

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

NEPR

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IN RE: INTERRUPCIÓN DE SERVICIO
ELÉCTRICO DE 6 DE ABRIL DE 2022

CASE NO. NEPR-IN-2022-0002

SUBJECT:

**Response in Opposition to Petition for
Intervention**

RESPONSE IN OPPOSITION TO PETITION FOR INTERVENTION

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 6th 2022, a failure in the electric system led to a fire at the Costa Sur transmission substation, which resulted in a power outage of the entire electrical system (hereinafter, the “April 6th Incident”).

2. On April 8th 2022, this Honorable Puerto Rico Energy Bureau (“Energy Bureau”) issued a Resolution and Order whereby it initiated the instant investigation of the April 6th Incident (“April 8th Order”) and instructed LUMA to submit on or before April 12th, 2022, at noon, a preliminary report on the causes of the April 6th Incident and the corrective actions taken by LUMA (the “Preliminary Report”).

3. Further, the April 8th Order instructed LUMA to submit on or before April 18th 2022, at noon, a report containing the information detailed in the Order.

4. On April 12, 2022, LUMA filed a *Request for a Brief Extension of Time to Comply with April 8th Resolution and Order on April 6th Incident Investigation*. Therein, LUMA requested a brief extension until the end of the day to submit the Preliminary Report in compliance with the April 8th Order, which the Energy Bureau granted hours later. Therefore, on that same day, in compliance with the April 8th Order, LUMA submitted the Preliminary Report of the April 6th Incident. The Preliminary Report included the information that LUMA had gathered thus far and preliminary findings and assessments of the April 6th Incident.

5. On April 13, 2022, the Independent Consumer Protection Office (“ICPO”), filed a *Solicitud de Consolidación y Notificación de Intervención* (the “ICPO’s Request for Intervention”), whereby it requested that it be allowed to intervene in the instant proceeding. The ICPO also requested that this proceeding be consolidated with a previous Request for Investigation. It requested that this Honorable Bureau open an investigation into the causes of the April 6th Incident and an adjudicative proceeding to evaluate the Limited Liability Waiver included as part of the Modified Terms of Service.

6. On April 14, 2022, to aid the Energy Bureau in its investigation and supplement the Preliminary Report, LUMA filed a *Motion to Supplement Preliminary Report on April 6th Incident*. Therein, LUMA submitted two (2) video recordings, including a screen camera from the Costa Sur transmission substation, which shows the moment of the explosion, and an aerial view video recorded the morning after the April 6th Incident.

7. LUMA also filed a *Motion to Request a Brief Extension to Submit Updated Report*. Therein, LUMA requested a brief extension until the end of the day on April 18th to submit an updated report (“Updated Report”) in compliance with the April 8th Order.

8. Also, on April 14, 2022, the Bureau entered a Resolution and Order in Case No. NEPR-MI-2021-0007, accepting both the Instituto de Competitividad y Sostenibilidad Económica's ("ICSE") and ICPO's requests and informing its decision to open a new adjudicative proceeding to evaluate the Modified Terms of Service and establish a procedural calendar to that end, including the issuance of requirements of information to the parties.¹

9. In compliance with the April 8th Order, on April 18th LUMA submitted an Updated Report of the April 6th Incident through a *Motion Submitting Updated Report and Request for Confidential Treatment*.

10. Through the Updated Report, LUMA provided an update on the overview of the third-party industry expert hired to assist with analysis; the outage investigation and proactive maintenance plan/strategy; the system analysis, including adding dynamic stability analysis into the model; and the ongoing restoration activities at Costa Sur.

11. LUMA also informed that it is conducting a thorough investigation of the April 6th Incident, including an independent forensic assessment to be led by Richard E. Brown, PH.D., P.E. ("Dr. Brown") from the third-party investigation firm, Exponent, which was retained to assist with the investigation and analysis of the April 6th Incident.

12. As also noted in the Updated Report, given the highly technical and extensive nature of the investigation and the desire to conduct an exhaustive, comprehensive, and scientific review, it is not possible at this juncture to establish a fixed date for completion of the root cause

¹ LUMA expressly reserves its right to seek reconsideration of the Honorable Bureau's April 18th Resolution and Order, among other reasons, because LUMA was not afforded the opportunity to express its position as to ICSE's and the ICPO's requests prior to the Bureau ruling upon them and because of the serious implications of such decision in the proceedings object of Case No. NEPR-MI-2021-0007. Their mention here is only as part of the procedural background relevant to the instant motion.

investigation and analysis. LUMA, nonetheless, committed itself to, in due course, providing the Energy Bureau with timely updates on the investigation of the April 6th Incident.

