

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: SUPPLEMENTAL  
MOTION TO MOTION  
REQUESTING THAT PREB  
ADDRESS OUTSDANDING  
ISSUES

SUPPLEMENTAL MOTION TO 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 reiterate the request that the Puerto Rico Energy Bureau (“PREB” or  
“Energy Bureau”) address the following outstanding issues before the evidentiary  
hearing.

On January 30, 2023, PREB, through its designated Examiner Officer, held a  
Prehearing Conference to discuss pending issues before the evidentiary hearing. At  
the prehearing conference, the parties highlighted the outstanding motions and  
unsettled discovery issues during the prehearing conference, so that the parties could

be at a better place to prepare for the evidentiary hearing. The Examiner Officer encouraged the parties to make any requests in writing.

### **Evidentiary Hearing Schedule, Format, and Guidelines Issues**

At the beginning of the prehearing conference, the Examiner Officer went through the schedule for the evidentiary hearing with the parties. The Examiner Officer explained that the order of questioning for the witness panels would be as follows: (1) PREB's consultants, (2) LUMA, and (3) then intervenors. The parties made some remarks pertaining to the sessions, the topics, and witnesses for those sessions.

First, LECO submits that LECO expert Prof. Agustín Alexi Irizarry-Rivera should be listed as a witness available for cross-examination on metrics for major outages, on Friday, February 10th, as well as regarding customer satisfaction on Wednesday, Feb. 8th. Prof. Irizarry discusses various issues related to the prevention of major outage events in his testimony. For example, Prof. Irizarry discusses the need for a resilient power system, which he explains includes “the ability to ensure electric service continuity—and quickly recover from—high-impact, low-frequency events,” such as Hurricane Maria<sup>1</sup>. Prof. Irizarry recommends performance metrics to “incentivize a move toward a more resilient power system,” aimed at, among other things, “provid[ing] basic electric service continuity during system outages” and “reduc[ing] exposure to damage due to storms.” *Id.* at 39. This testimony addresses issues of preparation for, and action during, major outages and should be considered

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<sup>1</sup> Nov. 16, 2021 Testimony at 38.

by PREB as it evaluates performance metrics for major outages. Similarly, Prof. Irizarry offers testimony on LUMA's proposed metrics for customer satisfaction, and should be weighed by PREB as it considers those metrics<sup>2</sup>. Therefore, LECO asks PREB to amend the evidentiary hearing schedule and add Prof. Irizarry in Session 2 (2): *"Customer satisfaction" performance category* and Session 4: *Major Outage Events and any other remaining topics*.

At the prehearing conference, several parties highlighted that Sessions 2 and 3 addressed a range of topics and pointed out that it could be helpful to break out the sessions by sub-topics. LECO respectfully proposes a breakdown as follows:

Session 2: Technical, Safety, and Regulatory

- Performance Metrics on Safety
- Metrics on Reliability
- Metrics on Inspections for transmission lines, distribution lines, T&D substations
- Interconnection of Distributed Renewables
- Energy Efficiency / Demand Response
- Vegetation Management

Session 3: Finance

- Days Sales Outstanding
- Budget Metrics

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<sup>2</sup> See, e.g., Nov. 16, 2021 Testimony at 46-47.

On the other hand, the Examiner Officer clarified that witnesses will only be subjected to cross examination, because their direct testimony was already filed. LECO agrees with the Examiner Officer and respectfully requests that, in order to provide context of their testimonies, each witness at each panel be given the opportunity for a short summary of their testimony and recommendations.

Pertaining to closing arguments or statements, neither the Schedule for the Evidentiary Hearing nor the Hybrid Evidentiary Hearing Protocol refers to the parties' availability to file closing statements. LECO respectfully requests that, time permitting, the parties be given at least five minutes each for a closing statement on the record at the conclusion of the final panel.

During the prehearing conference, counsel for LUMA proposed that parties assign one attorney to question each witness, during each session. LECO agrees with that approach and can commit to assigning one attorney to each witness, per panel. It is pertinent to clarify that in order to ensure adequate representation of clients, all attorneys of record must have the right to be present during all examinations of all witnesses, regardless of whether or not they are conducting cross-examination.

