

**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: Addressing Requests for
Clarification Regarding Emergency DR
Program Requirements from DR Third Party
Aggregator, Inc., and LUMA and LUMA's
Request for Extension of Enrollment Deadline

RESOLUTION AND ORDER

I. Introduction and Procedural Background

On June 5, 2023, LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively, "LUMA") filed with the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") a document titled *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* ("June 5 LUMA Motion"). This motion requests clarification regarding the applicability of several terms on the Regulation for Demand Response Regulation 9246¹ to the Emergency DR program ordered by the Energy Bureau as part of the Transition Period Plan. LUMA also requests an extension by thirty (30) days of the deadline to enroll customers in the Emergency DR program, from the date of issuance of an order providing clarification.

On June 5, 2023, DR Third Party Aggregator, Inc. ("DR Third Party") filed a document titled *Motion for Clarification of DR Third Party Aggregator, Inc. Regarding Application of Demand Response Regulation Section 2.02 and Regulation [8]701 to Emergency Batteries Demand Response Aggregators Under LUMA EE/DR Transition Period Plan* ("June 5 Motion"). In its motion, DR Third Party requests clarification of the requirements of the DR Regulation and Regulation 8701 with respect to certification of DR Aggregators.

These two motions address related and overlapping issues, and this Resolution and Order addresses both at once in order to minimize confusion and expedite the launch of the Emergency DR program.

II. Summary of LUMA's Motion

In the June 5 LUMA Motion, LUMA describes the current status of its efforts to launch an Emergency DR program aligned with the Energy Bureau's orders of February 16, 2023 ("February 16 Order") and April 3, 2023 ("April 3 Order"). LUMA states that it has "had significant progress in the establishment of this program, including developing 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."

LUMA attached a status update as Exhibit 1 to its motion. This exhibit indicates that the key milestones of "develop and execute aggregator agreements" and "prepare for customer enrollment" are in a "yellow" status, indicating "caution", while other key milestones are either complete or on target. The status update states that one source of "caution" for these items is the Energy Bureau's requirement for DR aggregators to be certified as Electric Service Companies (as required in Section 2.02B of the DR Regulation). LUMA states that customer enrollment would be conducted by the DR Aggregators, beginning two to four

¹ Regulation for Demand Response, December 21, 2020 ("Regulation No. 9246").



weeks after aggregator agreements are executed, so a delay in aggregator agreements also delays customer enrollment.

LUMA also highlights the requirement of the DR Regulation that LUMA or third-party DR Aggregators must obtain Energy Bureau approval for a standard form of customer communications and agreement to be submitted to each participating customer explaining the terms of the DR service (Section 2.03G). LUMA points out that, given the required quick-start and short timeline of the Emergency DR program, no third-party DR aggregators have become certified under Regulation No. 8701², and no standardized communication have been filed with the Energy Bureau for approval. In addition, enrollment would likely take place through the aggregators' electronic application, rather than through a paper form.

LUMA states that the February 16 Order did not explicitly address the certification or standard communications requirements of the DR Regulation, and that order separately established mechanisms that could be used to verify customer enrollment in order for LUMA to earn a performance award.

Due to delays associated with the issues it identifies in its filing, LUMA requests that the Energy Bureau extend the deadline for enrollment of customers to at least thirty (30) days following the issuance of a Resolution and Order resolving its questions, and further time if the Energy Bureau determines that the requirements of Section 2.02B and 2.03G of the DR Regulation do apply (in order to provide time for compliance).

III. Summary of DR Third Party's Motion

In its motion, DR Third Party requests clarification regarding two related items. First, it requests that the Energy Bureau clarify that its February 16 Order does not contemplate Regulation 8701 applying to third party aggregators that are engaged in administering demand response incentive payments for load-shifting behavior from an aggregation of distributed battery energy storage devices, none of which exceed 1 MW in size. Second, it requests clarification that Section 2.02 of the DR Regulation is either waivable or non-applicable for the purposes of launching the Emergency DR program contemplated in the February 16 Order.

DR Third Party provides contextual information to clarify its request. It states that the DR Regulation did not explicitly contemplate "quick start" DR programs or the Transition Period Plan, and that the DR Regulation contains provisions which appear to apply to "full-scale" programs. It also states that the Energy Bureau did not explicitly address many of the requirements of the DR Regulation in its February 16 Order on the Transition Period Plan. DR Third Party states that the requirement in the DR Regulation for DR Aggregators (as defined in that regulation) to be certified as Electric Service Companies under Regulation 8701 would "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."³ DR Third Party states that the definition of "Electric Service Company" in Regulation 8701 does not explicitly contemplate including an entity that administers a DR incentive payment for demand response, where each participating device is smaller than 1 MW in capacity. DR Third Party also states that the February 16 Order establishes "specific

² Amendment to Regulation No. 8618, Regarding Certifications, Yearly Charge and Operational Plans of Electric Service Companies, February 17, 2016, as amended ("Regulation No. 8701").