13. To that end, LUMA anticipated being able to provide an update to the Energy Bureau on schedule, scope, and status based on the investigator's review by May 9th, 2022, once the third-party lead investigator reviews and provides feedback on the timeline and scope of the investigation after a preliminary assessment of the collected data.

14. On April 21, 2022, EcoEléctrica, L.P. ("EcoEléctrica") filed a Petition for Intervention whereby it requested that the Honorable Bureau grant it leave to intervene in this proceeding pursuant to Section 5.05 of the *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*, Regulation number 8543 of the Puerto Rico Energy Bureau and section 3.5 of the Puerto Rico Law of Administrative Procedure, Law No. 38-2017 ("LPAU" for its Spanish acronym). As argued by EcoEléctrica, as an independent power generator of the Puerto Rico electric system, it has a great interest in the investigation being conducted by the Energy Bureau and the result thereof. To that end, EcoEléctrica alleges that, as intervenor, it would have the opportunity to access the information shared with the Bureau in this proceeding and participate therewith in the protection of its interests. Alternatively, EcoEléctrica requested that it be allowed a limited intervention or participation to be kept informed of the filings, resolutions, and orders in this proceeding subject to a non-disclosure agreement, if necessary.

15. As admitted by EcoEléctrica in its Petition for Intervention, the concept of the intervenor is recognized only in administrative proceedings of *adjudicative* nature. To that end, Law 38-2017 defines an intervenor as a person who is not an original party to an *adjudicative* proceeding and that has demonstrated his or her capacity or interest in the proceeding. 3 PR Laws Ann. sec. 9603(f). In an *adjudicative* proceeding, the administrative agency determines the rights,

obligations, or privileges that correspond to a party. 3 PR Laws Ann. sec. 9603(b). Section 3.5 of Law 38-2017 further establishes the criteria to be considered by administrative agencies upon ruling on a request for intervention as part of an administrative proceeding of an adjudicative nature. 3 PR Laws Ann. sec. 9645.

16. Consistent with the foregoing, Section 5.05 of Regulation 8543 provides that persons with a legitimate interest in a proceeding before the Bureau may move for intervention through a duly grounded petition that shall be evaluated according to the criteria set forth by Law 38-2017. That is, upon providing for the intervention of interested parties in a proceeding before the Bureau, Regulation 8543 refers to and incorporates the pertinent sections of Law 38-2017. Therefore, pursuant to Regulation 8543, intervention is proper for administrative proceedings of an adjudicative nature.

17. The present proceeding, however, is not *adjudicative*. It is of an *investigative* nature and, as such, is governed by Chapter VI of Law 38-2017 and Chapter V of Regulation 8543, specifically Article XV. None of those provisions contemplate the intervention of parties. The language of Article XV only provides the Energy Bureau with an active role in this type of proceeding. The Energy Bureau exclusively can issue requests of information and akin discovery requests to the investigated party or any other person or entity under its jurisdiction. The participation envisioned by Regulation 8543 of any other party that is not the Energy Bureau in an investigative proceeding is incompatible with the active role of an intervenor in an adversarial or adjudicative proceeding. As such, it is evident that the intervention requested by EcoEléctrica is not permitted nor warranted in proceedings of an investigative nature such as this one.

18. A review of the dockets maintained by this Honorable Bureau for other investigative proceedings identified with the “NEPR-IN” nomenclature confirms that, instead of

administering interventions, the Bureau propounds requirements for information to stakeholders that it understands possess information relevant to the investigation. Therefore, the Bureau has the necessary mechanisms to seek the information relevant and necessary to complete its investigation, which is the purpose of this proceeding. The Bureau's historical administration of investigative proceedings demonstrates that the role of an intervenor has not been necessary to successfully carry out an investigation, comply with the mandates of the law and regulation, and protect the public interest.

19. Although the foregoing is enough to deny EcoEléctrica's request for intervention, it should be added that allowing the intervention of third parties in this proceeding would delay the completion of the instant investigation and potentially derail its focus as the parties would then have to dedicate resources and attention to responding to the intervenor's submissions.² In other words, it would derail the purpose of the proceeding and turn it into a contentious one.

