

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

IN RE: ENERGY EFFICIENCY AND DEMAND
RESPONSE TRANSITION PERIOD PLAN

CASE NO: NEPR-MI-2022-0001

SUBJECT: Detemination on LUMA's March 8,
2023 Motion for Reconsideration and
Request to Vacate Deadlines

RESOLUTION AND ORDER

I. Introduction

On February 16, 2023, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order stating its determination on LUMA's¹ Proposed Transition Period Plan filed on June 21, 2022 ("Proposed TPP"), ("February 16 Order").

On March 8, 2023, LUMA filed a document titled *Motion for Reconsideration of Resolution and Order of February 16, 2023, and Request to Vacate Deadlines* February 16 Order ("March 8 Motion"), regarding the February 16 Order establishing provisions on activity-based performance targets.

On March 23, 2023, SESA² filed a letter with reference matter titled *SESA further comments by SESA on proposed EE and DR Transition Period Plan, Docket No. NEPR-MI-2022-0001* which are comments on LUMA's March 8 Motion ("March 23 SESA Comments").

II. Summary of LUMA's March 8 Motion and the March 23 SESA Comments

In its March 8 Motion, LUMA raises five concerns, the first related to process and the other four related to substance:

- 1) The Energy Bureau did not adopt its performance metrics and targets using the process required by the *Regulation for Performance Incentive Mechanisms*³ ("Regulation 9137"). Specifically, the Energy Bureau did not issue an "Order of Intent" as required by Regulation 9137. Adopting performance incentives in this proceeding violates LUMA's rights regarding the separate Performance Metrics Targets proceeding.⁴
- 2) LUMA was not apprised that the Energy Bureau would adopt performance metrics and targets in the February 16 Order, that would apply to LUMA's ability to earn the portion of the performance incentive pool allocated to EE and DR in the Performance Targets Proceeding.
- 3) Activity-based performance metrics are not supported by the record, as neither LUMA nor any other stakeholder proposed specific activity-based performance metrics.

¹ LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly referred as "LUMA")

² Solar and Energy Storage Association of Puerto Rico ("SESA").

³ *Regulation for Performance Mechanism*, Regulation 9137, December 13, 2019.

⁴ *In re: Performance Targets for LUMA Energy ServCo, LLC*, Case. No. NEPR-AP-2020-0025 ("Performance Target Proceeding").



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- 4) The specific metrics and validation methods adopted in the February 16 Order were not subject to discussion or feedback from LUMA or stakeholders.
 - 5) The timelines for achieving program milestones do not reflect LUMA's input regarding the current status of actions required to achieve those milestones.

LUMA requested the Energy Bureau to reconsider the adoption of activity-based metrics and to vacate the deadlines for achieving certain program launch milestones.

SESA
The March 23 SESA Comments urge the Energy Bureau to launch EE and DR programs as soon as possible. However, SESA expresses some concern that the timelines for DR programs in the February 16 Order could be "too aggressive and constraining"⁵ because of the lack of clarity regarding the initial funding source for a battery DR program. SESA supports granting LUMA timeline flexibility to ensure prompt deployment of battery DR programs.

7/11/23
III. Reconsideration of the February 16 Order

The Energy Bureau **GRANTS** in part, and **DENIES** in part, LUMA's March 8 Motion.

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After further evaluation of the February 16 Order and the March 8 Motion, the Energy Bureau **GRANTS** LUMA's request regarding the process by which the performance metrics and targets were set and **VACATES** a portion of its February 16 Order for LUMA in section D. *Performance Incentives* on pages 19-23 and on page 29. The Energy Bureau **VACATES** the incentive points shown in Table 2: Transition Period Performance Incentive Metrics and emphasized in the V. Summary of Order section of the February 16 Order. As detailed further on in this Resolution and Order, the Energy Bureau is using its authority to **ORDER** LUMA to undertake the essential actions to launch EE and DR programs, separate from any allocation of performance incentive funds.

and
The Energy Bureau **DENIES** LUMA's request to amend the February 16 Order on the basis that the metrics in Table 2 are activity-based. Section 2.02(B) of the EE Regulation explicitly requires that the Energy Bureau establish activity-based targets. The Energy Bureau reasserted this requirement on several occasions during the workshops. The Energy Bureau also publicly identified the fact that LUMA's Proposed TPP filing did not meet the filing requirements because it did not include activity-based metrics and targets. Further, LUMA's argument that "the Energy Bureau did not provide LUMA or stakeholder an opportunity to discuss the different activity-based performance metrics that could have been developed" is not supported by the record.⁶ The Energy Bureau requested additional suggestions of activity-based metrics, targets or deadlines, and incentive allocations from LUMA and stakeholders during workshops and through written comments with the explicit purpose of addressing the gap in LUMA's Proposed TPP filing.

The Energy Bureau **REJECTS** LUMA's argument that activity-based metrics of the form utilized in the February 16 Order are inappropriate or unachievable. Several of the activity-based metrics that the Energy Bureau adopted are explicitly required by the Energy Bureau's EE Regulations by the deadline identified (such as filing a specific document on a specific date or meeting with stakeholders).⁷ LUMA identified other of the proposed metrics as key milestone steps toward the launch of EE and DR programs in their Proposed TPP filing and

⁵ March 23 SESA Comments, p. 4.

