

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

IN RE: PERFORMANCE TARGETS FOR
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

SUBJECT: Amended LUMA Testimony,
Supplemental Discovery and Amended
Procedural Calendar.

RESOLUTION AND ORDER

I. Introduction

On December 22, 2021, the Energy Bureau of the Public Service Regulatory Board (“Energy Bureau”) issued a Resolution and Order (“December 22 Resolution”) through which, amended the Procedural Calendar previously established through the October 20, 2021, Resolution¹ (“October 20 Resolution”). In the December 22 Resolution, the Energy Bureau ordered LUMA to, no later than January 18, 2022, file a revised Annex IX to the OMA including targets and supporting metrics for the following: (i) Interconnection, (ii) Energy Efficiency/Demand Response, and (iii) Vegetation Management. The Energy Bureau also instructed LUMA to provide supplemental or revised direct pre-filed testimony for targets and supporting metrics for the new performance metric targets, on or before January 18, 2022.

On January 7, 2022, LUMA submitted a document titled *LUMA’s Request for this Energy Bureau to Modify the Procedural Calendar Set Forth in the Resolution and Order of December 22, 2021* (“January 7 Motion”). LUMA requested the Energy Bureau to extend the January 18, 2022 deadline to February 17, 2022.

On January 14, 2022, the Energy Bureau issued a resolution and order (“January 14 Resolution”) establishing an amended procedural schedule and granting LUMA’s request to submit the revised Annex IX and supporting written testimony on February 17, 2022.

February 17, 2022, LUMA submitted a document titled *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 on Additional Metrics* (“February 17 Motion”). LUMA requested the Energy Bureau to vacate or grant LUMA relief from the December 22 Order requiring LUMA to submit the three additional performance metrics and revise Annex IX of the OMA.

On August 1, 2022, the Energy Bureau issued a Resolution and Order (“August 1 Resolution”) in which the Energy Bureau denied LUMA’s February 17 Motion. The August 1 Resolution also ordered LUMA to file a revised Annex IX to the OMA to include targets and supporting metrics for Interconnection, Energy Efficiency/Demand Response, and Vegetation Management by August 21, 2022. The August 1 Resolution also required LUMA to provide supplemental or revised direct pre-filed testimony for the targets and supporting metrics in response to the December 22 Resolution.

On August 15, 2022, LECO² filed a document titled *Request to Authorize Discovery on LUMA’s Supplemental Testimony* (“August 15 Motion”). In the August 15 Motion, LECO requested

¹ See Resolution, *In re: Performance Targets for LUMA Energy ServCo, LLC*, Case No. NEPR-AP-2020-0025, October 20, 2021.

² Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc. – Enlace Latino de Acción Climática, Inc., 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 (Local Environmental and Civil Organizations, or “LECO”)



that the Energy Bureau grant LECO the opportunity to conduct discovery on LUMA's supplemental testimony for ten (10) days from the date that the testimony is filed.

On August 17, 2022, ICPO³ filed a document titled *Moción Uniéndonos a Solicitud de LECO Sobre Descubrimiento de Prueba de Nuevas Métricas* ("August 17 Motion"). In the August 17 Motion, ICPO requested that the Energy Bureau grant LECO the opportunity to conduct discovery on LUMA's supplemental testimony for eighteen (18) days from the date that the testimony is filed.

The Energy Bureau notes that LECO requests ten (10) days and that OIPC requests eighteen (18) days.

On August 18, 2022, LUMA filed a document titled *Motion to Request Extension of Time to Submit a Revised Annex IX and Written Direct Testimony in Compliance with the Resolution and Order August 1, 2022* ("August 18 Motion"). In the August 18 Motion, LUMA requested that the Energy Bureau allow LUMA to submit supplemental testimony and a revised Annex IX in compliance with the August 1 Resolution on September 21, 2022.

On September 9, 2022, LUMA filed a document titled *Amended Request for Extension of Time to Submit a Revised Annex IX and Pre-filed Written Direct Testimony in Compliance with the Resolution and Order August 1, 2022* ("September 9 Motion"). In the September 9 Motion, LUMA requested that the Energy Bureau allow LUMA to submit supplemental testimony and a revised Annex IX in compliance with the August 1 Resolution on October 6, 2022.

