

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

NEPR

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IN RE:
ENERGY EFFICIENCY AND DEMAND
RESPONSE TRANSITION PERIOD PLAN

CASE NO.: NEPR-MI-2022-001

SUBJECT: Motion for Clarification of
DR Third Party Aggregator, Inc. regarding
Application of Demand Response
Regulation Section 2.02 and Regulation
8701 to Emergency Battery
Demand Response Aggregators under
LUMA EE/DR Transition Period Plan

**MOTION FOR CLARIFICATION OF DR THIRD PARTY AGGREGATOR, INC.
REGARDING APPLICATION OF DEMAND RESPONSE REGULATION SECTION
2.02 and REGULATION 8701 TO EMERGENCY BATTERY DEMAND RESPONSE
AGGREGATORS UNDER LUMA EE/DR TRANSITION PERIOD PLAN**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COMES now DR Third Party Aggregator, Inc. (“DR Third Party Aggregator”) to respectfully state a request for clarifications noted below.

I. Procedural History and Background

On February 16, 2023, the Energy Bureau of the Puerto Rico Public Service Commission Regulatory Board (“Energy Bureau”) issued a Resolution and Order in *In re: Energy Efficiency and Demand Response Transition Period Plan*, stating its determinations on LUMA Energy, LLC and LUMA Energy ServCo’s (collectively, “LUMA”) filed proposal for an Energy Efficiency and Demand Response Transition Period Plan (“February 2023 Order”).¹ As this Order explains,

¹ See Resolution and Order, Determination of LUMA’s June 21, 2022, Proposed Transition Period Plan, Case No. NEPR-MI-2022-001 (issued Feb. 16, 2023)(citing and approving with modifications, LUMA’s Proposed Transition Period Plan).

LUMA filed its proposed Transition Period Plan (“Proposed TPP”) on June 21, 2022 with the Energy Bureau “in accordance with Regulation 9367, "Regulation for Energy Efficiency" ("EE Regulation"). As envisioned by Section 4.02(C) of the EE Regulation², the Proposed TPP incorporates an integrated approach to demand response, so the Proposed TPP is also a Demand Response Plan in accordance with Regulation 9246, "Regulation for Demand Response" ("DR Regulation").”³ The Order further explains that the Proposed TPP is a precursor to full-scale Energy Efficiency and Demand Response Programs, covering a period of July 1, 2022 through June 30, 2023 and July 1, 2023 through June 30, 2024, “designed to build market readiness and customer awareness prior to the launch of full-scale EE and DR programs, which will be delivered on a three-year cycle beginning in the summer of 2024 (FY2025).”⁴ The Order notes that LUMA’s Proposed TPP contemplates launch of “several quick-start programs and initiatives, each of which will be expanded after the TPP when full-scale program implementation begins.” This includes a “residential battery DR program [which] incentivizes residential customers with behind-the-meter batteries to shift load to their batteries during peak demand events [...] in response to either economic or reliability/emergency triggers.” (Emergency Battery DR Program or “EBDR

² See *In Re: Demand Response Plan Review, Implementation, and Monitoring*, Case No. NEPR-MI-2021-0006, (Wherein the Energy Bureau has stated that “Section 4.02(D) of the EE Regulation explicitly states that LUMA will design and implement integrated Energy Efficiency (“EE”) and Demand Response (“DR”) programs, that the planning processes for EE and DR should be consistent and coordinated, and that LUMA can combine the planning processes and documents for EE and DR”; the Energy Bureau further stated that it would review in technical conferences and in a subsequent Case, merits of a Proposed TPP based on “LUMA’s actions to prepare a Transition Period Plan for energy efficiency and demand response (emphasis added), as required by the EE Regulation and Section II of [the Energy Bureau’s] Resolution and Order.”). The subsequent Case opened by the Bureau combines Transition Period Plan requirements review for both Energy Efficiency and Demand Response: see “*In Re: Energy Efficiency and Demand Response Transition Period Plan*,” Case No. NEPR-MI-2022-001.

