

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

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**IN RE:**

ENERGY EFFICIENCY AND DEMAND  
RESPONSE TRANSITION PERIOD PLAN

**CASE NO.:** NEPR-MI-2022-0001

**SUBJECT:**

Informative Motion and Urgent Request for Clarification Regarding Requirements Applicable to Emergency DR Program and Extension to Meet Program Enrollment Deadline in Resolution and Order of April 3, 2023

**INFORMATIVE MOTION AND URGENT REQUEST FOR CLARIFICATION  
REGARDING REQUIREMENTS APPLICABLE TO THE EMERGENCY DR  
PROGRAM AND EXTENSION TO MEET PROGRAM ENROLLMENT DEADLINE IN  
RESOLUTION AND ORDER OF APRIL 3, 2023**

**TO THE HONORABLE PUERTO RICO ENERGY BUREAU:**

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

**I. Introduction**

1. On December 10, 2020, the honorable Energy Bureau of the Puerto Rico Public Service Regulatory Board (“Energy Bureau”) adopted the Regulation for Demand Response (“DR Regulation”)<sup>1</sup> requiring, among others, that the Puerto Rico Electric Power Authority (“PREPA”) or its successor, LUMA, file with the Energy Bureau a Three-Year Demand Response Plan (“Three-Year DR Plan”) by a specified date. *See* DR Regulation, Section 3.02(C)(1)(a).

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<sup>1</sup> DR Regulation, December 21, 2020, Regulation 9246.

2. On April 21, 2021, the Energy Bureau issued a Resolution and Order commencing the proceeding in docket NEPR-MI-2021-0006, *In Re: Demand Response Plan Review, Implementation and Monitoring* and ordering PREPA and LUMA to attend a Technical Conference, among others.

3. After other procedural events, on June 15, 2021, the Energy Bureau held a Technical Conference at which LUMA proposed a phased and integrated Energy Efficiency (“EE”) and Demand Response (“DR”) program development approach. *See Motion Submitting Revised Presentation for Technical Conference Scheduled for June 15, 2021* filed on June 14, 2021.

4. On January 21, 2022, the Energy Bureau published the final version of the Regulation for Energy Efficiency (“EE Regulation”)<sup>2</sup>, requiring, among others, that PREPA or its successor, LUMA, file with the Energy Bureau a plan to implement “quick start” EE programs during a two-year transition period (“Transition Period Plan”) by a specified date. *See EE Regulation, Section 2.01.*

5. On February 1, 2022, the Energy Bureau issued a Resolution and Order in which it, among others, expanded the scope of the NEPR-MI-2021-0006 proceeding to include EE alongside DR (*see* February 1<sup>st</sup> Resolution and Order, page 2) and scheduled a Technical Workshop to discuss LUMA’s “plans for the development and launch of quick-start EE and DR programs, as well as the other types of activities it is planning to undertake during the Transition Period to facilitate the ramp-up of EE and DR programs and development of the EE and DR workforce” (*see id.* at page 4).

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<sup>2</sup> The EE Regulation was at the time assigned the number 9354 by the Puerto Rico State Department. Regulation number 9354 was subsequently annulled, and the EE Regulation was resubmitted to and approved by the Puerto Rico Department of State on March 25, 2022, being assigned number 9367.

6. On March 9, 2022, the Energy Bureau held a Workshop at which LUMA discussed the submittal of a proposed integrated EE and DR Transition Period Plan for the development and launch of quick-start EE and DR programs.

7. On June 21, 2022, LUMA filed with the Energy Bureau its proposed EE and DR Transition Period Plan. *See Motion Submitting Proposed EE/DR Transition Period Plan* of that date and its *Exhibit 1* (this Exhibit 1, the “Proposed TPP”). The Proposed TPP included various programs, including a Battery Demand Response Program targeting residential customers with behind the meter batteries and providing incentives for load shifting to batteries during DR event periods and an Emergency Demand Response Program targeted at commercial and industrial customers for customers to voluntarily reduce load and/or shift load to back up generators during DR events. *See Proposed TPP, Sections 4.3.2 and 4.4.2.*

8. On June 28, 2022, the Energy Bureau issued a Resolution and Order initiating the instant proceeding for the review of the Proposed TPP.

9. After other procedural events (including, among others a Technical Conference held on September 29, 2022 and Workshops held on November 4 and 16, 2022, as well as questions issued by the Energy Bureau to LUMA and stakeholders), on February 16, 2023, the Energy Bureau issued a Resolution and Order (the “February 16<sup>th</sup> Resolution and Order”) in which it considered, amended and approved the Proposed TPP, containing the EE and DR Programs to be implemented by LUMA during the Transition Period and associated budgets for Fiscal Years (“FY”) 2023 and 2024, among others (the Proposed TPP, as approved by the Energy Bureau, the “Approved TPP”).

