

**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: Hybrid Evidentiary Hearing
Protocol.

RESOLUTION

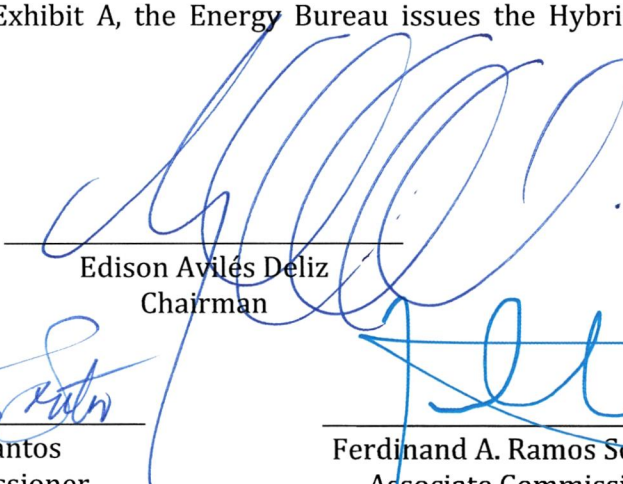
On April 8, 2021, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued the original procedural calendar in the instant case.

On October 14, 2022, the Energy issued a Resolution and Order through which, among other things, amended the procedural calendar for the instant proceeding, establishing that the Evidentiary Hearing would be held from February 7, 2023 to February 10, 2023.


On January 27 2023, the Energy Bureau modified the format of the Evidentiary Hearing and determined that hearing would be conducted using a hybrid model.

Through this Resolution, as Exhibit A, the Energy Bureau issues the Hybrid Evidentiary Hearing Protocol.

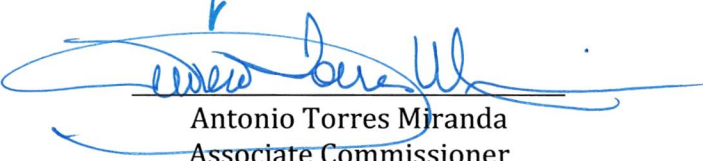
Be it notified and published.


Edison Avilés Deliz
Chairman


Lillian Mateo Santos
Associate Commissioner


Ferdinand A. Ramos Soegaard
Associate Commissioner


Sylvia B. Ugarte Araujo
Associate Commissioner


Antonio Torres Miranda
Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on January 30, 2023. I also certify that on January 30, 2023 a copy of this Resolution was notified by electronic mail to margarita.mercado@us.dlapiper.com, yahaira.delarosa@dlapiper.com, jmarrero@diazvaz.law, kbolanos@diazvaz.law, hriviera@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. I also certify that today, January 30, 2023, I have proceeded with the filing of the Resolution issued by the Puerto Rico Energy Bureau.

I sign this in San Juan, Puerto Rico, today, January 30, 2023.



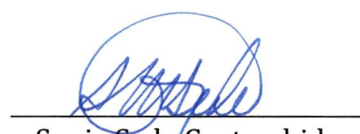

Sonia Seda Gaztambide
Clerk

EXHIBIT A
In Re: Performance Targets for Luma Energy Servco, LLC
Case No. NEPR-AP-2020-0025
Hybrid Evidentiary Hearing Protocol

I. Security Measures

The Evidentiary Hearing (“Hearing”) will be conducted via Microsoft Teams platform (“Teams”) under the control of Energy Bureau staff. Given that Teams is a video-conferencing platform that transmits over the Internet, Energy Bureau staff has taken measures to ensure the security of the platform. Nonetheless, all participants should not let any third party gain unapproved access to the Hearing and they, to the extent possible, attend the hearing via a secure password protected Internet connection, not a public Wi-Fi connection.

To protect the security of the hearing the virtual link will be sent to the virtual participants counsel directly by the Energy Bureau via email. It is ultimately the attorneys/parties’ responsibility to ensure that their witnesses receive the link to the hearing.

II. Time Allocation

The participants shall recognize that using virtual platforms may take longer than expected and arrange to accommodate that potential scenario.

