

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

NEPR
Received:
Oct 10, 2022
4:37 PM

IN RE: PERFORMANCE TARGETS FOR
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

SUBJECT: INTERVENORS'
RESPONSE TO LUMA'S
SEPTEMBER 30, 2022 MOTION
REQUESTING TO AMEND THE
PROCEDURAL CALENDAR

**LECO'S RESPONSE TO LUMA'S MOTION TO AMEND PROCEDURAL
CALENDAR, REQUESTING ADDITIONAL TIME TO SUBMIT REVISED ANNEX
IX AND PRE-FILED WRITTEN DIRECT TESTIMONIES DUE TO CHANGE IN
CIRCUMSTANCES, AND PROPOSING AMENDED PROCEDURAL CALENDAR**

TO THE PUERTO RICO ENERGY BUREAU:

COME NOW, 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, and Sierra Club and its Puerto Rico chapter, and Unión
de Trabajadores de la Industria Eléctrica y Riego, Inc. (collectively, "LECO"),
respectfully state and request the following:

1. On December 22, 2021, the Puerto Rico Energy Bureau ("PREB") issued a
Resolution and Order ("December 22 Resolution") requiring Luma Energy LLC
("LUMA") to file, by January 18, 2022, the following documents:
 - a. A revised version of Annex IX to the Transmission & Distribution Operation
& Management Agreement ("O&M"), which included proposals for metrics

on Interconnection of Distributed Renewables, Energy Efficiency/Demand Response, and Vegetation Management.

- b. Direct Pre-Filed Testimony from LUMA witnesses, supporting LUMA's proposed metrics in these categories.
2. To date, LUMA has not filed the required documents. On August 1, 2022, PREB issued another Resolution and Order on this topic ("August 1 Order"), deeming LUMA's delaying actions "frivolous" and "a clear showing of bad faith ... aimed at delaying the proceedings."¹
3. On September 16, 2022, the PREB issued a Resolution and Order ("September 16 Resolution") establishing the new procedural calendar in the case referenced above. Within the modified procedural calendar, LUMA was ordered to submit the revised Annex IX for the O&M with the new metrics by October 6th, 2022. This submission was to include supplemental direct testimony, limited to the aforementioned metrics.
4. On September 30, 2022, LUMA filed *Motion to Amend Procedural Calendar, Requesting 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").
5. On October 4, 2022, the Office of Independent Consumer Protection ("OIPC" by its acronym in Spanish) filed an opposition to LUMA's September 30 Motion. OIPC

¹ PREB, *Resolution and Order* p. 5, Dkt. No. NEPR-AP-2020-0025 (Aug. 1, 2022) <https://energia.pr.gov/wp-content/uploads/sites/7/2022/08/20220801-AP20200025-Resolution-and-Order.pdf> [Hereinafter "August 1 Order"].

argues that while LUMA may have had complications and competing priorities in the aftermath of Hurricane Fiona, LUMA has also had ten (10) months to comply with PREB's original December 22 Resolution. Therefore, OIPC requested that LUMA's motion be denied.

6. LECO joins OIPC's motion. Since PREB issued its December 22 Resolution and Order, LUMA's conduct displays a clear and consistent intent to undermine that order and delay the proceedings. The great majority of LUMA's 265- day delay in providing the required draft Annex IX for the O&M and supporting testimony occurred prior to Hurricane Fiona. For months, LUMA has refused to comply with the PREB's order. Its delay cannot now be blamed on a hurricane that made landfall seven months to the day *after* the deadline established by the PREB's December 22 Resolution.
7. PREB's August 1 Order was prescient. In the August 1 Order, PREB pointed out that incentives and penalties on Interconnections, Energy Efficiency/Demand Response, and Vegetation Management would "*encourage LUMA to undertake the work that is needed for the implementation of important goals of the Puerto Rico energy public policy.*"² If anything, the current state of the grid proves this to be true. LUMA's problems in bringing the grid back online after Hurricane Fiona are, in many ways, tied to its inadequate progress towards implementing Puerto Rico's energy public policy.