**The Evidentiary Hearings should be held in the Spanish language.**

LECO filed a motion on January 27, 2023, asking the PREB to address unresolved issues. In this motion, we stressed the significance of conducting the evidentiary hearings in Spanish with simultaneous translation, especially because

76.6% of the Puerto Rican population does not speak English.<sup>3</sup> To ensure that Puerto Ricans are fully informed and equipped with the knowledge necessary to participate in the public hearings, we emphasized how crucial it is for this proceeding to be conducted in Spanish for them. This request is consonant with section 1.10 (B) of Regulation 8543 which states:

The proceedings heard before the Commission shall be conducted in the Spanish language. Notwithstanding, upon request of a party or when warranted, the Commission may order the proceedings to be conducted in the English language, provided it is not incompatible with the adjudication of the case.<sup>4</sup>

Given the nature and importance of the issues that will be elucidated, the evidentiary hearings should be held in Spanish with simultaneous interpretation available for English-speaking parties to guarantee that Puerto Ricans can understand what is discussed during the hearings. In line with that, PREB should allow native English-speaking witnesses to respond in English. This will ensure that the process is fair to both witnesses who only speak English and participants who only speak Spanish or can properly deliver their testimonies or defense in Spanish, as well as Puerto Rican residents who will be watching to prepare for the upcoming public hearings.

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<sup>3</sup> See Selected Social Characteristics in Puerto Rico, United States Census Bureau, (2019), Survey, <https://data.census.gov/table?tid=ACSDP5Y2019.DP02PR&g=0400000US72&hidePreview=true>.

<sup>4</sup> Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings, Regulation No. 8543, December 18, 2014, <https://energia.pr.gov/wp-content/uploads/sites/7/2015/09/RE-8543-ES.pdf>

**Opposition to LUMA's request to substitute witnesses.**

On January 26, 2023 - twelve days before the commencement of the evidentiary hearing- LUMA filed its Motion Requesting Authorization to Substitute Pre-Filed Testimonies. LUMA petitioned PREB to substitute the testimonies of Mr. Jorge Meléndez, filed on September 9, 2021, and February 1, 2022, respectively for the testimony of Mr. Curtis Clark. LUMA alleged –but provided no proof– that Mr. Meléndez is no longer employed with the company and did not state when Mr. Meléndez left LUMA.

In that same motion LUMA also petitioned PREB to substitute the testimonies of Brent Bolzenius, filed on February 1, 2022, April 27, 2022, and October 28, 2022, for the testimonies of Mrs. Diane Watkins. LUMA provided no justification for the substitution of Mr. Bolzenius, who has actively participated in the proceedings as witness since the beginning of 2022 and submitted testimony after Ms. Watkins joined LUMA in October 2022.

LUMA provides no information indicating that Mr. Bolzenius is unavailable to testify. LECO respectfully joins OIPC's motion, requesting that the PREB deny LUMA's tardy and unjustified request to substitute witnesses for Mr. Meléndez and Mr. Bolzenius.

Given that this Bureau has already acknowledged LUMA's consistent failure to provide timely filings,<sup>5</sup> if these witnesses cannot attend the hearing, LECO

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<sup>5</sup> See In RE: Performance Targets for LUMA Energy Servco, LLC, Resolution and Order, at 3, (Oct. 14, 2022), <https://energia.pr.gov/wp-content/uploads/sites/7/2022/10/20221014-AP20200025-Resolution-and-Order.pdf>: “While LUMA has pointlessly invested valuable time and resources

requests that their testimony be stricken from the record, in accordance with Regulation 8543 Article XII Section 2.03.<sup>6</sup>

**LECO's Motion Requesting the Imposition of Penalties in LUMA's Performance-Based Mechanism.**

On May 26, 2022, LECO filed a motion requesting that PREB impose a penalty scheme within LUMA's Performance Based Mechanism. LECO argued that Puerto Rico's statutory energy framework grants PREB the authority to do so. It stated that Act 17-2019 provides that the Bureau "shall establish performance-based incentives **and penalty schemes** for electric power service companies as well as mechanisms that ensure strict compliance with the orders of the Bureau."<sup>7</sup> Likewise, LECO mentioned Act 57-2014, which provides similar authority to PREB by granting it the right to establish "mechanisms that provide incentives and penalties that consider the performance and compliance of the electric service companies with the execution metrics that constitute the energy public policy."<sup>8</sup> LECO clearly demonstrated that PREB has the authority to impose penalty schemes, and because contracts in Puerto Rico cannot violate the law, order, or morality of the public order, any T&D OMA clause that improperly limits the Energy Bureau's authority would be illegal.

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disputing the Energy Bureau's jurisdiction and avoiding compliance with public policy requirements instead of timely filing the information required, the occurrence of Hurricane Fiona opportunely qualifies as cause to avoid the imposition of a fine for noncompliance with our orders."