III. Virtual Participant’s Identification

Before the hearing, all virtual participants shall ensure that they are properly named when they log on Teams using the logging information provided by the Energy Bureau. Note that nicknames and names like “iPhone 777”, “8889-543-0000” or GalaxyXCV” will not be allowed as they do not help the Energy Bureau to identify who should be let into the hearing and may result in a delay in admission.

IV. Handling of Documents and Exhibits

1. Any documentary evidence the parties propose to introduce into evidence during the Hearing must be provided by e-mail or hand delivery to the Energy Bureau and to all other parties (or their attorneys if represented) in PDF format or JPG format before the Hearing, no later than February 2, 2023 at 5:00 pm (ET). The proposed documentary evidence shall include any document attached to pre-filed testimonies which the parties intend to introduce into evidence in the proceeding.
2. Counsel shall ensure that all the documentary evidence be bated stamped to prevent any confusion as to which page of the Exhibit is being referred to.
3. Any such documentary evidence shall be properly identified by counsel using the following nomenclature: Identification No. __ of [name of the party offering it].
4. The Hearing Examiner shall determine admissibility of evidence offered by the parties. Such determination as well as any objections from the other parties shall be verbally included in the record. Any evidence admitted shall be labeled using the following nomenclature: Exhibit __ [use letters]. For such purposes, the Hearing Examiner shall use and Exhibit Control Sheet form to be filed in the administrative record.
5. Any documentary evidence and other items of evidence too voluminous to be sent by email shall be timely hand delivered to the Energy Bureau not later than February 2, 2023 at 5:00 pm (ET).



6. If an Exhibit is altered in any way during the Hearing (*e.g.*, written upon, highlighted, marked, enhanced, reduced/enlarged and/or zoomed in upon), the Exhibit will be saved at the time of the alteration and exchanged electronically with the Energy Bureau's and all counsel in "actual size" immediately or as soon as practicable following the alteration of the Exhibit. The Exhibit will be exchanged in the same orientation, scale, and color format as altered.

V. Document Sharing During Hearing

To avoid delays and inconveniences, the Energy Bureau shall handle sharing documents that the parties intend to offer in evidence or used during a witness testimony. The Energy Bureau staff will not be responsible for the printing or dissemination of documents filed and/or emailed to the Energy Bureau. Upon admission into evidence, the Hearing Officer shall direct the Energy Bureau' staff to make the corresponding marking and physical entry into the administrative file.

VI. Recording of Hearing and Official Record

1. The proceeding conducted via Teams will be recorded by the Energy Bureau (*i.e.*, video and audio) and none of the parties and/or participants is to record the proceeding without the Energy Bureau permission. However, a party or their counsel may keep an official court reporter to make an official record of the proceeding upon the Energy Bureau's permission.

The Teams' recording will be used by the Energy Bureau to produce an official transcript of the Hearing. . The parties must file a joint motion with proposed transcript corrections no later than fifteen (15) days after the initial transcript of the Hearing is provided by the Energy Bureau.

2. After taking into account the proposed corrections to the initial transcript of the Hearing, the Energy Bureau will issue a final official transcript of the Hearing which along with the Exhibits marked into evidence, shall be the official evidentiary record for the proceeding.
3. In order to further ensure having a clear and reliable:
 - a. the Energy Bureau's staff will monitor the Hearing to ensure that the sound is functioning, speaking is clearly heard, and the video is recording.
 - b. The Energy Bureau will use the Gallery View functionality to avoid the shift of the screen to the person speaking and allow the Energy Bureau to see all of the participants and know who was speaking;
 - c. the Energy Bureau's staff will configure the Teams' settings to play a sound when someone enters or leaves a proceeding to facilitate the tracking of the participants ; and
 - d. the Energy Bureau will limit the Chat Functionality of Teams to disable private chats that could be *ex parte* communication or comments to be made that are not included in the official record. Only the public chat functionality (*i.e.*, seen by everyone) will be enable and the messages will be saved.

VII. Decorum and Order During the Hearing

1. All participants shall recognize that a Virtual Hearing (hybrid or fully virtual) is a formal proceeding. Therefore, the rules and principles that guide in-person hearings remain in place.
2. All participants are to have proper attire, there should be no consumption of food or drink or smoking during the proceedings.