⁶ March 8 Motion, p. 3

⁷ See Sections 2.02(E) and 4.03 of the EE Regulation.



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comments filed in response to Energy Bureau questions. The deadlines adopted in the February 16 Order for these activities reflect the timeframes in LUMA's own filings.

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4. marketing and sales for retail system expansion, retail customer retention and customer care and service programs, including all aspects of marketing planning and implementation activities, promotion and communications; market research; account relationship management; economic development; field sales; trade ally relations; and demand response, renewable and Energy Efficiency Programs;

The EE Regulation requires PREPA, through LUMA and in accordance with the T&D OMA, to develop and implement EE and DR programs on an established schedule. Section 2.01(C) of the EE Regulation requires LUMA to implement the TPP while it awaits Energy Bureau approval of that plan, and LUMA's Proposed TPP includes \$4.57 million in funding for program design and preparation, education and outreach, and cross-cutting planning, administration, and startup costs during FY2023. LUMA has had sufficient authority and budget to undertake all necessary steps to prepare for program launch and has only been missing secured funding to launch incentive programs. LUMA's apparent failure, to date, to secure the assistance of an implementation contractor does not eliminate or defer LUMA's responsibilities under the T&D OMA and under the EE Regulation. By establishing a timeline and process for the approval of the EE Rider to provide secure funding for EE and DR programs, the February 16 Order clears the barrier that has prevented LUMA from moving to program launch.

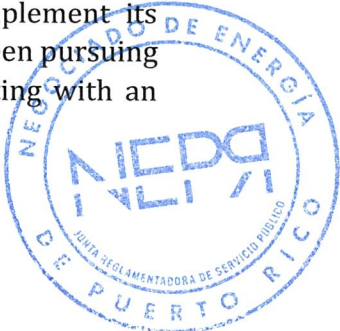
LUMA's Proposed TPP and other filings in this docket support an implementation timeline aligned with the timeline present in the February 16 Order, as reiterated in modified form below. LUMA's most recent proposed schedule is reflected in Table 4-1 of LUMA's December 2, 2022, filing, which is reproduced here:

Table 4-1: Program Launch Roadmap Gantt Chart

Task	Description	Start Date	End Date	Dec	Jan	Feb	Mar	Apr	May	June
1	PREB Approval and Order	12/1	12/15							
2	LUMA Pre-Launch Milestones									
2a	IC contracting process	12/1	3/1							
2b	Rebate application systems in place	3/1	6/1							
2c	Marketing materials ready	3/1	6/1							
2d	Initial contractor outreach	4/1	7/1							
2e	Billing system programmed for Rider	1/1	4/1							
2f	EE Rider application filing	4/1	6/1							
3	PREB Rider Approvals	6/1	7/1							
4	Rebate Program Launch	6/1	7/1							

LUMA's timeline shows that an EE Rider filing in April 2023, followed by Energy Bureau approval of the rider in June 2023, comes with Rebate Program Launch in June, 2023. The timelines for marketing materials and EE incentive programs in Table 2 of the February 16 Order match or are slower than the timeframe depicted in this LUMA filing.

The Energy Bureau's reconsideration of the performance targets component of its February 16 Order does not remove the Energy Bureau's statutory obligation to achieve 30 percent energy efficiency savings by 2040 or affect the Energy Bureau's approval of the modified Proposed TPP. Section 2.01(C) of the EE Regulation requires LUMA to implement its Proposed TPP while awaiting Energy Bureau approval, so LUMA should have been pursuing appropriate planning actions and other foundational work (such as contracting with an



1
implementation contractor) while the Energy Bureau deliberated on the Proposed TPP. Delays in EE and DR implementation enact a real cost on Puerto Rico because they defer savings that could be achieved by earlier implementation. The Energy Bureau estimates that, by delaying program ramp-up during the Transition Period and subsequent years, delays in TPP program launch cost Puerto Rico ratepayers a present value of \$200,000 for each day of delay. It is therefore imperative that both LUMA and the Energy Bureau have little tolerance for unnecessary delays in program launch.

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To move expeditiously toward program implementation, the Energy Bureau establishes the following timeline for EE program funding, launch, and reporting. This schedule is informed by LUMA's filings in this proceeding, and it presumes prudent and diligent action on the part of LUMA throughout the TPP process, as required by LUMA's T&D OMA. The February 16 Order secures funding through the inclusion of the EE Rider filing and confirmation that the EE Rider will be in effect by July 1, 2023. Once the EE Rider is approved, program delays are LUMA's responsibility, and the Energy Bureau will hold LUMA responsible for any failure to implement its TPP. LUMA was apprised of the key activities and schedule through the February 16 Order, and the Energy Bureau's perspective on key milestones and timing has not changed. To reflect the fact that there is no longer funding available to incentivize faster performance than required, the deadlines that the Energy Bureau establishes here are slightly delayed relative to the deadlines in the February 16 Order relative to LUMA's December 2, 2022, filing. In respect of SESA's concern regarding funding to launch DR programs, combined with the urgent need to launch such programs before the summer season, the required demonstration of capability to call Emergency DR events is deferred until July 14, after the effective date of the EE Rider. LUMA does not require additional funds to design the DR program or enroll customers in advance of the EE Rider's effective date, but the Energy Bureau has nonetheless adjusted this date to require enrollment by June 9, rather than offering an incentive payment for achieving enrollment by April 15 (as was the case in the February 16 Order).