20. Even though EcoEléctrica, as part of Puerto Rico's generation infrastructure, is an industry stakeholder, its role as it relates to the April 6th Incident is different from LUMA's. LUMA is the operator of the Puerto Rico Transmission and Distribution System and the System Operator in accordance with the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement of June 22, 2020 (the "T&D OMA") and the System Operation Principles approved by this Energy Bureau in case NEPR-MI-2021-0001. LUMA is committed to cooperating with the instant investigation and understands its role in gathering and reporting the pertinent information to this Bureau. As with other investigations, LUMA has and will continue

² This Bureau recognized as much upon ruling on the ICPO's Request for Intervention as it decided to open a separate adjudicative proceeding to consider that petition. As stated, LUMA reserves its right to submit its position as to the ICPO's request through a separate submission and makes reference to it here only to the effect of illustrating the differing nature of an adjudicative proceeding *vis á vis* an investigative proceeding.

to contact as necessary other stakeholders –including EcoEléctrica-- to request and garner any relevant information pertaining to this investigation.

21. EcoEléctrica, on its part, is a generator in the Puerto Rico bulk electric system. As such, Ecoelectrica is called to provide information and cooperate with the system operator in carrying out its responsibilities, including providing relevant information to maintain the security of the bulk electric power system of Puerto Rico and operate the T&D System safely in accordance with Prudent Utility Practices and System Operation Principles as required under the T&D OMA.

22. Therefore, the direct intervention of EcoEléctrica in the proceeding would not be indispensable for this Bureau to complete its investigation as efficiently as possible.

23. Additionally, as related above, pursuant to the regulatory provisions pertaining to investigations, this Honorable Bureau required information from LUMA related to the causes of the April 6th Incident. LUMA has been complying with the Bureau’s requirements by submitting the Preliminary Report and the Updated Report. LUMA also expressed its commitment to update this Bureau as its investigation progresses. Considering the confidential and sensitive nature of some of the information included in the reports, LUMA has moved for the confidential treatment of certain portions of those reports.

24. As set forth in LUMA’s submissions, the information provided to the Bureau under seal of confidentiality constitutes Critical Energy Infrastructure Information (“CEII”) that garners protection from public disclosures pursuant to federal statutes and regulations, *see e.g.*, 6 U.S.C. §§ 671-674; 18 C.F.R. §388.113 (2020), and the Bureau’s Policy on Management of Confidential Information. *See* Energy Bureau’s Policy on Management of Confidential Information, CEPR-MI-2016-0009 (“Policy on Management of Confidential Information”), issued on August 31, 2016, as amended by the Resolution dated September 16, 2016. As such, on April 22, 2022, LUMA

submitted memoranda of law in support of its request to file portions of the reports under seal of confidentiality pursuant to Section A.2 of the Energy Bureau's Policy on Management of Confidential Information.

25. Allowing the intervention of third parties in this proceeding would jeopardize the Bureau's control over the confidential, proprietary and sensitive information submitted pursuant to the same as it would open the door to other parties seeking similar treatment and access.

26. Finally, it is respectfully noted that denying EcoEléctrica's request would not deprive it of access to the developments of this investigation as it would be able to monitor the same through the Bureau's electronic case management system. Moreover, in its role as system operator and an agent for the Puerto Rico Electric Power Authority, LUMA is and will continue to be in regular contact with EcoEléctrica. Therefore, not only does EcoEléctrica's petition finds no legal or regulatory basis, but it is unwarranted in light of the balance of the interests involved.

WHEREFORE, LUMA respectfully requests that, for the reasons discussed above, the Energy Bureau **deny** EcoEléctrica's Petition for Intervention.

RESPECTFULLY SUBMITTED.

We hereby certify that we filed this Motion using the electronic filing system of this Energy Bureau and that we will send an electronic copy of this Motion to attorneys for PREPA, Katuska Bolaños-Lugo, kbolanos@diazvaz.law, and Joannely Marrero-Cruz, jmarrero@diazvaz.law; and the attorney for EcoEléctrica, Carlos Colón Franceschi, ccf@tcm.law.

In San Juan, Puerto Rico, this 28th day of April 2022.



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