3. All participants should appear via both video and audio with their cameras always on and operational unless otherwise instructed. Absent extenuating circumstances presented in advance via motion, all witnesses must give testimony with both audio and video on;
4. As in in-person proceedings, only one person may speak at a time. Participants shall not speak over one another and there should be no colloquies between attorneys during the Hearing. Nonspeaking participants should always be in mute mode.
5. Counsel and witnesses are to attend the Hearing from quiet locations, without background distractions. All participants shall use best efforts to eliminate all visual and auditory distractions. Using multiple devices in close proximity should be avoided as it can cause feedback and may disrupt the Hearing. If a participant cannot substantially eliminate background noise, the participant shall use a headset.
6. Upon a pause of the Hearing the Energy Bureau will direct all parties to remain on mute and disable video; leave the Hearing and rejoin at a time certain; or provide other instructions to ensure that *ex parte* communications among the Energy Bureau, attorneys, parties, and witnesses do not take place.
7. All parties and participants shall comply with the ground rules set by the Energy Bureau, which shall be repeated by the Hearing Officer at the start.
8. Before the commencement of any testimony, the participants shall be reminded again by the Hearing Officer that the proceeding is:
 - a. Live-streamed in both audio and video;
 - b. that anything said during the proceeding may be overheard by those observing;
 - c. the proceedings are being recorded and that everything said will be captured and made part of the record as in a physical hearing room;
 - d. Decorum, demeanor, and appropriate dress code¹, still apply.
 - e. Remote participants, including but not limited to witnesses must be in a quiet place, and may not use a virtual background;
 - f. Counsel and parties may not speak with a witness until the witness's testimony has been completed. Counsel must ensure that a remote witness is not being coached, assisted, or signaled in any way;
 - g. If required by the Hearing Examiner, prior to testify remote witnesses, shall share their surroundings to ensure that these procedures are followed to ensure they are not being coached, assisted, or signaled.
 - h. Counsel shall instruct all participants to pay attention to the proceedings, remote participants shall only access and display on their screen the Teams screen;

¹ Dress appropriately as you would if you were actually going to an in-person hearing at a government agency or a courthouse.



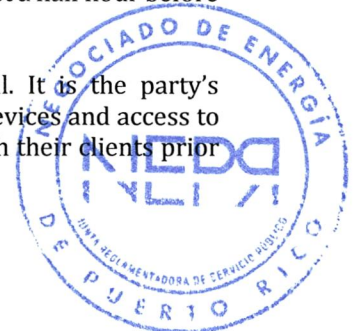
- i. The Hearing Officer will be responsible for maintaining order and decorum as they do in a physical courtroom. As such the Hearing Officer may remove disruptive participants, if needed. The participant can be returned to the “waiting room” and will not rejoin the hearing on their own and can only be readmitted by the Energy Bureau’s staff.

VIII. Witness Testimony

1. Counsel shall notify the Energy Bureau at least three (3) days before the date of the Hearing the names, e-mail addresses and back-up mobile telephone numbers of all his or her prospective witnesses expected to be called during the course of the hearing and Counsel must furnish this information to the Hearing Examiner at least three (3) days before the date of the Hearing. The same applies to any other member of counsel’s team and party that will attend the Hearing remotely.
2. Counsel shall instruct all witnesses they are to log onto the proceeding at least thirty (30) minutes before the commencement of the daily session and remain in the Microsoft Teams “lobby” area until called as a witness and admitted by the Energy Bureau into the Hearing.²
3. Counsel shall not assist the witness with answers in any way, including but not limited to gestures, notes, or facial expressions, otherwise impact or influence the witness’ testimony “off camera”.
4. Counsel shall instruct his or her witnesses to run a test using the Microsoft Teams platform before the scheduled hearing date and to test their audio and video to ensure they are properly working before joining the Hearing via Teams. Counsel shall ensure that the participants familiarize themselves with the Teams platform (*e.g.*: use of waiting rooms, mute mode, raising hand feature, chat, testing of audio and video devices, screen sharing) before the hearing to have an effective participation during the proceeding.³
5. Counsel must instruct witnesses, and the Hearing Examiner should warn them, that written or oral communications of any kind, via electronic means or otherwise, between a witness or party and legal counsel for the witness during the Hearing testimony are strictly prohibited. Communications between the witness and legal counsel shall be restricted as if the Hearing were being conducted in-person.
6. Counsel must ensure that a remote witness is not being coached, assisted, or signaled in any way. Witnesses are discouraged from being in the same physical space as the attorney. However, if a witness or a party testifying is in the same physical space as the attorney or self-represented party questioning the witness, the witness must be at least six (6) feet away from any other person in the room and the camera shall be directed at the witness. Counsel shall have a separate camera available for each individual so that the Energy Bureau can see counsel and all participants at all times simultaneously. Participants should not share the same camera or screen.
7. Counsel must instruct witnesses, and the Hearing Examiner should warn them, that they may not read or refer to any Exhibit, image, document, or other writing of any kind (*e.g.*, notes, images, e-mails, texts, pdf’s, or digital communications of any kind) during their testimony other than Exhibits, images, documents or other writing

