

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

NEPR Received: Oct 26, 2022 12:59 PM

IN RE:

THE PERFORMANCE TARGETS FOR
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

SUBJECT:

**Reply to LECO's Opposition to LUMA's
Motion to Amend Procedural Calendar,
Request for Extension of Time to Submit a
Revised Annex IX and Pre-Filed Written
Direct Testimonies and Proposing
Amended Procedural Calendar**

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

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:

I. Relevant Background

1. On December 22nd, 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 22nd 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.

2. In the December 22nd 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.

3. On February 17th, 2022, LUMA filed *LUMA’s Response in Opposition and Objection to December 22nd, 2021, Resolution and Order and Request to Vacate or Grant LUMA Relief from the December 22nd, 2021 Resolution and Order* (“LUMA’s Objection”).¹ In essence, LUMA contended that the December 22nd Resolution and Order entry was arbitrary and in violation of LUMA’s due process rights and requested that this Energy Bureau vacate said order.

4. On August 1st, 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 22nd Resolution and Order.

¹ On March 14th, 2022, LECO filed a *Reply to LUMA’s Response in Opposition to the December 22nd, 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 25th, 2021, does not prohibit the Energy Bureau from requiring consideration of additional metrics. LECO also set forth that the December 22nd Resolution and Order ensure due process rights to all parties in this proceeding and that LUMA’s Objection constitutes a tardy motion for reconsideration. Thereafter, on March 24th, 2022, LUMA filed *LUMA’s Response to LECO’s Reply to LUMA’s Response in Opposition to the December 22nd, 2021, Resolution and Order on Additional Metrics*.

5. On August 15th, 2022, the intervenors, collectively known as LECO, filed a *Request to Authorize Discovery on LUMA's Supplemental Testimony*. The Independent Consumer Protection Office ("ICPO") joined said request through a motion filed on August 17th, 2022.

6. On August 18th, 2022, LUMA submitted a Motion styled *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 1st, 2022* ("August 18th Request for Extension"), whereby LUMA requested an extension until September 21st, 2022, to file its submissions in compliance with the August 1st Order. In the August 18th Request for Extension, LUMA suggested a filing date of September 21st, 2022. Said proposed date was congruent with the then-current regulatory workload and considered the then-current workload of at least three witnesses who will offer the pre-filed written direct testimonies on the additional metrics.

7. On September 9th, 2022, LUMA filed an *Amended Request for Extension of Time to Submit Revised Annex IX and Pre-Filed Written Direct Testimonies in Compliance with Order of August 1st, 2022*, requesting the Energy Bureau to extend the deadline further to file the revised Annex IX until October 3rd, 2022, and the deadline to file the pre-filed written testimonies on the additional metrics on October 6th, 2022. As explained therein, when LUMA prepared the August 18th Request for Extension, it was not able to consider certain overlapping submissions that were due between September 9th and September 20th in other proceedings before the Energy Bureau as well as LUMA's participation in the technical conference on the Fiscal Year 2023 Certified Budget which was set for September 13th, 2022. For that reason, LUMA, in good faith, stated that it would need eight (8) additional business days to complete the submission of the revised Annex IX.

8. On September 16th, 2022, this Energy Bureau entered a Resolution and Order granting LUMA's Amended Request for Extension of Time as well as LECO's and the ICPO's

request for discovery limited to the additional metrics (“September 16th Order”). Through the September 16th Order, the Energy Bureau also issued an amended procedural calendar for the instant proceeding contemplating the celebration of the virtual evidentiary hearings from January 24th through 27th, 2022.

9. On Thursday, September 15th, 2022, at 0800, the United States National Weather Service announced the imminent passage of Tropical Storm Fiona through Puerto Rico, LUMA activated its Emergency Operations Center (LEOC) in compliance with LUMA's Emergency Response Plan. Preparing for and responding to Hurricane Fiona required the engagement of many key personnel and components of the organization. Consequently, LUMA personnel that was at that time working on the revised Annex IX and including the witnesses whose testimonies as to the three additional metrics will be presented, were activated in the LEOC in the response and restoration efforts in the aftermath of Hurricane Fiona. Restoration, repairs, and concomitant administrative support will continue in the coming weeks. For these reasons, on September 30th, 2022, LUMA filed a *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 30th Request to Amend Procedural Calendar”). Thus, LUMA requested the Energy Bureau 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 October 28th, 2022. LUMA also proposed an amended procedural calendar and suggested in good faith that the Energy Bureau seek the input of the other parties to the proceeding as to the proposed calendar for the phases following the filing of the revised Annex IX and the pre-filed direct written testimonies by LUMA.

10. On October 4th, 2022, ICPO filed a motion titled *Moción en Oposición a Moción Radicada por LUMA en Solicitud de Prórroga y Recalendarización de los Procesos Radicada por LUMA*. ICPO opposed the remedies sought by LUMA without stating any reasons for its position.

11. On October 5th, 2022, the Energy Bureau entered a Resolution and Order allowing all intervenors in this proceeding until October 8th, 2022, to respond to LUMA's and ICPO's motions.