10. In the February 16<sup>th</sup> Resolution and Order, the Energy Bureau concluded that the Proposed TPP “represents a reasonable and appropriate launch of EE and DR programs in Puerto

Rico and approves all components of LUMA's Proposed TPP that are not specifically addressed” in the February 16<sup>th</sup> Resolution and Order. *See id.* at page 5. In the February 16<sup>th</sup> Resolution and Order, the Energy Bureau also established (i) deadlines for various activities under the Proposed TPP, including for the filing the EE Rider and for the EE Rider to enter into effect; (ii) Performance Incentives Metrics for various activities related to the Proposed TPP tied to specified deadlines; and (iii) requirements and deadlines relating to reporting.

11. In pertinent part, the Energy Bureau also ordered LUMA to “[d]evelop an emergency battery DR program for existing residential and commercial/customers, for launch in FY2023, to be part of or operated in parallel with its proposed emergency DR program” and to “leverage the capabilities of third-party aggregators to launch this program”.<sup>3</sup> *See id.* The Energy Bureau also provided that “LUMA shall [...] refile its request for approval of any additional DR program offerings after establishing agreements with third-party aggregators and enrolling residential and commercial customers in its emergency battery DR program”. *See id.* Regarding customer enrollment, the Energy Bureau indicated that: “LUMA shall prioritize launch of emergency DR program offerings. The first part of this is demonstrating program availability and outreach to customers. Verification of customer enrollment shall include:

- a. agreements with third-party aggregators, including details about outreach and enrollment strategies;
- b. images of outreach materials and messaging; and
- c. completed customer enrollment forms.”

*See id.* at page 23.

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<sup>3</sup> The Energy Bureau also indicates that “LUMA's top priority shall be to work with third-party battery aggregators to develop and launch an emergency battery DR program in FY2023, as part of or paired with its proposed emergency DR program that utilizes backup generators and other load flexibility”. *See id.* at page 15.

12. On March 8, 2023, LUMA filed a motion requesting reconsideration of certain requirements or determinations in the February 16<sup>th</sup> Resolution and Order, except for certain activities or deadlines, and informed that it anticipated filing the EE Rider by the established deadline. *See Motion for Reconsideration of Resolution and Order of February 16, 2023, and Request to Vacate Deadlines* of that date (“March 8<sup>th</sup> Motion”), page 44.

13. On April 3, 2023, the Energy Bureau issued a Resolution and Order (“April 3<sup>rd</sup> Resolution and Order”) in which it made several determinations regarding LUMA’s March 8<sup>th</sup> Motion, including, among others, (a) ordering LUMA to file the EE Rider petition on or before April 11, 2023 as specified in the April 3<sup>rd</sup> Resolution and Order (*see* April 3<sup>rd</sup> Resolution and Order, page 5), (b) vacating certain dates tied to the Performance Incentives Metrics (*see id.* at page 3), and (c) issuing orders for LUMA to complete certain activities by specified deadlines, including, among others, to: “file, on or before June 9, 2023, proof that it has enrolled customers in an Emergency DR program” (*see id.* at page 6) and 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” (*see id.*)

14. In compliance with the February 16<sup>th</sup> Resolution and Order, as modified or supplemented by the April 3<sup>rd</sup> Resolution and Order, on April 11, 2023, LUMA submitted the EE Rider petition (“EE Rider Petition”).

15. On May 5, 2023, the Energy Bureau held a Technical Conference to discuss the EE Rider Petition filed by LUMA, during which the Energy Bureau issued a bench order requiring LUMA to file a revised Exhibit 1 to the EE Rider Petition, to include certain clarifications that were discussed during the Technical Conference, including revising the program descriptions to

combine the Emergency DR and Battery DR programs into one program, and to file a translation of the Revised Exhibit 1.

16. On May 19, 2023, LUMA filed the revised Exhibit 1 of the EE Rider Petition.

## **II. Information and Requests**

17. LUMA respectfully informs that, in accordance with the February 16<sup>th</sup> Resolution and Order, it has been actively working on the establishment of the Emergency DR Program, prioritizing the Emergency Battery DR component of this program, including leveraging the capabilities of third-party aggregators to enroll the customers and provide other related services. LUMA has made significant progress in the establishment of this program, including developing the program guidelines, developing an aggregator enrollment process, developing proposed dispatch/operating procedures, and working with aggregators to prepare for the customer enrollment they would perform. Attached is a status update LUMA prepared identifying the key activities undertaken to date. *See Exhibit 1.*