² The Energy Bureau may also establish various login times for each witness which is at least a half hour before their testimony times.

³ The information provided at <https://support.office.com/en-us/teams> may be helpful. It is the party’s exclusive responsibility that each of their witnesses has the appropriate equipment and devices and access to participate in the proceeding. As necessary, attorneys should practice this technology with their clients prior to the hearing.



provided to them by Counsel in the course of cross examination or redirect examination.

8. Counsel must ensure there shall be no information available to the witness whether written or otherwise out of the sight of the Energy Bureau.
9. Counsel must ensure there shall be no other computer monitor, screen, TV screen, cell phone or the like in the room wherein the witness is testifying. The room that the witness is testifying from shall be displayed to the Energy Bureau and all legal counsel before the testimony beginning and periodically thereafter.
10. Any document or other writing which the witness may refer to shall be shared via Teams by the Energy Bureau staff to all participants including the witness.
11. Counsel must instruct witnesses, and the Hearing Examiner should warn them, that no other individual may be present, either physically or electronically, in the same room as the witness or so near the witness as to be seen and/or heard by the witness. Where appropriate, that exceptions can be made for individuals who are not a witness to the events under consideration at the Hearing if they are present only to assist the witness in using the computer equipment/camera or because the witness requires physical assistance due to a medical condition. The presence of any such party or person must be disclosed to the Energy Bureau, all parties, and their counsel. Once disclosed, the Hearing Examiner shall note the presence of the third party on the record.
12. The Hearing Examiner will confirm with all witnesses all instructions given by Counsel.
13. Counsel who calls the witness for cross examination or redirect examination is responsible for ensuring the witness has a suitable location and access to suitable computer equipment and screen(s) that are necessary for the visual and audio nature of the proceedings and Exhibits/images shared, including the ability to highlight a document or alter it.⁴
14. Unless specifically authorized by the Energy Bureau in advance, witnesses shall not be permitted to testify from a cell phone, whether through the phone's camera and video features or via calling in to the Hearing.
15. All witnesses must appear on camera and be easily seen to assess credibility.
16. No one participating should be off screen or turn their computer camera off without the express prior permission of the Energy Bureau.
17. The Hearing Examiner will swear in the witnesses. The identity of the witnesses must be confirmed before the administration of the oath. Any objection to the administration of the oath should be waived.
18. The parties and counsel will speak slowly, will not interrupt⁵, and wait until prompted to speak by the Hearing Officer;
19. Witnesses and counsel shall "raise their hand" using the Teams' feature and wait until the Energy Bureau unmutes them so they can speak.

⁴ It is important that where possible all witnesses have a substantially similar computer screen in both size and quality so that when an Exhibit is shown to them the witness shall each have the benefit of seeing the image on the screen in the same way.

⁵ Unless there is an objection or some other reason to speak out of turn.



20. If the Hearing Officer and/or the Commissioners want to speak to the attorneys without a witness hearing or address an issue with only the Energy Bureau's staff; an Energy Bureau Staff personnel, all other participants will be put on hold;
21. Since there may be a few seconds time delay when participating remotely, parties may be more likely to overlap when talking. Should that happen, the Hearing Examiner will ask the parties to repeat what they said;

IX. Objections

Counsel shall make any and all objections verbally. In addition, counsel should physically raise their hands and/or use the "raise hand" function in Microsoft Teams. Once objections are resolved by the Hearing Officer, exceptions will be duly noted (verbally) on the record.

