

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
OUTSTANDING ISSUES

Motion For Reconsideration of PREB's Order Allowing Only One Attorney Per Topic

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") reconsider its Resolution, dated February 1, 2023, allowing each party only one attorney for each topic in the evidentiary hearing. Given the variety of subjects addressed within a single topic, the length and complexity of testimony and exhibits on each topic, and the very limited time available for preparation before the evidentiary hearing, PREB's order on this issue would significantly affect the fairness of the process and therefore prejudice LECO – and as a result, PREB.

On February 1, 2023, the Energy Bureau issued a Resolution specifying the agenda for the hearing, including the witnesses who will testify on each topic. Solely for the "Technical, Safety, and Regulatory" topic, there are four witnesses for LUMA

who have collectively submitted nearly 200 pages of testimony; attached numerous exhibits that include detailed, multi-tab spreadsheets; and responded to over 200 requests for information,¹ many of these documents and responses were produced within the last several weeks. The topic includes complex and highly distinct sub-topics, including safety, energy efficiency, vegetation management, reliability, line inspections, and interconnection – each of which warrant close attention as essential to the advancement of Puerto Rico’s public policy and the functionality of the archipelago’s fragile grid. A failure to obtain the pertinent information necessary to establish fair and robust penalties and incentives, for each of these sub-topics, would harm electric services to residents, businesses, and institutions in Puerto Rico, as well as PREB. For a single attorney, the task of questioning, in a meaningful manner, multiple witnesses on such a breadth and depth of complex technical information would be unduly burdensome and deny due process of law.

The tremendous challenge faced by a single attorney charged with questioning witnesses about Major Outages would rival that of the single attorney tasked with the Technical, Safety, and Regulatory topic. There are four LUMA witnesses

¹ These include responses to requests for information authored by former witnesses on sub-topics that fall within this broad topic area, J. Melendez and B. Bolzenius. For all LUMA witnesses on this topic, the responses include:

- For **J. Melendez**, answers to PREB-1: questions 1-15, PREB-5: question 17, LECO-3: questions 2-11, and LECO-4: questions 7-11.
- For **C. Clark**, who is substituting for J. Melendez, answers to PREB-11: questions 37-39.
- For **B. Bolzonius**, answers to PREB-10: questions 3-31, LECO-5: questions 10 and 12, and LECO-8: questions 15-17.
- For **L. Wood**, answers to PREB-10: questions 32-47 and 50-57, LECO-5: questions 22, 41-44, and LECO-8: question 5; and
- For **D. Cortez**, answers to PREB-1: questions 16-34 and 41-45; PREB-5: questions 14 and 18-29; PREB-6: questions 7-10; PREB-7, questions 1-4; PREB-11: questions 1-14, 18, 23, 33, and 34; LECO-2: questions 1-8 and 15; LECO-4: questions 3,4, 12, and 18-22; LECO-5: questions 16, 17, 19-21, 23, and 26-36, LECO-8: questions 6-10 and 12-14; and OIPC-1: questions 5, 13, and 15.

scheduled for the Major Outages topic. Mr. Cortez, Mr. Tonsi, and Mr. Gomez have answered well over 200 requests for information;² Mr. Hurtado has provided numerous and voluminous responses as well. The testimony and exhibits of the four witnesses surpass 450 pages and encompass detailed emergency planning documents that require significant scrutiny in light of the fundamental importance of prompt, comprehensive, and safe restoration of electricity following the major storms and other major outage events that Puerto Rico experiences all too frequently.

The law and PREB's own regulation require that PREB protect the interests of the residents of Puerto Rico. Article 6.3(o) of Act 57-2014, as amended, gives PREB the authority to "... request and gather all pertinent or necessary information for the proper performance of their powers and duties."³ One of the objectives of said law is precisely to promote transparency in the processes framed within the energy public policy and make active citizen participation viable.⁴ Consonant with the mandates of Law 57-2014, Act 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.⁵ Moreover, Regulation No. 9137, *Regulation of*

² These witnesses' responses to requests for information include the above-noted responses for Mr. Cortez, as well as:

- For **T. Tonsi**, answers to PREB-2: questions 23-49; PREB-3: questions 6 and 20; PREB-11: question 21; LECO-2: questions 1, 20, 30-33, 35, 36, 45, 46, 48 and 49; LECO-5: question 4; and OIPC-1: questions 3 and 4.
- For **A. Gomez Cortes**, answers to PREB-3: questions 22-37; PREB-5: questions 31-39; PREB-10: questions 1 and 2; LECO-2: questions 12-14, 16-29, 34, 37-44, 47, 48 and 50; OIPC-1: questions 16 and 17.
- For **M. Hurtado**, answers to PREB 2-16, LECO 2-14, PREB 3-2, PREB 3-4, and PREB 3-5.

³ Puerto Rico Energy Transformation and RELIEF Act. 22 L.P.R.A. § 1054b.

⁴ Id at 22 L.P.R.A. § 1051 (c)(o).

⁵ Puerto Rico Energy Public Policy Act. 22 L.P.R.A. § 1141d.

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..."

The tremendous public interest in ensuring responsible electric service by LUMA Energy, the mandate of Act 17-2019 and Act 57-2014 to advance Puerto Rico's energy policy, and the directives of Regulation 9137 to protect the interests of the residents of Puerto Rico via participatory rulemaking, all make clear that PREB must *facilitate* – not undermine – the participation of interveners in this proceeding. And limiting questioning on such complex and fundamental topics to a single attorney not only harms LECO's interests; it also severely hampers parties' ability to assist PREB in approving performance metrics that satisfy Puerto Rican law and the standards PREB set out in its December 23, 2020, Resolution and Order in this proceeding.

Accordingly, LECO requests that the Energy Board urgently reconsider its February 1, 2023, Resolution allowing only a single attorney to question all the witnesses concerning an entire topic, and instead limit questioning to one attorney, per witness, per topic – or, at a minimum, allow at least two attorneys to question witnesses addressing each of the "Technical, Safety, and Regulatory" and "Major Outage" topics.

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

Respectfully submitted. In San Juan Puerto Rico, February 2, 2023.

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CERTIFICATION OF SERVICE

I hereby certify that on February 2, 2023, I served this Motion to the following parties:

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