² August 1 Order p. 5, emphasis in original.

8. Specifically, LUMA’s vegetation management plan leading up to Hurricane Fiona was insufficient and led to greater damages to the grid than should have befallen Puerto Rico with a storm of this magnitude. In fact, a few weeks before Hurricane Fiona, the president of the Energy Commission in Puerto Rico’s House of Representatives, Rep. Luis Raul Torres Cruz, reported that PREPA’s Executive Director, Josué Colón, sent the CEO of LUMA, Wayne Stensby, a letter, “in which he warned that, entering the peak of energy demand and the hurricane season, the state of several of the transmission lines, in particular the state of the vegetation in the easements and their proximity to the lines, put their safe operation at risk.”³ Rep. Torres Cruz explained that this was particularly important because LUMA had reduced vegetation management costs in order to balance its budget.
9. Moreover, the Energy Committee of the United States House of Representatives affirmed that LUMA did not adequately prepare for Hurricane Fiona.⁴ This is consistent with the Center for Investigate Journalism’s (“CPI” for its Spanish acronym) finding that LUMA did not comply with its own emergency plan. According to the CPI, LUMA’s Emergency Response Plan Restoration Protocol (“ERP”) directs it to “provide hourly real-time information to customers based on important outage metrics through [its] electronic page, telephone application,

³ Leoncio Pineda Dattari, *LUMA Redujo Costos De Manejo De Vegetación Para Cuadrar Su Presupuesto*, NOTICEL (Sept. 5, 2022, 05:45 AM) <https://www.noticel.com/economia/top-stories/20220905/luma-redujo-costos-de-manejo-de-vegetacion-para-cuadrar-su-presupuesto/>.

⁴ Leoncio Pineda Dattari, *Cámara Federal Cuestiona A LUMA Por Qué No Se Preparó Para Ciclón Categoría 1*, NOTICEL (Oct. 6, 2022, 5:45 AM) <https://www.noticel.com/ahora/top-stories/20221006/camara-federal-cuestiona-a-luma-por-que-no-se-preparo-para-ciclón-categoría-1/>.

social networks, media and on the map.”⁵ LUMA, on the other hand, has failed to provide a map that displays current outage data for each region and town in Puerto Rico.⁶ In addition, the ERP requires LUMA to provide detailed information and updates on restoration services to a person designated by the municipal government. Both the president of the Federation of Mayors, Gabriel Hernandez Rodriguez, and the president of the Association of Mayors, Luis Javier Hernandez Ortiz, reported that LUMA had not complied with this section of the ERP.⁷

10. Additionally, LUMA made abysmal progress during the many months prior to Hurricane Fiona, on clearing the backlog of rooftop solar + storage systems to be interconnected. All reports indicate that the vast majority of rooftop systems performed at a high level during and after the storm.⁸ Had the backlog been cleared, more of those systems would have been online, lowering the number of customers without power. LUMA’s failure to adequately prepare for hurricane season has caused widespread inconvenience, suffering, damages, and even deaths across the archipelago.

⁵ Centro de Periodismo Investigativo, *LUMA No Cumple Con Lo Que Dice Su Plan Para Emergencias* (Oct. 7, 2022), <https://periodismoinvestigativo.com/2022/10/luma-no-cumple-con-lo-que-dice-su-plan-para-emergencias/>.

⁶ *Id.*

⁷ *Id.*

⁸ Gaye Taylor, *349,000 Without Power in Puerto Rico, 10 Days After Fiona*, THE ENERGY MIX (Sept. 29, 2022) <https://www.theenergymix.com/2022/09/29/349000-without-power-in-puerto-rico-10-days-after-fiona/> ““Providing solid ‘proof of concept,’ some 97% of Sunnova Energy’s 30,000 rooftop solar customers kept their lights on—and their perishables cold, and vital communications and medical equipment charged—throughout Fiona’s assault.”; Maria Gallucci, *Puerto Ricans Are Powering Their Own Rooftop Solar Boom*, CANARY MEDIA (June 8, 2022) <https://www.canarymedia.com/articles/solar/puerto-ricans-are-powering-their-own-rooftop-solar-boom> - Another solar developer, Sunrun, told Canary Media its battery fleet on the island “had provided more than 15,000 hours of backup power to thousands of customers as of September 20.”