18. As indicated in the attached status update, as part of this process, LUMA has prepared an agreement to be executed with third-party DR aggregators and has engaged with potential third-party DR aggregators to discuss the program requirements, including the customer outreach and enrollment activities which are part of the infrastructure, equipment, and technology required to run this program and are already in place and owned by the third-party DR aggregators. In this process, questions have arisen on the part of LUMA and the potential third-party DR aggregators regarding the applicability of certain provisions of the DR Regulation. In particular, the DR Regulation provides that the third-party DR aggregators shall be certified by the Energy Bureau under Regulation 8701, Amendment to Regulation No. 8618 on Certification, Annual Fees, and Operational Plans for Electric Service Companies in Puerto Rico, and the request for

certification shall contain a description of the DR resources it seeks to develop and aggregate, identify the DR program or programs offered by PREPA, and provide the standard form letter or electronic communication and agreement it intends to submit to the customers to be enrolled, among others. DR Regulation, Section 2.02B. In addition, the DR Regulation provides that PREPA or the third-party DR aggregators “must obtain approval from the Energy Bureau for a standard form or electronic communication and agreement to be submitted to each customer explaining the terms and conditions in the DR service”. *See id.* Section 2.03G.

19. The Emergency DR Program, and other programs in the Approved TPP, are quick launch programs, akin to pilot programs, which have never been established in Puerto Rico. Therefore, it is unsurprising that, as of this date, there are no third-party DR aggregators certified as per the provisions of the DR Regulation. In addition, the standard communication form and agreement for customer enrollment will be produced and disseminated by the third-party DR aggregators and have not been submitted by the potential third-party DR aggregators to the Energy Bureau. Furthermore, customer enrollment will likely be conducted through the third-party DR aggregators’ mobile app, rather than a standard paper application form. This situation presents a barrier to the execution of the program with the potential third-party DR aggregators and the commencement of enrollment of customers.

20. LUMA notes that in the Energy Bureau’s February 16<sup>th</sup> Resolution and Order, the Energy Bureau did not address the applicability of the mentioned requirements to the Emergency DR Program but, as mentioned above, expressly required that the verification of customer enrollment include: “the agreements with third-party aggregators, including details about outreach and enrollment strategies”, “images of outreach materials and messaging”; and “completed customer enrollment forms”. *See* February 16<sup>th</sup> Resolution and Order, page 23. This provision

could be interpreted to exclude the requirements of Section 2.03G of the DR Regulation for this quick launch Emergency DR Program.

21. Given that the DR Regulation does not contemplate quick launch or pilot programs and in light of the aforementioned provision of the February 16<sup>th</sup> Resolution and Order, LUMA respectfully seeks clarification from this honorable Energy Bureau as to (a) whether the mentioned requirements in Sections 2.02B and 2.03G of the DR Regulation apply to the instant situation involving a TPP quick launch program or whether, instead, these provisions are limited to regular DR programs (which would be covered in the Three -Year DR Plan) and that, for purposes of TPP programs, meeting the verification of customer enrollment provisions of the February 16<sup>th</sup> Resolution and Order suffices at this stage for purposes of documentary requirements; and (b) whether the third-party DR aggregators need to be certified to commence services for the Emergency DR Program and/or other TPP quick launch programs.

22. LUMA also respectfully informs that the determination of the Energy Bureau with respect to the issues discussed above, the implementation of which are outside LUMA's control, will have an impact on the ability to meet the deadline of June 9, 2023 established in the April 3<sup>rd</sup> Resolution and Order to have customers enrolled in the Emergency DR Program and thus the timeline for implementation of the program. As mentioned, the customer enrollment needs to occur through the third-party DR aggregators who own the infrastructure, equipment, and technology required to run this program. However, the uncertainty surrounding the applicability of Sections 2.02B and 2.03G of the DR Regulation presents a barrier for the third-party DR aggregators to proceed with the enrollment and may delay the execution of the Aggregator Agreements between LUMA and the third-party DR aggregators which should precede customer enrollment. The timing for customer enrollment, therefore, depends on how these issues are



resolved and the celerity with which the third-party DR aggregators conduct the enrollment once these issues are resolved.

23. In light of the circumstances above, LUMA respectfully requests the Energy Bureau to extend the deadline for enrollment of customers in the Emergency DR Program to at least thirty (30) days following the issuance of a Resolution and Order from the Energy Bureau resolving the questions regarding the applicability of Sections 2.02B and 2.03G of the DR Regulation to the Emergency DR Program provided that the Energy Bureau determines that these requirements are not applicable to this program. If, however, the Energy Bureau resolves that these requirements are applicable, then the timeline for enrollment would have to be adjusted contingent upon the third-party DR aggregators meeting these requirements. In addition, given that LUMA does not have control over customer enrollment, LUMA respectfully requests that the Energy Bureau clarify that, to document compliance with the enrollment deadline, it should suffice that LUMA submit the agreement with third-party DR aggregators and that submittal of the completed customer enrollment forms, which enrollment is beyond LUMA's control, including details about outreach and enrollment strategies and the images of outreach materials and messaging be dependent on whether the third-party aggregators were able to enroll any customers.

