

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

NEPR Received: Aug 18, 2022 8:47 PM
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IN RE:

THE PERFORMANCE TARGETS FOR
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

SUBJECT:

**Motion to Request Extension of Time to
Submit a Revised Annex IX and Pre-Filed
Written Direct Testimonies in Compliance
with the Resolution and Order of August 1,
2022**

**MOTION TO REQUEST EXTENSION OF TIME TO SUBMIT A REVISED ANNEX IX
AND PRE-FILED WRITTEN DIRECT TESTIMONIES IN COMPLIANCE WITH THE
RESOLUTION AND ORDER OF AUGUST 1, 2022**

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 December 22, 2021, the Puerto Rico Energy Bureau (“Energy Bureau”) entered a Resolution and Order whereby it concluded that additional performance-based incentive metrics must be evaluated as part of this procedure (“December 22 Resolution and Order”). To that end, the Energy Bureau identified three additional categories of performance metrics: (i) Interconnection of Distributed Energy Resources; (ii) Energy Efficiency and Demand Response; and (iii) Vegetation Management. In the December 22 Resolution and Order, the Energy Bureau ordered LUMA to file a revised Annex IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (“T&D OMA”), including targets and supporting metrics for (i) Interconnection; (ii) Energy Efficiency/Demand Response; and (iii) Vegetation

Management. The Energy Bureau also ordered LUMA to provide supplemental or revised direct pre-filed testimonies for the new metrics and targets.

2. On February 17, 2022, LUMA filed *LUMA's Response in Opposition and Objection to December 22, 2021 Resolution and Order and Request to Vacate or Grant LUMA Relief from the December 22, 2021 Resolution and Order* ("LUMA's Objection"). LUMA contended that the entry of the December 22 Resolution and Order was arbitrary and in violation of LUMA's due process rights for several reasons. Specifically, upon entering the December 22 Resolution and Order, the Energy Bureau incorrectly relied on several supplemental responses to discovery propounded by the Energy Bureau and by intervenor Local Environmental and Civil Organizations ("LECO") that LUMA was ordered to provide without being afforded the prior opportunity to be heard concerning the objections to the additional performance metrics that LUMA had timely raised.

3. In its Objection, LUMA also argued that upon entering the December 22 Resolution and Order, the Energy Bureau unfairly admitted those responses to discovery requests as evidence. In addition, the Energy Bureau did not first allow LUMA to file rebuttal testimonies regarding the information and documentation in the record from which the Energy Bureau drew its conclusion to include additional categories of performance metrics in this proceeding. Nor did the Energy Bureau wait until the conclusion of the evidentiary hearing with the benefit of the full record to issue a determination on whether additional categories of metrics are warranted.

4. LUMA also argued that the December 22 Resolution and Order constituted an improper exercise of the Energy Bureau's ability to take administrative notice of filings made in other regulatory proceedings as it did not provide LUMA a reasonable opportunity to be heard. Moreover, as LUMA outlined in its Objection, the Energy Bureau established an abbreviated

procedural calendar for LUMA to add the new metrics to the Revised Annex IX to the T&D OMA, which only underlines the unfair and impractical nature of the December 22 Order and Resolution.

5. On March 14, 2022, LECO filed a *Reply to LUMA's Response in Opposition to the December 22, 2021 Resolution and Order on Additional Metrics*. LECO averred that the Energy Bureau has authority to require the inclusion of additional metrics in this proceeding and that the Determination of Completeness entered by the Energy Bureau on August 25, 2021, does not prohibit the Energy Bureau from requiring consideration of additional metrics. LECO also set forth that the December 22 Resolution and Order ensure due process rights to all parties in this proceeding and that LUMA's Objection constitutes a tardy motion for reconsideration.

6. On March 24, 2022, LUMA filed *LUMA's Response to LECO's Reply to LUMA's Response in Opposition to the December 22, 2021 Resolution and Order on Additional Metrics*. LUMA posed that as a threshold procedural matter, LUMA's Objection is not a motion for reconsideration because it does not seek reconsideration of a final or partial resolution or order entered by the Energy Bureau but of an interlocutory determination. In addition, the opportunity to conduct discovery as to the additional performance metrics does not cure the December 22 Resolution and Order's defects arising from the fact that it was entered in violation of LUMA's due process rights. As such, LUMA restated its request for this Energy Bureau to vacate the December 22 Resolution and Order or otherwise grant LUMA relief from that portion of the December 22 Resolution and Order that requires LUMA to add three additional performance metrics categories to the Revised Annex IX to the T&D OMA.