- The Energy Bureau **ORDERS** LUMA to file an EE Rider petition on or before April 11, 2023. This petition shall include:
 - The FY24 EE and DR budget to be funded by the rider, including program summaries and budgets in accordance with the approved TPP
 - Details of any external funding sources secured
 - The first-year energy efficiency savings expected to be achieved during FY24. Section 2.02(A)(2) of the EE Regulation requires LUMA to design programs and budgets to achieve at least 0.25 percent of annual sales this year.
 - The expected sales over which the EE Rider will be allocated.
 - A calculation of the EE Rider rate, in \$/kWh.
 - Any and all other information LUMA believes the Energy Bureau needs in the administrative record in order to approve the EE Rider.

To facilitate prompt review of the EE Rider petition, and avoid unnecessary delays from an incomplete filing, the Energy Bureau will host a Teams conference on **May 5, 2023 at 10:00 a.m.**⁹ at which LUMA may ask any questions it may have regarding this required filing.

- The Energy Bureau will not tolerate an incomplete or delayed filing. The Energy Bureau **WELCOMES** stakeholders to file comments on the EE Rider petition on or before April 18, 2023, by email to comentarios@jrsp.pr.gov.
- For the purpose of this Resolution and Order, the Energy Bureau defines the "EE Rider Approval Date" as the date on which the Energy Bureau issues an order establishing the value and implementation date for the EE Rider.

⁹ The Technical Conference shall be Virtual. The Energy Bureau's Clerks Office shall provide the parties via email the Microsoft Team link to access the Technical Conference.



- The Energy Bureau **ORDERS** LUMA to file, on or before June 9, 2023, proof that it has enrolled customers in an Emergency DR program. This proof could be completed customer enrollment forms or similar documentation.
- The Energy Bureau **ORDERS** LUMA to file, on or before 30 calendar days following the EE Rider Approval Date, or July 14, 2023, whichever occurs later, documentation showing that LUMA has the capability to call Emergency DR events. This documentation shall be a report on a successful test dispatch event, including the number of participants and the capacity dispatched.
- The Energy Bureau **ORDERS** LUMA to file, on or before 75 calendar days following the EE Rider Approval Date, documentation showing that LUMA is processing energy efficiency incentive/rebate applications. This documentation shall include a report on the number of customers served, number of incentive applications processed, number of rebate checks issued, and the cost associated with the rebate checks issued.
- The Energy Bureau **ORDERS** LUMA to file its Annual Report on the first year of the TPP (covering the period up to June 30, 2023) on or before October 28, 2023. LUMA shall ensure this Annual Report contains all materials required by the EE Regulation.
- The Energy Bureau **ORDERS** LUMA to file documentation of at least one stakeholder meeting to discuss its draft FY2025-2027 Three-Year Plan on or before December 31, 2023. LUMA shall file the meeting agenda, including the meeting date, and a summary of key takeaways from the meeting.
- The Energy Bureau **ORDERS** LUMA to file its proposed FY2025-2027 Three-Year Plan on order before March 1, 2024. LUMA shall ensure this plan has all materials required by the EE Regulation and any Energy Bureau orders or guidance on content and organization.

Under the Energy Bureau's authority under Section 6.36 of Act 57-2014, as amended, the Energy Bureau may issue monetary fines of up to \$25,000 per day for violations of its orders and regulations. It is important for LUMA to note that the EE and DR Regulations have specific requirements for required quarterly and annual filings, as well as the Three-Year EE and DR Plan. The Energy Bureau will judge to be incomplete any filing that does not meet the full specifications of the EE and DR Regulations. Incomplete filings constitute violations of the Energy Bureau's orders and regulations.

Be it notified and published.

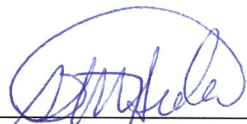
 Lillian Mateo Santos Associate Commissioner	 Edison Avilés Deliz Chairman	 Ferdinand A. Ramos Soegaard Associate Commissioner
 Sylvia B. Ugarte Araujo Associate Commissioner	 Antonio Torres Miranda Associate Commissioner	



CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on April 3, 2023. I also certify that on April 3, 2023 a copy of this Resolution and Order was notified by electronic mail to agraitfe@agraitlawpr.com, info@sesapr.org; bfrench@veic.org; shanson@veic.org; ana.rodriquezrivera@us.dlapiper.com, laura.rozas@us.dlapiper.com; jmarrero@diazvaz.law, hrivera@jrsp.pr.gov. I also certify that today, April 3, 2023, I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, today April 3, 2023.



Sonia Seda Gaztambide
Clerk