On September 30, 2022, LUMA filed a document titled *Motion to Amend Procedural Calendar, Requiring Additional Time to Submit Revised Annex IX and Pre-filed Written Direct Testimonies due to Change in Circumstances, and Proposing Amended Procedural Calendar* ("September 30 Motion"). In the September 30 Motion, LUMA requested that the Energy Bureau allow LUMA to submit supplemental testimony and a revised Annex IX in compliance with the August 1 Resolution on October 28, 2022. LUMA **contends that its response to Tropical Storm Fiona both in terms of storm preparation and storm response has diverted key personnel and resources from the preparation of pre-filed testimony as required by the Energy Bureau.** ⁴

On October 4, 2022, the ICPO filed a document titled *Moción en Oposición a Moción Radicado por LUMA en Solicitud de Prórroga y Recalendarización de los Procesos Radicada por LUMA* ("ICPO October 4 Opposition"). The ICPO requested the Energy Bureau to deny the September 30 Motion arguing that LUMA has had more than ten (10) months to comply with the December 22 Resolution.

On October 5, 2022, the Energy Bureau issued a Resolution and Order granting the intervenors three (3) days to respond to the September 30 Motion and the ICPO October 4 Opposition within the next three (3) days.

On October 10, 2022, LECO filed a document titled *LECO's Response to LUMA's Motion to Amend Procedural Calendar, Requesting Additional Time to Submit Revised Annex IX and Pre-Filed Written Testimonies Due to Change In Circumstances, and Proposing Amended Procedural Calendar* ("LECO October 10 Motion"). LECO requests that the Energy Bureau impose the necessary penalties which have been duly warned to LUMA and assure that such penalties are not passed to the rate payers, but to be passed to LUMA's shareholders.

³ Independent Consumer Protection Office ("ICPO")

⁴ September 30 Motion, pp. 3-4, ¶10.



II. Conclusion

Upon review of LECO’s August 15 Motion and ICPO’s August 17 Motion, the Energy Bureau **DETERMINES** that the ability for Intervenors to conduct discovery on the additional metrics is a reasonable measure. The Energy Bureau **GRANTS** LECO and OIPC’s request for time for additional discovery on LUMA supplemental written testimony and the amended portions of Annex IX. The Energy Bureau **DETERMINES** that the period for discovery on LUMA’s supplemental testimony shall be limited to a period of fourteen (14) days as established in the revised procedural calendar below.

The Energy Bureau also **GRANTS** LUMA’s request to file supplemental testimony and a revised Annex IX in compliance with the August 1 Resolution on or before October **28, 2022**. The Energy Bureau **ORDERS** LUMA to provide both a clean and a blacklined version of the revised Annex IX in its filing to identify the portions amended. The Energy Bureau **REMINDS** LUMA that such revised Annex IX shall be compliant with the principles established by the Energy Bureau in the Resolution and Order opening this procedure.

After evaluating LUMA’s arguments and the intervenor requests, the Energy Bureau **AMENDS** the procedural calendar for the instant case as follows:

Date	Phase
October 28, 2022	LUMA’s submission on new targets metrics and revised Annex IX to the OMA
October 28, 2022	Filing Supplemental Written Testimony by LUMA (Limited to Additional Performance Targets)
October 28, 2022 – November 14, 2022	Discovery on LUMA’s Supplemental Written Testimony (Limited to Additional Performance Targets)
December 8, 2022	Filing of Supplemental Written Testimony by Intervenors (Limited to Additional Performance Targets)
December 8, 2022 – December 22, 2022	Discovery on Intervenors Supplemental Written Testimony (Limited to Additional Performance Targets)
January 23, 2023	Rebuttal on Intervenor’s Supplemental Written Testimony due
January 30, 2023	Pre-Hearing Conference
February 7-10, 2023	Evidentiary Hearing
February 16-17, 2023	Public Hearings
March 10, 2023	Filing of Final Substantive and Legal Briefs by the Parties
March 31, 2023	Filing of Replies to Final Briefs by the Parties
April 12, 2023	Filing of Comments by General Public Due, Filing of Final Brief <i>by Amicus Curiae</i>

