

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

NEPR

Received:

Jan 31, 2023

3:16 PM

IN RE:

THE PERFORMANCE TARGETS FOR
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

**SUBJECT: Response to LECO's "Motion
Requesting That PREB Address Outstanding
Issues"**

**RESPONSE TO LECO'S "MOTION REQUESTING THAT PREB ADDRESS
OUTSTANDING ISSUES"**

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:

1. On January 27, 2023, the intervening entities collectively identified in this proceeding as "LECO" filed a *Motion Requesting that PREB Address Outstanding Issues* whereby they requested that the PREB address certain matters in anticipation of the evidentiary hearing scheduled to commence on February 10th, 2023, in the instant proceeding ("Motion on Outstanding Issues").

2. In what is pertinent here, through its Motion on Outstanding Issues, LECO insisted on its request for a pre-hearing ruling on its *Motion Requesting the Imposition of Penalties in LUMA's Performance-Based Mechanism* filed on May 26, 2022 ("May 26th Motion") which LUMA opposed on June 23, 2022.

3. Through the May 26th Motion, LECO essentially requested that the honorable Energy Bureau include a penalty scheme as part of the performance mechanism to be adopted in this

proceeding. LECO's basis for its request was the testimony rendered by its expert Agustín Irizarry dated November 16, 2021, at page 8, lines 1-3, and page 64, lines 10-12.

4. As LUMA espoused in detail in its June 23rd Opposition, LECO's request for the Energy Bureau to make a ruling on whether to adopt penalties as part of the performance-based mechanism applicable to LUMA prior to the evidentiary hearing is premature because the testimony upon which LECO bases its request has not been subject to cross-examination. LECO's invitation to the honorable Energy Bureau is, thus, to enter an order that would effectively preclude LUMA from exercising its constitutional right to be heard in connection with its request for the adoption of penalties as part of the performance-based mechanisms and to cross-examine the purported basis for such request. Any order adopting LECO's proposal would be premature, null, void, and contrary to LUMA's due process rights.

5. LUMA adopts by reference, as if fully set forth herein, the arguments set forth in detail in its Opposition and respectfully restates its request for this honorable Bureau to deny LECO's *Motion Requesting the Imposition of Penalties in LUMA's Performance-based Mechanism*.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **deny** LECO's *Motion Requesting that PREB Address Outstanding Issues* insofar as it requests a ruling on its May 26, 2022 *Motion Requesting the Imposition of Penalties in LUMA's Performance-based Mechanism* prior to the evidentiary hearing in the present case.

RESPECTFULLY SUBMITTED.

We hereby certify that we filed this motion using the electronic filing system of this Energy Bureau. We will send an electronic copy of this motion to attorneys for PREPA, Joannely Marrero-Cruz, jmarrero@diazvaz.law; and Katuska Bolaños-Lugo, kbolanos@diazvaz.law, the Office of 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@agrailawpr.com, counsel for the Colegio de Ingenieros y a 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, rstgo2@gmail.com, notificaciones@bufete-emmanuelli.com, pedrosaade5@gmail.com, jessica@bufete-emmanuelli.com; rolando@bufete-emmanuelli.com, lvez@earthjustice.org, rmurthy@earthjustice.org, jcassel@earthjustice.org.

In San Juan, Puerto Rico, on this 31st day of January 2023.



DLA Piper (Puerto Rico) LLC
500 Calle de la Tanca, Suite 401
San Juan, PR 00901-1969
Tel. 787-945-9107
Fax 939-697-6147

/s/ Margarita Mercado Echegaray
Margarita Mercado Echegaray
RUA NÚM. 16,266
margarita.mercado@us.dlapiper.com

/s/ Yahaira De la Rosa Algarín
Yahaira De la Rosa Algarín
RUA NÚM. 18,061
yahaira.delarosa@us.dlapiper.com