Testimonies* requesting that the Puerto Rico Energy Bureau ("Energy Bureau") authorize LUMA to conduct discovery on the intervenors' witnesses' pre-filed testimonies and submit pre-filed rebuttal testimonies prior to the evidentiary hearing.

2. On August 9, 2021, the Energy Bureau entered a Resolution and Order granting LUMA the opportunity to conduct meaningful discovery on the intervenors' witnesses' pre-filed testimonies and submit pre-filed rebuttal testimonies in response thereto.

3. After several procedural developments, on January 27, 2022, the Puerto Rico Environmental and Civil Organizations ("LECO") filed a *Request to Amend Procedural Calendar to Authorize Discovery on LUMA[s] Rebuttal Testimonies* (the "Request for Additional

Discovery”) whereby it requested that the procedural calendar in this proceeding be modified to allow LECO, an intervenor, to conduct discovery on LUMA’s rebuttal testimonies.

4. LECO’s Request for Additional Discovery is not contemplated in the procedural calendar. It is also unduly belated. Since August 9, 2021, LECO is aware that LUMA would conduct discovery on the direct testimonies filed by intervenors and then submit written rebuttal testimonies. LECO, however, waited more than five (5) months, after several amendments to the procedural calendar, to request that pre-hearing and discovery proceedings include an additional discovery stage on LUMA’s rebuttal testimonies. LECO’s request is untimely and should be denied.

5. Importantly, LECO did not include a concrete or principled justification on the need to conduct discovery on the pre-filed testimonies of LUMA’s rebuttal witnesses. Instead, LECO’s request is exclusively based on the incorrect premise that it is entitled to conduct additional discovery in this proceeding on LUMA’s rebuttal evidence which would grant LECO the right to a second round of discovery beyond what is available to LUMA in this proceeding. LECO alleges that “the same reasoning” cited by LUMA upon requesting the opportunity to conduct discovery as to the intervenors’ witnesses’ pre-filed testimonies, applies to LECO as an intervenor in the present case to conduct discovery on LUMA’s rebuttal testimonies. LECO’s reasoning to request additional discovery is incorrect and unsupported. LECO ignores that it conducted discovery on the direct testimonies of LUMA’s witnesses and that after said discovery, it filed written direct testimonies. LUMA was then granted the same right to discovery on the direct testimonies of LECO’s witnesses. Because both LUMA and intervenors were allowed to conduct discovery regarding direct testimonies, LECO cannot claim that the right to additional discovery on rebuttal

testimonies is somehow justified because LUMA was allowed to conduct discovery on the direct testimonies of LECO's witnesses.

6. LECO's proposal on its alleged right to conduct additional discovery on LUMA's witnesses' rebuttal testimonies disregards that LUMA and LECO are not in the same position in the present proceeding. As the regulated and moving party, LUMA's due process rights guarantee it the opportunity to conduct discovery as part of the adequate defense and representation of its interests in this proceeding where LUMA is the moving party. *See*, Section 3.1 of the Puerto Rico Uniform Administrative Procedure Act, Act 38-2017 ("LPAU" for its Spanish acronym), 3 P.R. Laws Annot. § 9641 (2021) and Article VIII of the Energy Bureau's *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Procedures*, Regulation No. 8543 dated December 18, 2014 ("Regulation 8543"). Consistent with the foregoing, the Energy Bureau correctly held on August 9, 2021, that LUMA should be allowed to conduct discovery on the intervenors' pre-filed testimonies and to rebut such testimonies through pre-filed rebuttals. *See*, Resolution and Order dated August 9, 2021.

7. As an intervenor, LECO has been granted the opportunity to participate, conduct discovery on equal footing as LUMA, and exchange information because the Energy Bureau –in its discretion- deemed that LECO's presence would benefit the exercise of its regulatory duties in this proceeding. *See*, Resolution and Order dated August 5, 2021 (granting LECO's request for intervention). In its request to conduct discovery on rebuttal testimonies, LECO did not assert material and cognizable justifications of harm to be suffered as an intervenor if it does not conduct the additional discovery requested.

8. LECO's participation as an intervenor cannot be equated to or go beyond LUMA's as the regulated party for purposes of defining the extension of its capacity to conduct a second and

additional round of discovery, related to the rebuttal testimonies to be submitted by LUMA. Moreover, LECO's participation shall not interfere with the prompt and efficient administration of the present case as that would run counter to the criteria that govern the agency's discretion to grant a request for intervention, which include consideration of whether participation by the intervenor would extend or delay proceedings. *See*, Section 3.5 (c) of the LPAU and Article 5.05 of the Regulation, 3 P.R. Laws Annot. § 9645 (2021). It is respectfully submitted that LECO's request for an additional round of discovery to cover LUMA's witnesses' rebuttal testimonies would unduly interfere with the orderly conduct of proceedings that are at an advanced stage, in circumstances in which LECO already exercised its right to discovery on the direct testimonies of LUMA's witnesses.