The Energy Bureau had **WARNED** LUMA on several occasions⁵ as that failure by LUMA to comply with its orders may be cause for the Energy Bureau to impose penalties.⁶ While LUMA has pointlessly invested valuable time and resources disputing the Energy Bureau’s jurisdiction and avoiding compliance with public policy requirements instead of timely filing the information required, the occurrence of Hurricane *Fiona* opportunely qualifies as cause to avoid the imposition of a fine for noncompliance with our orders. Nevertheless, the Energy Bureau **CAUTIONS** LUMA that noncompliance with the filing of the supplemental written testimony and the new target metrics ordered since the December 22 Resolution **on or**

⁵ See the December 22 Resolution and Order; the February 13, 2022 Resolution and Order; the March 1, 2022 Resolution and Order; the March 16, 2022 Resolution and Order; and the August 1 Resolution and Order.

⁶ Article 6.36 of the Puerto Rico Energy Transformation and *RELIEF* Act, as amended (Act 57-2014).

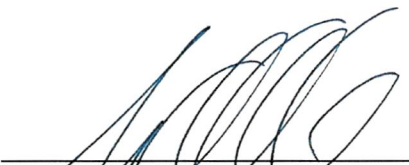


before October 28, 2022 (*i.e.*, their self-imposed deadline), will carry the imposition of fines and/or sanctions for each day of delay⁷.

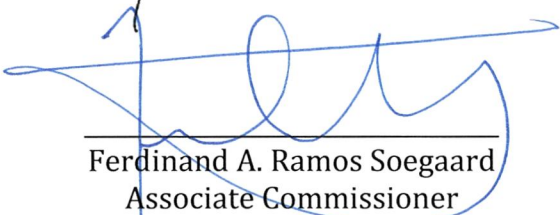
The Energy Bureau **REMINDS** LUMA that this procedure is of the utmost importance and even though LUMA’s handling of this case does not seems to recognize it, time is of the essence. Therefore, the Energy Bureau will not entertain requests for extension unless the cause is the occurrence of an unforeseeable major event⁸. While the parties appearing before the Energy Bureau have the right to present an adequate defense of their rights, they also have a clear responsibility and duty to comply with our orders and the procedural calendars. The Energy Bureau **STRONGLY URGES** LUMA to devotes its time and resources to comply with the calendar and orders, rather than engage into another round of arguments contesting our findings.

The Energy Bureau **WARNS** LUMA that as per section 6.36(a) it may also impose fines to an electric power company subject to its jurisdiction, of up to a maximum of twenty-five thousand dollars (\$25,000.00) per day for violation of Act 57-2014, or the regulations and orders issued thereunder.

Be it notified and published.



Edison Aviles Deliz
Chairman



Ferdinand A. Ramos Soegaard
Associate Commissioner



Lillian Mateo Santos
Associate Commissioner



Sylvia Ugarte Araujo
Associate Commissioner



⁷ To avoid any confusions, such fines are not deemed pass-through costs and as such will have to be paid from the Fixed Fee established under the OMA.

⁸ Neither the availability of resources nor the multiplicity of procedures under which LUMA appears before the Energy Bureau shall be deed just cause or justification. LUMA has had ample time and opportunity to assemble an effective team of resources to handle their multiple responsibilities including, but not limited, to timely compliance with public policy and adherence to calendars established for the procedures before the Energy Bureau, LUMA shall coordinate accordingly to ensure compliance with the procedural calendar.

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on October 14, 2022. I also certify that on October 14, 2022 a copy of this Resolution and Order was notified by electronic mail to margarita.mercado@us.dlapiper.com, yahaira.delarosa@dlapiper.com, jmarrero@diazvaz.law, kbolanos@diazvaz.law, hrivera@jrsp.pr.gov, contratistas@jrsp.pr.gov, agraitfe@agraitlawpr.com, rstgo2@gmail.com, pedrosaade5@gmail.com, flcaseupdates@earthjustice.org, rolando@bufete-emmanuelli.com, notificaciones@bufete-emmanuelli.com, jessica@bufete-emmanuelli.com, rhoncat@netscape.net, larroyo@earthjustice.org, lvelez@earthjustice.org, rmurthy@earthjustice.org and I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today October 14, 2022.



Sonia Seda Gaztambide
Clerk

