

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

NEPR
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IN RE: PERFORMANCE TARGETS FOR
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

SUBJECT: MOTION REQUESTING
THAT PREB ADDRESS
OUTSDANDING ISSUES

MOTION REQUESTING THAT PREB ADDRESS OUTSTANDING ISSUES

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 (collectively, “LECO”), to respectfully request that the Puerto Rico Energy Bureau (“PREB” or “Energy Bureau”) address the following outstanding issues before the evidentiary hearing.

On October 14, 2022, the Energy Bureau issued a Resolution and Order through which it modified the Procedural Calendar and established that it will hold a Pre-Hearing Conference on Monday, January 30, 2023, an Evidentiary Hearing from Tuesday, February 7th to the 10th, and Public Hearings on February 16 and 17, 2023.

In advance of the prehearing conference, LECO wants to flag that there is a pending motion to be resolved by the Energy Bureau, that is, the May 26, 2022, *Motion Requesting the Imposition of Penalties in LUMA’s Performance-Based*

Mechanism. In that motion LECO requested PREB to affirm its authority to impose penalties, pursuant to the Puerto Rico energy statutory framework, as part of the performance-based mechanism to be determined in this proceeding.

Although this proceeding has been carried out mostly in the English language, LECO request that the evidentiary hearing be held in Spanish with simultaneous translation available. It is critical for Puerto Ricans to be able to attend and follow along with the evidentiary hearing – that is a critical piece towards effective public participation. Since 94.3% of the population in Puerto Rico communicates in Spanish and 76.6% does not speak English,¹ a case of such high interest should be conducted in Puerto Rico’s main language. If PREB decides to conduct the evidentiary hearing in English, then it should guarantee simultaneous translation and be flexible for participants, including attorneys and witnesses, to speak in the language of their choice.

On the other hand, LECO also asks PREB to implement guarantees and safeguards for an informed and effective public participation regarding this important proceeding for the residents of Puerto Rico. During the course of this case, PREB has issued several Procedural Calendar resolutions. The last one (October 14, 2022, Resolution and Order) only specified the dates of the public hearings. LECO asks that PREB provide more information, for example: the time of the hearing, whether they are going to be held virtually or in person, instructions for the public to

¹ See Selected Social Characteristics in Puerto Rico, United States Census Bureau, (2019), Survey, <https://data.census.gov/cedsci/table?tid=ACSDP5Y2019.DP02PR&g=0400000US72&hidePreview=true>.

participate, and crucial information in the Spanish language for the public. We gathered what PREB has established before in other resolutions setting the procedural calendar:

- May 14, 2021 Resolution and Order – Footnote 4 specified that any person interested in presenting oral comments or suggestions during the public hearing shall contact the Energy Bureau's Clerk to request a turn and to obtain instructions and a link to access the public hearing. On that Resolution, PREB asked the public to notify their participation two days before the hearing.
- April 8, 2021 Resolution and Order – PREB stipulated that it will timely publish a notice in a newspaper of general circulation in Puerto Rico regarding the public hearings. Additionally, the Resolution and Order pointed out that the public hearing will be streamed live via the Energy Bureau's YouTube Channel.
- October 20, 2021 Resolution – Footnote 19 specified that in order to prevent the spread of Covid-19, the virtual public hearings will be held remotely via the Microsoft Teams platform from 9:00 a.m. to 5:30 p.m. each day.

Article 6.3(o) of Law 57-2014, as amended, gives PREB the authority to conduct public hearings, request and gather all pertinent or necessary information for the proper performance of their powers and duties.² One of the objectives of said law is

² Puerto Rico Energy Transformation and RELIEF Act. 22 L.P.R.A. § 1054b.

precisely to promote transparency in the processes framed within the energy public policy and make active citizen participation viable.³ Law 17-2019 specifies in Article 1.5 (10) that PREPA, PREB and other entities must promote transparency and public participation in all processes related to energy service in Puerto Rico.⁴ Regulation No. 9137, *Regulation of Performance-Based Incentive Mechanisms*, establishes in Section 1.3 that said regulation "shall be interpreted so it promotes the highest public good and the protection of the interests of the residents of Puerto Rico...". Section 3.6 provides that the Energy Bureau may schedule public hearings so that the public has an opportunity to provide testimony and comments.

To ensure an active and informed public participation from individuals, groups, businesses, municipalities, and others, who have been impacted by LUMA's performance and will be impacted in the future, LECO requests that the notice with the instructions to participate be published in Spanish, receive wide dissemination, and contain information on how citizens can access the proposed performance metrics (including the additional metrics filed by LUMA Energy) in Spanish and in an accessible not technical language so that they can make informed comments.

LECO requests that the public hearings --which are of great importance to the people of Puerto Rico-- be rescheduled and that the public be given at least 30 days to prepare and participate from the day the notice is published. This is crucial because the first public hearing is 20 days away and the public has not yet received notice for said hearings. Furthermore, LECO asks that PREB, not only celebrate virtual public

³ *Id.* at 22 L.P.R.A. § 1051 (c)(o).

⁴ Puerto Rico Energy Public Policy Act. 22 L.P.R.A. § 1141d.

hearings, but also in-person public hearings across the archipelago with the appropriate safety protocols to prevent the spread of Covid-19, especially when the community risk level right now in Puerto Rico is at low level.⁵

Failure to do all the above would practically exclude a large part of the population from effectively participating in the process, will represent a prejudicial barrier, and will prevent the Energy Bureau from obtaining useful insights to inform even more its eventual decision.

Wherefore, it is respectfully requested that PREB take notice of the foregoing and grant the specified relief.

Respectfully submitted. In San Juan Puerto Rico, January 27, 2023.

⁵ As of January 24, 2023, *See* <https://covidactnow.org/us/puerto-rico-pr/?s=45003250>.

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CERTIFICATION OF SERVICE

I hereby certify that on January 27, 2023, I served this Motion to the following parties:

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