7. On August 1, 2022, this Energy Bureau entered a Resolution and Order, whereby it denied LUMA's Objection ("August 1st Order"). In turn, it ordered LUMA to file within twenty (20) days: (i) a revised Annex IX to the T&D OMA, including targets and supporting metrics for

Interconnection, Energy Efficiency/Demand Response, and Vegetation Management; and (ii) a supplemental or revised direct pre-filed testimony for targets and supporting metrics for the performance metric targets described in the December 22 Resolution and Order.

8. LUMA has identified three witnesses who will offer the pre-filed written direct testimonies on the additional metrics. These witnesses are working with others to collect, evaluate and review data, as well as other work, including preparing potential targets and baselines. Preparing and filing written testimonies requires substantial work by LUMA in consultation with several departments and counsel. Time and effort must be devoted to each witness to review data submitted to this Energy Bureau as part of the revised Annex IX to the T&D OMA. Note that the process of setting performance baselines and metrics and assessing compliance benchmarks for the additional performance categories identified by the Energy Bureau requires an analysis of the basis for each metric in the context of the desired performance to be measured in light of the data available, and the ability to validate and report on this data.

9. The metrics and targets to be proposed need to be consistent with and based on the implementation of LUMA's improvement programs, including those that are part of the System Remediation Plan. *See* Initial Budgets approved by the Energy Bureau in Case No. NEPR-MI-2021-0004, and System Remediation Plan approved by the Energy Bureau in Case No. NEPR-MI-2020-0011. To provide some context, the performance metrics in LUMA's Revised Annex IX submitted on September 23, 2021, in this case, were the subject of research, validation, discussion, and review over the course of eight months before submittal to the Puerto Rico Public-Private Partnerships Authority ("P3A") and subsequently after review and comment from the P3A to the Energy Bureau.

10. Moreover, LUMA is also currently drafting a Revised Annex IX to the T&D OMA. Notwithstanding, such Revised Annex IX requires review and input from LUMA leadership and personnel in charge of operations. The review process is time-consuming and is accomplished while prioritizing resources on crucial tasks regarding the transmission and distribution system operation.

11. Further, LUMA has been working on several complex and time-intensive regulatory filings, particularly in Case No. NEPR-MI-2020-0004, in addition to requiring an extensive investment of time and resources to achieve a Certified Budget, also needed preparation for a Technical Conference on the Fiscal Year 2023 Certified Budget, which was set aside through Resolution and Order entered on August 12, 2022; Case No. NEPR-MI-2020-0012; and Case No. NEPR-MI-2019-0016.

12. LUMA appreciates the importance of moving forward in a timely manner in this proceeding. The records before this Energy Bureau manifest LUMA's commitment to comply with the orders issued by this Honorable Energy Bureau in setting performance baselines and benchmarks that will inform the Bureau's consideration of a Revised Annex IX to the T&D OMA. However, due to the circumstances mentioned above, LUMA cannot responsibly file a complete revised Annex IX to the T&D OMA and pre-filed written direct testimonies on the additional testimonies by the deadline set in the August 1st Order. Thus, LUMA respectfully moves this Energy Bureau to extend the timeframe to file the revised Annex IX to the T&D OMA and the pre-filed written direct testimonies on the additional metrics to September 21, 2022. LUMA's request for an extension of time is made in good faith and has no impact on the procedural calendar, as it has not been established yet.

WHEREFORE, LUMA respectfully requests this Honorable Bureau to **consider** the aforementioned and **grant** this request to reschedule the deadline to file the Revised Annex IX to the T&D OMA and pre-filed direct written testimonies on the additional metrics for September 21, 2022.

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@agrailawpr.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, lvez@earthjustice.org, rmurthy@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, on this 18th day of August 2022.



DLA Piper (Puerto Rico) LLC
500 Calle de la Tanca, Suite 401
San Juan, PR 00901-1969
Tel. 787-945-9132
Fax 939-697-6102

/s/Ana Margarita Rodríguez Rivera
Ana Margarita Rodríguez Rivera
RUA Núm. 16,195
ana.rodriguezrivera@us.dlapiper.com

/s/Yahaira De la Rosa Algarín
Yahaira De la Rosa Algarín
RUA Núm. 18,061
yahaira.delarosa@us.dlapiper.com