³ February 16, 2023 Order, at p. 1, (“Section II. Procedural History.”).

⁴ February 16, 2023 Order, at p. 2.

Program”).⁵ The Energy Bureau “agree[d] with LUMA and stakeholders that the Transition Period is meant to be a period of learning and improvement.”⁶

The Energy Bureau approved large portions of LUMA’s Proposed TPP in the February 16, 2023 Order, and noted that the changes or clarifications ordered therein are what the Bureau “believes are required to amend the TPP and achieve the objectives of Act 17-2019 and the EE and DR Regulations.”⁷ “Overall, the Energy Bureau [found] that the proposed TPP represents a reasonable and appropriate launch of EE and DR programs in Puerto Rico...”⁸ With regard to the EBDR Program in the Proposed TPP, the Energy Bureau ordered LUMA to develop an emergency battery DR program for launch in FY2023, leverage the capabilities of third-party aggregators to launch this program, ensure that per-kWh incentive offered through the emergency DR program is set consistent with Section 3.01 (B) of the DR Regulation, provide customers with additional flexibility during extreme weather allowing them to use batteries for resiliency, and file a revised TPP that includes a revised DR portion post-launch of the EBDR Program, to include updates that are well coordinated and integrated with the EBDR Program. Further, the Energy Bureau laid out deadlines and milestones related to filing LUMA’s EE and DR Program Rate Rider, enrolling customers in an Emergency DR Program, demonstrating capability to call emergency DR program events, a process to be completed and reported from LUMA by filing with the Energy Bureau, 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. The Energy Bureau specified that “this documentation shall be a report on a successful test

⁵ February 16, 2023 Order, at p. 4 (Section III. B., Program Design).

⁶ February 16, 2023 Order, at p. 20.

⁷ February 16, 2023 Order, at p. 5. (Section VI. Summary of Comments and Required Changes).

⁸ February 16, 2023 Order, at p. 5. (Section VI. Summary of Comments and Required Changes).

dispatch event, including the number of participants and the capacity dispatched.”⁹ It was noted in relation to these accelerated deadlines for program development and launch, that “given the large number of existing behind-the-meter batteries....there is considerable opportunity to improve grid reliability and reduce costs for customers through battery DR Programs”; the Bureau acknowledged and agreed with stakeholders’ comments that “emergency conditions present themselves on a regular basis in Puerto Rico and all opportunities to reduce peak demand need to be implemented immediately.”¹⁰

II. Request for Clarification

Based on the specific orders and notices issued by the Energy Bureau cited above, it is DR Third Party Aggregator’s understanding that the Bureau intends for a “quick start” EBDR Program at minimum to be developed and launched by LUMA, with the support of third-party aggregators, no later than July 2023.

The following points and arguments are respectfully submitted for the Energy Bureau’s consideration:

1. The Energy Bureau noted in its February 16, 2023 Order that the Emergency Battery DR Program is intended to be a quick-start program and that the TPP, as approved in this Order, achieves the objectives of Act 17-2019 and the EE and DR Regulations.¹¹
2. The only section of the DR Regulation explicitly included by the Energy Bureau in its February 16, 2023 Order as a modification to LUMA’s Proposed TPP, which ostensibly achieved the objectives of the DR Regulation, was Section 3.01(B).

⁹ April 3, 2023 Order, at p. 6.

¹⁰ February 16, 2023 Order, at p. 13. (Section 3. DR Programs).

¹¹ February 16, 2023 Order, at p. 5. (Section VI. Summary of Comments and Required Changes).

