

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

<p>NEPR</p> <p>Received:</p> <p>Jan 31, 2023</p> <p>2:52 PM</p>

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

CASE NO. NEPR-AP-2020-0025

**SUBJECT: Request for Clarification on
Evidentiary Hearing Protocol**

**MOTION REQUESTING CLARIFICATION ON
EVIDENTIARY HEARING PROTOCOL**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME now **LUMA Energy, LLC** (“ManagementCo”), and **LUMA Energy ServCo, LLC** (“ServCo”), (jointly referred to as the “Operator” or “LUMA”), and respectfully state and request the following:

1. On January 30, 2023, the Puerto Rico Energy Bureau (“Energy Bureau”) held a Pre-Hearing Conference. Therein, LUMA requested the Official Examiner, Attorney Dennis Seilhamer, clarification on the following topics: the order of the witnesses; if the parties will be allowed to leave documents and materials in the hearing room overnight; the sitting arrangements for the witnesses and the parties’ counsel; if only one attorney per party will be allowed to examine a witness; and identify who the Energy Bureau’s consultants examining witnesses at the hearing will be.

2. During the Pre-Hearing Conference, Attorney Seilhamer indicated that the Energy Bureau was working on a protocol for the evidentiary hearing that would be issued and would cover many of the issues raised by LUMA. Nevertheless, Attorney Seilhamer mentioned that he would get back to the parties on housekeeping issues that did not necessitate a ruling from the

Energy Bureau, such if the parties would be allowed to leave documents and materials in the hearing room overnight and the sitting arrangements for the witnesses and the parties counsel.

3. On that same day, January 30, 2023, the Energy Bureau issued a Resolution which included, as Attachment A, a Hybrid Evidentiary Hearing Protocol (“Protocol”) detailing various aspects of how the evidentiary hearing scheduled for next week will be conducted. However, the Hybrid Evidentiary Hearing Protocol did not include guidelines on any of the topics described above and raised by LUMA during the Pre-Hearing Conference. Nor has clarity been provided on the housekeeping matters discussed at yesterday’s conference as of today.

4. Considering that the Evidentiary Hearing is scheduled to begin Tuesday of next week, LUMA believes it is in the best interest of all the parties to this proceeding to get clarification beforehand on the following housekeeping matters: (a) the order of the witnesses; (b) if the parties will be allowed to leave documents and materials in the hearing room overnight; (c) the sitting arrangements for the witnesses and the parties’ counsel; (d) if only one attorney per party will be allowed to examine a witness; and (e) if witnesses will be sworn each day at the start of each session.

5. Further, LUMA seeks clarification on several aspects of Section IV of the Protocol regarding the submission of exhibits and identifications. Given that direct and rebuttal testimonies were pre-filed as determined by this Energy Bureau, LUMA requests that the Energy Bureau allow the parties to submit the pre-filed testimonies and rebuttals marked as exhibits. This will expedite proceedings as the parties will not need to mark the testimonies as exhibits prior to initiating cross-examinations. LUMA also requests that the Energy Bureau clarify that the only documents to be

received as exhibits prior to the hearing are the pre-filed testimonies and the rebuttal testimonies, with their exhibits.

6. Finally, absent the possibility of conducting discovery on this Energy Bureau's potential witnesses and any evidence to be considered or utilized by the Energy Bureau and its consultants, the parties' ability to adequately set forth their arguments and defenses at the evidentiary hearing would be materially limited. Only through cross-examination would the parties be able to inquire about the analyses, opinions, or recommendations the Energy Bureau's witnesses may submit in this proceeding. However, the ability to cross-examine would consequently be limited, as they would not have had the opportunity to inquire about the basis or data of those witnesses' testimonies to develop their analyses, opinions, or recommendations in advance.

7. As such, LUMA requests that the Energy Bureau identify each consultant's name and the topics they will address through questioning during the Evidentiary Hearing. LUMA makes this request in good faith to ensure fairness and transparency during the course of the Evidentiary Hearing.

8. LUMA believes obtaining clarification on the aforementioned issues will assist the Energy Bureau in conducting the proceeding in an organized manner, making the most of the limited time allotted.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **takes note of the aforementioned** and **provide** clarification on (a) the order of the witnesses; (b) if the parties will be allowed to leave documents and materials in the hearing room overnight; (c) the sitting arrangements for the witnesses and the parties' counsel; (d) if only one attorney per party will be

allowed to examine a witness; and (e) if witnesses will be sworn each day at the start of each session. LUMA also requests that the Energy Bureau identify who the Energy Bureau's consultants examining witnesses at the hearing will be.

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@agraitlawpr.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, lvelez@earthjustice.org, rmurthy@earthjustice.org, jcassel@earthjustice.org.

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



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