11. PREB warned LUMA in December 2021, August 2022, and September 2022 that it could impose a fine of up to \$10,000 per day for repeated delays in filing the revised Annex IX of the O&M and supporting testimony. At this point, LUMA's filings are four days late from PREB's latest schedule (and 265 days late from PREB's original deadline of January 18, 2022). LECO requests that PREB impose the necessary penalties, subject to one condition: If PREB imposes a penalty for the delay, LECO requests that PREB make it clear that this penalty must be paid by LUMA shareholders, and that the penalty absolutely cannot be passed on to Puerto Rican electric customers through rates, fees, or any other billing mechanism. Puerto Rican customers have already paid severe penalties for LUMA's failures.

Respectfully submitted. In San Juan Puerto Rico, October 10, 2022.

/s/ Raghu Murthy

Raghu Murthy
Earthjustice
48 Wall Street, 19th Floor
New York, NY 10005
T: 212-823-4991
E: rmurthy@earthjustice.org
flcaseupdates@earthjustice.org

/s/ Ruth Santiago

Ruth Santiago
RUA No. 8589
Apartado 518
Salinas, PR 00751
T: 787-312-2223
E: rstgo2@gmail.com

/s/ Lorena I. Vélez Miranda

Lorena I. Vélez Miranda
RUA No. 22720
Earthjustice
151 Calle de San Francisco
Ste. 200 PMB 0528
San Juan, PR 00901-1607

/s/ Pedro Saadé Lloréns

Pedro Saadé Lloréns
RUA No. 4182
Clínica Asistencia Legal,
Sección Ambiental
Escuela de Derecho
Universidad de Puerto Rico
Condado 605 – Office 616
San Juan, PR 00907
T: 787-397-9993
E: pedrosaade5@gmail.com

/s/ Rolando Emmanuelli Jiménez

Rolando Emmanuelli-Jiménez
RUA No. 8509
E: rolando@emmanullie.law

/s/ Jessica Méndez-Colberg

Jessica Méndez-Colberg

RUA No. 19853

E: jessica@emmanuelli.law

/s/ Zoé C. Negrón Comas

Zoé C. Negrón Comas

RUA No. 22276

E: zoe@emmanuelli.law

472 Tito Castro Ave.

Marvesa Building, Suite 106

Ponce, Puerto Rico 00716

Tel: (787) 848-0666

Fax: (787) 841-1435

notificaciones@bufeteemmanuelli.com

CERTIFICATION OF SERVICE

I hereby certify that on October 10, 2022, I served this Response to the following parties:

- Puerto Rico Energy Bureau: secretaria@energia.pr.gov; secretaria@jrsp.pr.gov; legal@jrsp.pr.gov and atorres@jrsp.pr.gov
- LUMA Energy LLC and LUMA Energy ServCo LLC: mmercado@mercado-echegaray-law.com; margarita.mercado@us.dlapiper.com; yahaira.delarosa@us.dlapiper.com; and ana.rodriguezrivera@us.dlapiper.com
- PREPA: jmarrero@diazvaz.law; kbolanos@diazvaz.law
- Oficina Independiente de Protección al Consumidor (OIPC): contratistas@oipc.pr.gov; hrivera@oipc.pr.gov
- Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico (ICSE): agraitfe@agraitlawpr.com
- Colegio de Ingenieros y Agrimensores de Puerto Rico (CIAPR): rhoncat@netscape.net

/s/ Raghu Murthy

Raghu Murthy

Earthjustice

48 Wall Street, 19th Floor

New York, NY 10005

T: 212-823-4991

E: rmurthy@earthjustice.org

flcaseupdates@earthjustice.org