X. Attorney-Client Consultation

During the proceeding, counsel may request that the Hearing be paused to allow Counsel to consult with his/her client. If counsel and the client are in different locations, the Energy Bureau may permit the use of the Breakout Room feature on Microsoft Teams to facilitate this discussion.

XI. Sidebar Conferences

Should the need arise for any reason and during the Hearing, for Counsel and the Energy Bureau to confer on any objections or any other matters, the Energy Bureau may make use of the Breakout Room feature on Teams so the witness is not privy to the sidebar discussion. The Energy Bureau staff will remain on the main link to monitor the witness. The Energy Bureau can direct that a mobile phone conference call occurs with all parties muting their audio on the Teams platform.

XII. Breakout Rooms:

The Energy Bureau may use a Teams Breakout Room for bench conferences during the Hearing. With the approval of the Energy Bureau, Breakout Rooms may also be used for Attorney/Client conferences during the Hearing. Breakout Rooms will not be used for any other purpose unless ordered by the Energy Bureau.

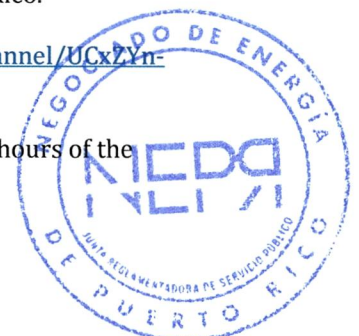
XIII. Public Access to the Hearing

1. Unless the proceeding is closed or access would otherwise be limited by statute or rule, the general public will have access to the hearing via:
 - a. attending the hearing in person at the hearing room of the Energy Bureau⁶;
 - b. the live streaming of the hearing through the Energy Bureau's YouTube Channel⁷; and
 - c. the hearing video recording to be posted in the Energy Bureau's website⁸ and the Energy Bureau's YouTube Channel.
2. The live stream will be paused by the Energy Bureau staff during bench conferences and other off the record discussions.
3. To the extent possible, any live-streams and Microsoft Teams link should include a notice/banner prohibiting recording of the proceedings.

⁶ Located at Floor 8th of the World Plaza Building, 268 Muñoz Rivera Ave, San Juan, Puerto Rico.

⁷ The Energy Bureau's YouTube channel can be accessed at: <https://www.youtube.com/channel/UCxZYn-qt1k0Lu9TX37-11oA> (last verified January 30, 2023).

⁸ The video recording of the hearing will be posted in the Energy Bureau's website after 24 hours of the proceedings (daily hearings).



XIV. Handling of Technical Difficulties or Interruptions

1. Any participant (*e.g.*, counsel, party, or witness) who is disconnected from the videoconference or experiences some other technical failure shall use best efforts to promptly re-establish the connection and shall take no action which jeopardize the integrity of the proceeding (*e.g.*, third party communications except for matters related to resolving the technical issue). If the connection cannot be re-established within approximately ten (10) minutes, the Energy Bureau may try to “pause” the Hearing. If the Energy Bureau believes it is unfair to any party to continue the Hearing due to a technical failure, the Energy Bureau may postpone or terminate the proceedings at any time and take such other steps as may be necessary to ensure the fairness and integrity of the proceedings.
2. Counsel, parties, and witnesses should exchange back-up contact information, such as reliable cell phone numbers and e-mail addresses, with the Energy Bureau Clerk at secretaria@jrsp.pr.gov at least three (3) days before the Hearing.
3. To the extent possible the parties’ contact information for technology support should also be shared with the Energy Bureau before the date of the Hearing.
4. All participants should immediately notify the Energy Bureau staff via the chat feature if it appears anyone has dropped from the Hearing.
5. The Energy Bureau will immediately take such steps to ensure the fairness and integrity of the proceedings. The parties are expected to work cooperatively and professionally with the Energy Bureau and with each other to resolve any technical issues that arise.