<sup>6</sup> This section discusses consequences when a person designated to testify "fails to comply with an order to perform or permit disclosure of evidence..." See PREB's January 23, 2020, Order in Docket CEPR-AP-2018-0001: "...the non-appearance of [a party's] witness at the designated date and time may result in his pre-filed direct testimony [being] stricken from the record, in accordance with the provisions of Article XII of Regulation 8543."

<sup>7</sup> Puerto Rico Energy Public Policy Act, Act 17-2019, 22 LPRA § 1141d (emphasis added).

<sup>8</sup> Act 17-2019 Art. 5.21 adding Art. 6.25B to Act 57-2014.

In fact, PREB's own Performance- Based Incentive Mechanisms Regulation (hereinafter Regulation 9137) includes penalties as a critical part of the financial incentive process, an expressly states that financial incentives may include penalties.<sup>9</sup> Moreover, PREB itself underscored the importance of penalties as an essential part for the effective and successful implementation of metrics to achieve the minimum standards set for by the Energy Bureau.<sup>10</sup>

Not satisfied with LECO's arguments and request for penalties, LUMA filed an opposition on June 23<sup>rd</sup>, 2022, to which LUMA presented an opposition on July 15<sup>th</sup>, 2022. The PREB's decision on the application of a penalty scheme is critical to the well-being of Puerto Rican customers, especially in light of LUMA's continuous failures while operating the T&D systems. If LUMA is committed to following the law and providing dependable services, it should not be concerned about a penalty scheme.

### **Public Hearings**

Public Hearings are scheduled for February 16th and 17th, 2023 according to PREB's October 14, 2022 Procedural Calendar. PREB has issued no other orders or resolutions providing additional information required to ensure public participation. In that regard, Puerto Ricans have yet to receive official instructions in Spanish and learn the exact time and format of the hearings (virtual, hybrid, and/or in person).

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<sup>9</sup> PREB, Regulation for Performance Incentive Mechanisms, Num. 9137, Article 7 § 7.3 (A) (2) (B).

<sup>10</sup> See In RE: Performance Targets for LUMA Energy Servco, LLC, Resolution and Order, at 1-2, 4-5, NEPR- AP-2020-0025, (Dec. 20, 2020), <https://energia.pr.gov/wp-content/uploads/sites/7/2020/12/20201223-AP20200025-Resolution-and-Order.pdf>.



In the motion submitted by LECO on January 27, 2023, LECO compiled the information PREB has established in previous resolutions regarding the public hearings. Here it referenced Footnote 19 of PREB's October 20, 2021, Resolution which stated that in order to prevent the spread of Covid 19, the public hearings would be virtual from 9:00 am to 5:30 pm each day. However, given that as of January 30, 2023, Covid levels in Puerto Rico are low,<sup>11</sup> we respectfully request the PREB to conduct the public hearings in the hybrid format, just as it intends to do with the evidentiary hearings. A hybrid format would help comply with Art. 6.3 (o) of Law 57-2014, as amended, which requires PREB to guarantee the transparency in the processes framed within the energy public policy and make active citizen participation viable.<sup>12</sup>

Furthermore, LECO cited PREB's April 18, 2021, Resolution and Order, in which PREB expressly stated that it would publish a notice of the Public Hearings in a newspaper of general circulation in Puerto Rico in a timely manner. Given that, to the best of our knowledge, no such notice has been published, we respectfully request that the public hearings be rescheduled so that the public has at least 30 days from the date the notice is published to prepare and participate. This will protect public participation, which is essential for the people of Puerto Rico.

Finally, we reiterate our request made on LECO's January 27, 2023, Motion, that the notice with the instructions to participate be published in Spanish, receive widespread distribution, and include information on how citizens can access the

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<sup>11</sup> As of January 30, 2023, [https://covidactnow.org/us/puerto\\_rico-pr/?s=45073258](https://covidactnow.org/us/puerto_rico-pr/?s=45073258).

<sup>12</sup> Puerto Rico Energy Transformation and RELIEF Act 22 L.P.R.A. §1051 (c) (o).

proposed performance metrics (including additional metrics filed by LUMA) in Spanish and in an accessible language. This will enable the public to make informed comments.

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

Respectfully submitted. In San Juan Puerto Rico, January 31, 2023.

/s/ Laura Arroyo

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## CERTIFICATION OF SERVICE

I hereby certify that on January 31, 2023, I served this Motion 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
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