9. As the Energy Bureau is aware, this proceeding commenced on December 23, 2020. Since August 2021, the parties engaged in meaningful discovery while complying with the procedural calendar, as amended. As it relates to LECO, LUMA responded to four discovery requests (totaling 112 questions) by that intervenor.<sup>1</sup> Thus, LECO has been afforded the opportunity and has exercised its prerogative to conduct extensive discovery upon LUMA as an intervenor in this case. Its request to conduct additional discovery will only delay the proceedings and increase costs. It would also potentially place LECO in an undue procedural advantage *vis à vis* LUMA, given that LECO would be granted access to a second round of discovery that is not contemplated in the procedural calendar and has not been granted to LUMA. Also, LECO would potentially have an opportunity to supplement the testimonies and information that it has submitted in the instant proceeding at a juncture in which LUMA's discovery on the testimonies of LECO's witnesses is at an advanced stage. Specifically, LUMA's discovery on LECO's witnesses' testimonies is set

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<sup>1</sup> Discovery included supplemental responses by LUMA on November 20, 2021. *See* LUMA's *Motion Informing Compliance with Resolution and Order of November 4, 2021*.

to conclude when LECO submits supplemental responses to LUMA's written discovery by February 10, 2021, and LUMA determines if there is need to file a motion to compel. Thus, the requested additional discovery would give LECO an undue procedural advantage.

10. In sum, LECO's request for a second round of discovery or additional discovery, would mean that the discovery stage of this proceeding would remain active and open, contrary to the course chartered by this Energy Bureau since August 9, 2021, when the Energy Bureau adopted a schedule pursuant to which only one discovery phase would be allowed on equal footing to the parties: intervenors, including LECO, would be able to conduct discovery on LUMA's witnesses' direct testimonies and then LUMA would conduct discovery on the direct testimonies submitted by intervenors.

11. It is respectfully noted that LUMA is in the process of submitting rebuttal testimonies on specific portions of the intervenors' witnesses' pre-filed testimonies that merit clarification and rebuttal. As rebuttal evidence, those testimonies would not be subject to discovery even in a formal judicial proceeding. *See*, Rule 37.4(h) of the Puerto Rico Rules of Civil Proceeding, 32 P.R. Laws Annot. Ap. V, that may apply in this proceeding per the Energy Bureau's discretion under Section 2.01 of Regulation 8543 (stating that the parties need not announce rebuttal witnesses prior to trial). As an intervenor, LECO will have the opportunity to cross-examine any rebuttal witnesses during the evidentiary hearing that is scheduled in this proceeding. Thus, LECO would not be left without an opportunity to challenge the rebuttal testimonies. Importantly, LECO has not shown that its right to question rebuttal witnesses during the evidentiary hearing would be ineffective if an additional round of discovery on rebuttal testimonies is not authorized.

12. Granting LECO's request would likely require an additional amendment to the procedural calendar for discovery, which would include time for LUMA to submit responses and objections,

for LUMA and intervenors to meet and confer on responses to discovery and for LUMA to file supplemental responses, if necessary. In sum, the additional discovery that LECO has requested will only delay the proceedings given that discovery and proceedings leading to the evidentiary hearing are currently at an advanced stage.

13. It bears noting that in the adjudicative phase of proceedings for consideration and approval of the Integrated Resources Plan, Case No. CEPR-AP-2018-0001 (the “IRP Proceeding”), this Energy Bureau issued an order to strike a sur-rebuttal testimony presented by an intervenor in response to certain rebuttal testimony filed by an expert witness for the Puerto Rico Electrical Power Authority (“PREPA”). *See*, Resolution and Order dated January 15, 2020, in the IRP Proceeding.<sup>2</sup> As stated in the Energy Bureau’s Resolution and Order of January 15, 2020, in the IRP Proceeding, its decision to deny filing of sur-rebuttal testimony was rooted in the interest of procedural economy. The Energy Bureau also emphasized that the procedural calendar in that proceeding did not contemplate sur-rebuttal testimonies. *Id.* Further, the Energy Bureau considered that the submitting party would have the opportunity to question PREPA’s witnesses during cross-examination at the evidentiary hearing.

14. Similar to the IRP Proceeding, the amended procedural calendar in this case does not contemplate discovery on the rebuttal testimonies related to the intervenors’ witnesses’ pre-filed testimonies nor filing sur-rebuttal testimonies. As in the IRP Proceeding, the procedural economy would also dictate that the Energy Bureau deny the request for additional discovery, especially considering the extent of discovery already propounded by LECO and the rest of the intervenors in the captioned case as well as the advanced status of proceedings.

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<sup>2</sup> <https://energia.pr.gov/wp-content/uploads/sites/7/2020/01/Resolution-and-Order-CEPR-AP-2018-0001-Windmars-Request-a-Clarification.pdf>.

15. In sum, LECO's Request for Additional Discovery is unfounded and would only delay the instant proceedings which are at an advanced stage.

**WHEREFORE**, LUMA respectfully requests that this Honorable Bureau deny LECO's Request for Additional Discovery.

**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](mailto:jmarrero@diazvaz.law); and Katuska Bolaños-Lugo, [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law), the Office of the Independent Consumer Protection Office, Hannia Rivera Diaz, [hrivera@jrsp.pr.gov](mailto:hrivera@jrsp.pr.gov), and counsel for the Puerto Rico Institute for Competitiveness and Sustainable Economy ("ICSE"), Fernando Agrait, [agraitfe@agraitlawpr.com](mailto:agraitfe@agraitlawpr.com), counsel for the Colegio de Ingenieros y Agrimensores de Puerto Rico ("CIAPR"), Rhonda Castillo, [rhoncat@netscape.net](mailto: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](mailto:larroyo@earthjustice.org), [rsto2@gmail.com](mailto:rsto2@gmail.com), [notificaciones@bufete-emmanueli.com](mailto:notificaciones@bufete-emmanueli.com), [pedrosaade5@gmail.com](mailto:pedrosaade5@gmail.com), [jessica@bufete-emmanueli.com](mailto:jessica@bufete-emmanueli.com); [rolando@bufete-emmanueli.com](mailto:rolando@bufete-emmanueli.com).

In San Juan, Puerto Rico, this 7<sup>th</sup> day of February 2022.



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