³ June 5 Motion, page 5



performance and reporting metrics” that differ substantially from the requirements of certified Electric Service Companies under Regulation 8701.

IV. Discussion

LUMA and DR Third Party raise important questions that are essential to be clarified to quickly launch the Emergency DR program while maintaining the regulatory structure that the Energy Bureau has established through Regulation No. 9246 and Regulation No. 8701.

A. Certification requirements

Section 2.02 (B) of the Regulation No. 9246 states that:

Demand Response Aggregators shall be certified by the Energy Bureau under the processes established in Energy Bureau Regulation 8701, or its successor.

- 1) *As part of the operational report submitted to the Energy Bureau under Regulation 8701, the DR Aggregator shall include a copy of the Annual Report as specified in Section 5.01 of this Regulation.*
- 2) *In its Request for Certification under Regulation 8701, a DR Aggregator shall, in addition to meeting the requirements of Regulation 8701:*
 - a) *describe the type of DR resources it seeks to develop and aggregate;*
 - b) *identify the DR program or programs offered by PREPA that it intends to utilize on behalf of its customers;*
 - c) *provide the privacy and data security policy required by Section 6.01 of this Regulation; and*
 - d) *if the DR Aggregator intends to serve residential or small commercial customers, provide the standard form letter or electronic communication and agreement to be submitted to each customer explaining the terms and conditions of participating in the DR service as required by Section 2.03 of this Regulation.*

This regulation would require DR aggregators contemplating participation in LUMA's Emergency DR program to 1) become certified under the processes established in Regulation 8701, and 2) to file certain additional information as part of its request for certification, including description of its resources, the program(s) it intends to participate in, a compliant privacy and data security policy, and the standard form of communication it intends to use.

Regulation No. 8701 requires Electric Service Companies (“ESCs”) to file certain information with the Energy Bureau, both as an initial matter to become certified, and as an ongoing matter regarding their operations. Some types of ESCs have specific additional requirements, tailored to their type of business. Regulation No. 8701 also specifies certain fees that ESCs must pay to the Energy Bureau. Regulation No. 8701 defines certain types of ESCs, specifically: 1) PREPA, 2) entities that generate power for sale to PREPA, 3) entities that offer generation for sale through distributed generators with an aggregate capacity of 1 MW or more, 4) entities that operate electric storage where at least one unit has a capacity of 1 MW or more, 5) entities that conduct electric power billing or resale, and 6) entities that carry out or offer electric power transmission (wheeling) service.



Regulation No. 8701 predates the enactment of Act 17-2019⁴, which defines “Electric Power Service Company or Electric Power Company” to mean “any natural or juridical person or entity, including energy cooperatives, engaged in the rendering of energy generation, transmission, and distribution services, billing, wheeling, grid services, energy storage, the resale of electric power, as well as any other electric power service as defined by the Bureau. For purposes of this Act, the Electric Power Authority or its successor, as well as any electric power transmission and distribution network operator, shall be deemed to be an Electric Power Service Company.” The Energy Bureau will be informed by this definition when considering the potential applicability of aspects of Regulation No. 8701 to entities that do not clearly fit the definition of Electric Service Companies in the regulation.

Regulation No. 8701 predates LUMA taking on its role as operator of the electric system, as well as the adoption of the DR Regulation and the Transition Period Plan. This regulation therefore does not directly and clearly address the requirements that apply to DR Aggregators.

The Energy Bureau need not restate the relevant provisions of its regulations when issuing orders that relate to actions governed by a regulation, such as the DR Regulation or Regulation 8701. Parties impacted by the order or resolution are responsible for understanding the requirements. When entities require clarification, the Energy Bureau encourages those entities to file for clarification as soon as possible, so that the need to provide clarity does not impede timely compliance with the Energy Bureau’s orders. In this case, requests for clarification were received four days before the relevant deadline, and more than eight weeks after the April 3, 2023, Order on Reconsideration.