12. On October 10th, 2022, LECO filed *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* ("LECO's October 10th Opposition"). LECO joined ICPO's motion in opposing the extension requested. It also asked the Energy Bureau to impose penalties on LUMA for the alleged delay in filing the revised Annex IX to the T&D OMA and the pre-filed written direct testimonies on the additional metrics.

13. On October 14th, 2022, the Energy Bureau entered a Resolution and Order amending the procedural calendar of this instant proceeding. It granted LUMA's request to file supplemental testimony and a revised Annex IX on or before October 28th, 2022. The Energy Bureau also granted LECO and OIPC's request for time for additional discovery on LUMA supplemental written testimony and the amended portions of Annex IX.

14. As explained below, LUMA respectfully requests that this Energy Bureau strike from the record certain statements and arguments included by LECO in the October 10th Opposition that are irrelevant to the question of LUMA's request to amend the procedural calendar.

II. Discussion

15. LECO's October 10th Opposition includes a series of unfounded and hearsay allegations on LUMA's response to the emergency caused by Hurricane Fiona, which can only be considered inflammatory and made in bad faith. These allegations were not related to the request on the timing of a filing and the procedural calendar. They should be stricken from the record as irrelevant.

16. Consistent with the Emergency Response Plan, before, during and after Hurricane Fiona, LUMA has communicated extensively and consistently with customers, the public and this Energy Bureau on restoration efforts and the repercussions of the emergency. With regards to communications with customers and the public, LUMA issued 435 updates, 1,759 Radio announcements, 1,135 social media updates—including Facebook, Twitter and Instagram— and 34 videos, along with press releases, participated in government of Puerto Rico news conferences, held multiple interviews with news outlets on a daily basis, and posted information on its website on the progress of restoration including notices on Estimated Time of Restoration.²

17. With regards to this Energy Bureau, LUMA provided regular updates to the Bureau as evidenced by filings before this Energy Bureau in the case *In re LUMA's Response to Hurricane Fiona*, Case No. NEPR-MI-2022-0003. In fact, just on October 11th, 2022, LUMA's System Operations personnel appeared before this Energy Bureau to discuss concerns about generation resource inadequacies in the aftermath of Hurricane Fiona. It is baseless for LECO to rely on hearsay statements not supported by concrete facts on LUMA's operations and restoration efforts and present arguments about LUMA's preparedness and response to Hurricane Fiona that conveniently omit the full scope of information on restoration efforts that is available publicly,

² Information available at <https://lumapr.com/hurricane-fiona-response-and-restoration-event-summary/?lang=en> (last visited October 26th, 2022).

including the LUMApr website, LUMA's social media outlets, as well as the records of this Energy Bureau, and obscuring the concrete circumstances of the emergency. The facts do not support and in fact completely refute LECO's allegations on this matter.

18. Additionally, this Energy Bureau cannot countenance LECO's attempt to skirt the proper means of presentation of evidence in this adjudicative proceeding. LECO's filing aims to submit arguments and information not supported by sworn statements or admissible evidence on LUMA's efforts to process interconnections of distributed generation systems. This is particularly troubling because that matter is addressed in a separate proceeding before this Energy Bureau, *see In re Informes de Progreso de Interconexión de la Autoridad de Energía Eléctrica de Puerto Rico*, NEPR-MI-2019-0016. Furthermore, the topic of interconnections will be addressed by LUMA in upcoming filings in this proceeding in the proper and accepted form of sworn testimonies and supporting documentation. LUMA opposes the use of a procedural motion to submit arguments and contentions that are irrelevant to the issue of an amendment to the procedural calendar.

19. LECO's use of an opposition to a procedural motion to present arguments and information and request the imposition of sanctions is particularly improper given that this Energy Bureau has set a clear path on when and in what manner it will receive evidence in the form of pre-filed and live testimonies, which do not include submission of unfounded factual contentions in a procedural motion. Consideration of LECO's statements for issuance of substantive relief without a proper process for the presentation of testimonies and evidence as a part of this adjudicative proceeding would amount to a violation of LUMA's right to procedural process.

20. In sum, the matters raised by LECO in paragraphs 8 through 10 of its October 10th Motion, are outside the scope of this proceeding. LUMA requests that those paragraphs that include argumentation by counsel and ill-presented factual allegations be stricken from the record

and that LECO is admonished to refrain from attempting to submit evidence outside the confines of the procedures set forth by this Energy Bureau in this proceeding to submit pre-filed testimonies per the procedural calendar.

WHEREFORE, LUMA respectfully requests this Honorable Bureau to **consider** the aforementioned; and **strike** from the record paragraphs 8 through 10 of LECO's October 10th Opposition and admonish LECO to refrain from submitting factual allegations that are irrelevant to the precise order issued by the Energy Bureau and presented through legal argumentation by counsel, unsupported by admissible evidence and submitted without authorization.

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 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@agraitlawpr.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, lvelez@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 26th day of October 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/ Margarita Mercado Echegaray
Margarita Mercado Echegaray
RUA NÚM. 16,266
margarita.mercado@us.dlapiper.com

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