**WHEREFORE**, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned; **provide** clarification on the issues relating to the applicability of Sections 2.02B and 2.03G of the DR Regulation to quick launch TPP programs and in particular the Emergency DR Program; **grant** an extension of the deadline of June 9, 2023 for enrollment of customers in the Emergency DR Program established under the April 3<sup>rd</sup> Resolution and Order to at least thirty (30) days following the issuance of a Resolution and Order from the Energy Bureau resolving the issues relating to the applicability of Sections 2.02B and 2.03G of the DR Regulation to the

Emergency DR Program provided that the Energy Bureau determines that these requirements are not applicable to this program, but if the Energy Bureau resolves that these requirements are applicable, then the timeline for enrollment be adjusted contingent upon the third-party DR aggregators meeting these requirements; and **provide** clarification that to document compliance with the enrollment deadline, it should suffice that LUMA submit the agreements with third-party aggregators, and that submittal of the completed customer enrollment forms including details about outreach and enrollment strategies and the images of outreach materials and messaging provided by the third-party DR aggregators, as provided in the February 16<sup>th</sup> Resolution and Order, be dependent on whether the third-party aggregators were able to enroll any customers.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 5 day of June 2023.

We hereby certify that we filed this Motion using the electronic filing system of this Energy Bureau and that we will send an electronic copy of this Motion to the attorney for PREPA at [jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law); the Independent Office for Consumer Protection at [hrivera@jrsp.pr.gov](mailto:hrivera@jrsp.pr.gov); and [agraitfe@agraitlawpr.com](mailto:agraitfe@agraitlawpr.com), [info@sesapr.org](mailto:info@sesapr.org), [elevin@veic.org](mailto:elevin@veic.org), and [mrios@arroyorioslaw.com](mailto:mrios@arroyorioslaw.com).



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*Exhibit 1*

*Emergency DR Program Status Update*



**Exhibit 1**  
**Battery Emergency Demand Response Pilot (BEDRP)**  
**Status Update**

NEPR-MI-2022-0001  
June 5, 2023

# Emergency DR Program Status Update

G On target  
 Y Caution  
 R Off plan  
 C Complete

Key Activity Summary	Key Milestones	Date	Status
Activities conducted to-date towards Key Milestones: <b>Develop Program Guidelines (Complete)</b> <ul style="list-style-type: none"> <li>Developed program design (incentive, eligibility, terms &amp; conditions)</li> <li>Developed draft Program Guidelines</li> <li>Met with Aggregators to gather feedback on Program Guidelines</li> <li>Developed final draft of Program Guidelines incorporating feedback</li> </ul> <b>Develop Aggregator Enrollment Process (Complete)</b> <ul style="list-style-type: none"> <li>Developed draft of standardized Aggregator Agreement (including requirements, forms and procedures for enrolling Aggregators)</li> <li>Met with Aggregators to gather feedback on enrollment requirements</li> </ul> <b>Develop and Execute Aggregator Agreements</b> <ul style="list-style-type: none"> <li>Draft Agreements discussed and shared with third-party DR aggregators for review and subsequent execution</li> </ul> <b>Develop Dispatch/Operating Procedures</b> <ul style="list-style-type: none"> <li>Worked with LUMA System Operations to develop Key Operating Parameters</li> <li>Developed draft of Program Operating Procedures</li> </ul> <b>Prepare for Customer Enrollment</b> <ul style="list-style-type: none"> <li>Worked with Aggregators in development of customer enrollment and eligibility verification process</li> <li>Developed draft customer-facing webpage with program overview</li> </ul>	Develop Program Guidelines	April	C
	Develop Aggregator Enrollment Process	May	C
	Develop and Execute Aggregator Agreements <sup>1</sup>	Late June	Y
	Develop Dispatch/ Operation Procedures	Late July	G
	Prepare for Customer Enrollment <sup>2</sup>	Late June	Y
	Develop Program Administration, Data Tracking and Invoicing Procedures	Late July	G
<b>Risks / Issues:</b>			
1. In process of finalizing Aggregator Agreements. However, requirements for PREB Aggregator Certification could delay execution of Aggregator Agreements and subsequent enrollment of customers by Aggregators. 2. Customer enrollment is conducted by Aggregators and expected to begin 2-4 weeks after Aggregator Agreements are executed.			