3. The DR Regulation includes several provisions that appear to apply to “full-scale” programs, and was published well before LUMA assumed contractual responsibility to administer the DR Regulation and before the development of Transition Period Plan requirements for either EE or DR. The Energy Bureau did not cite to these provisions as conditions of launching an Emergency DR program in its February 16, 2023 Order. However, it did approve alternative conditions and requirements either as stipulated in LUMA’s Proposed TPP, or as modified in the Order, as consistent with the DR Regulation and Act 71.
4. Certain DR Regulation provisions which are not explicitly referenced in the February 16, 2023 Order would appear to add significant time and process that would limit or preclude third-party aggregators to deliver LUMA’s “quick-start” program to enrolled customers in summer 2023 as PREB intended to occur per its February 16, 2023 Order. One such requirement of significant concern is Section 2.02 of the Demand Response Regulation: “Certification of Demand Response Aggregators.” This Section incorporates by reference, full compliance with a different regulation requiring certification of “Electric Service Companies.”¹² Both the Demand Response Regulation and Regulation 8701 were promulgated in isolation of, and prior to, the issuance of the Bureau’s many decisions on the Proposed TPP.
5. Regulation 8701 states that “Electric Service Companies” include: PREPA, any natural or legal person that generates electric power through the use of fossil fuel or renewable energy sources for sale to PREPA or any other electric service company in accordance with a power purchase agreement (excluding net energy metering customers themselves), and

¹² Regulation 8701, Amendment to Regulation No. 8618 on Certification, Annual Fees, and Operational Plans for Electric Service Companies in Puerto Rico.

natural or legal persons that offer any of these services: electric power generation in Puerto Rico through distributed generators with an aggregate capacity of 1 MW or more, electric power storage where at least one storage unit has a nominal capacity of 1 MW or more, electric power (utility power consumption) billing services, or electric power resale, and the carrying out or offering of electric power transmission service (wheeling).

6. Regulation 8701 does not include any language indicating that the definition of an “electric service company” extends to a natural or legal person who administers on behalf of LUMA, a demand response incentive payment for residential behind-the-meter, device-level load shifting behavior from battery storage devices, each such device individually well under 1MW. (An DR Third Party Aggregator Residential Battery System by example, are typically 5kW-12kW system and customers typically have two such devices on a premise).
7. In its February 16, 2023 Order, the Energy Bureau directed LUMA to require third-party aggregators participating in the EBDR Program to engage in specific performance and reporting metrics that are uniquely suited to such “quick-start” programs. These requirements differ substantially from the requirements for certified Energy Service Companies in Regulation 8701 and may directly conflict and add duplicative burdens on both LUMA and third-party aggregators.

Given the above-noted concerns and observations, DR Third Party Aggregator respectfully requests clarification from the Energy Bureau on the following:

- 1. The Summer 2023 Emergency Battery DR Program ordered by the Bureau in its February 16, 2023 Order does not contemplate Regulation 8701 applying to third party aggregators that are exclusively administering demand response incentive payments for load-shifting behavior from an aggregation of battery energy storage**

devices on residential customer premises, where such devices are individually and/or collectively on any participating customer premise, under 1 MW in size.

- 2. Section 2.02 of the Demand Response Regulation is either a waivable or non-applicable provision for the purposes of launching the Emergency Battery DR Program contemplated in the Energy Bureau's February 16, 2023 Order.**

WHEREFORE, DR Third Party Aggregator Inc. respectfully requests that the Energy Bureau provide clarifications requested above regarding applicability of Regulation for Demand Response (Regulation 9264) Section 2.01 and Regulation 8701 to support the timely launch of the Emergency Battery Demand Response Program contemplated in its Resolution and Order re: Determination of LUMA's June 21, 2022, Proposed Transition Period Plan, Case No. NEPR-MI-2022-001 (issued on February 16, 2023).

Respectfully Submitted.

It is hereby certified that, on this same date, I have filed the above motion with the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and I will send an electronic copy of the filing to: PREPA through its attorneys at jmarrero@diazvaz.law, kbolanos@diazvaz.law; LUMA through its legal representatives at margarita.mercado@us.dlapiper.com and laura.rozas@us.dlapiper.com; the Independent Office for Consumer Protection at hrivera@jrsp.pr.gov; and agraitfe@agraitlawpr.com, info@sesapr.org, elevin@veic.org.

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

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