In the interest of allowing the Emergency DR program to launch quickly, in the nature of a pilot, the Energy Bureau clarifies the following regarding requirements for this program:

- The Regulation No. 9246 requires that DR Aggregators follow the certification processes established by Regulation 8701, without directly stating that DR Aggregators are Electric Service Companies under that regulation. DR Aggregators provide grid services and are therefore Electric Power Service Companies under Act 17-2019.
- Provisions of Regulation No. 8701 that apply only to one or more of the specified types of ESCs enumerated in the regulation do not apply to DR Aggregators, because they are not one of the specified types. This includes, for example, the requirements in Section 2.02 for Operational Reports.
- In reference to Section 2.02(A) of Regulation No. 9246, the Energy Bureau **DETERMINES** that for the Emergency DR programs that are part of the Transition Period Plan (“TPP”) the following provisions of Regulation No. 8701 shall either be waived or applied as follows:
 - Applicable: Entirety of Article 1 of Regulation No. 8701.
 - Applicable: Section 2.01 and 2.03A(1) (Personal Information) of Regulation No. 8701. The remainder of Article 2 is waived;
 - Applicable: Article 3, with the exception of Sections 3.03(B) and 3.07 of Regulation No. 8701.

⁴ Puerto Rico Electric Public Policy Act, April 11, 2019.



- Waived: Entirety of Article 4 of Regulation No. 8701.
- Applicable: Entirety of Article 5 of Regulation No. 8701.
- Applicable: Entirety of Article 6 of Regulation No. 8701.
- The Energy Bureau temporarily **WAIVES** those sections of Regulation No. 8701, as stated above, only for the duration of the Transition Period Plan unless a Resolution is issued by the Energy Bureau amending such waiver
- In order to avoid delays due to the certification process, the Energy Bureau **ESTABLISHES** a deadline of December 1, 2023, for DR aggregators participating in the TPP Emergency DR program to apply for certification.

B. Customer communications and enrollment forms

Under the DR Regulation, the Energy Bureau has the authority to review and approve communications used to enroll residential and small commercial customers in DR programs. In the interest of a prompt launch of the Emergency DR programs as a pilot program, the Energy Bureau **DEFERS** the requirements of the DR Regulation that allow it to review customer communications. DR Aggregators participating in the Emergency DR program **SHALL** file the customer communications they are using alongside their request for certification on or before December 1, 2023 (thereby satisfying the requirements of Section 2.02B(2)(d) of Regulation No. 9246). LUMA and DR Aggregators participating in the program are advised to review the requirements of the DR Regulation No. 9246 regarding the contents of that communication so as to avoid the need to amend the communication and re-enroll participants.

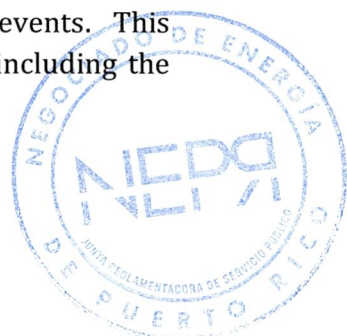
C. Customer enrollment deadline and documentation

The Energy Bureau appreciates that the need for clarification regarding DR aggregators has caused delays, outside of LUMA's control, relating to its ability to meet the June 9, 2023, deadline that the Energy Bureau ordered for customer enrollment in the Emergency DR program. In this Resolution and Order, the Energy Bureau has established requirements which should not create any additional delay in launching the Emergency DR program, so there is no need to further extend the timeline to allow for additional process.

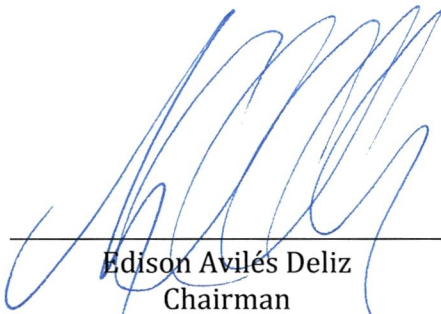
The Energy Bureau sees no need to amend its order regarding proof of customer enrollment. The Energy Bureau's April 3, 2023 Order on Reconsideration amended the documentation when it removed the need for performance validation. As previously ordered, proof of customer enrollment could take the form of completed customer enrollment forms or similar documentation.

The Energy Bureau establishes the following revised deadlines for proof of customer enrollment and proof that LUMA has the capability to call Emergency DR events. While LUMA did not request an amended deadline for the demonstration of the ability to call an Emergency DR event, the Energy Bureau defers this deadline by one week in order to allow two weeks between proof of enrollment and proof of a test dispatch.


- The Energy Bureau **ORDERS** LUMA to file, on or before July 14, 2023, proof that it has enrolled customers in an Emergency DR program.
- The Energy Bureau **ORDERS** LUMA to file, on or before July 31, 2023, 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.




Be it notified and published.


Edison Avilés Deliz
Chairman


Lillian Mateo Santos
Associate Commissioner


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 June 15, 2023. I also certify that on June 15, 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, June 15, 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 June 15, 2023.


Sonia Seda Gaztambide
Clerk

