

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

<b>NEPR</b>  <b>Received:</b>  Jun 15, 2023  1:12 PM
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IN RE: PERFORMANCE METRICS  
TARGETS FOR LUMA ENERGY SERVCO,  
LLC

**CASE NO. NEPR-AP-2020-0025**

**SUBJECT: Urgent Request for Stay of  
Deadline to Submit Reply Briefs**

**URGENT REQUEST TO STAY THE DEADLINE TO SUBMIT REPLY BRIEFS  
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 states and requests the following:

**I. Background**

1. On February 7-10, 2023, this Honorable Puerto Rico Energy Bureau (“Energy Bureau”) held the Evidentiary Hearing to evaluate the *Request for Approval of Revised Annex IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (OMA)*.

2. On February 14, 2023, LUMA filed a *Motion Requesting Audio Recording of Evidentiary Hearing*. LUMA petitioned the Energy Bureau to provide the full audio recording of the evidentiary hearing to prepare a certified transcript of the proceedings. The Energy Bureau granted the request on February 22, 2023.<sup>1</sup>

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<sup>1</sup> The Secretary of the Energy Bureau provided LUMA with the audio recording of the Evidentiary Hearing on February 17, 2023.

3. On March 3, 2023, LUMA filed a *Motion Requesting the Energy Bureau to Amend Procedural Calendar* requesting that this Energy Bureau amend the procedural calendar to allow the parties to complete the transcript of the proceedings and submit the final substantive and legal briefs after the official transcripts were provided to the parties. The Energy Bureau granted the request on March 9, 2023, set the deadline for filing final briefs for March 30, 2023, and amended the subsequent deadlines accordingly.

4. On March 29, 2023, the Energy Bureau entered a Resolution and Order in which it granted a further request to amend the procedural calendar of the proceeding and extended the deadline to submit the final legal and substantive briefs to April 27, 2023.

5. On April 19, 2023, LUMA filed an *Informative Motion on the Evidentiary Hearing Transcript and Request for Final Amendment of the Procedural Calendar*, requesting to extend the deadline to file legal briefs until May 11, 2023.

6. On May 11, 2023, LUMA, LECO, and the OPIC filed their respective legal briefs before this Energy Bureau.

7. On May 22, 2023, LUMA filed a *Motion Requesting Extension of Time to File Replies to Final Briefs by the Parties*, requesting to extend the deadline to submit the replies to the final briefs by the parties until June 22, 2023. The Energy Bureau granted the request on May 23, 2023.

8. On May 25, 2023, the Energy Bureau issued a Resolution informing that it had taken official notice of a group of twelve (12) documents<sup>2</sup> and directed all parties to file their

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<sup>2</sup> Specifically, the Energy Bureau informed that it took official notice of (i) certain data on several metrics, which LUMA provided in Case No. NEPR-MI-2019-0007, (ii) a related Resolution and Order in the stated proceeding, (iii) data included on interconnection progress reports provided by LUMA in periodic filings in Case No. NEPR-MI-2019-0016, on the Performance of the Puerto Rico Electric Power Authority, (iv) LUMA's annual report for Fiscal Year 2022 and Report on Efficiencies as well as LUMA's filing on the Annual Budget for Fiscal Year 2024 to 2026 in LUMA's Initial Budget docket, Case No. NEPR-MI-2021-0004, (v) an associated Resolution and Order in Case No.

position on taking official notice within fifteen (15) days of the notification of the Resolution (“May 25<sup>th</sup> Order”).

9. On June 9, 2023, LUMA filed *LUMA’s Response and Opposition to Resolution and order of May 25, 2023 Taking of Administrative Notice* objecting to the decision of the Energy Bureau to take official notice as it did not comply with the requirements under Puerto Rico law and case law (“LUMA’s Opposition to Energy Bureau Order on Administrative Notice”). LUMA objected to the Energy Bureau’s decision on various grounds, including that it was entered in violation of LUMA’s due process rights and that it does not meet the requirements under the Puerto Rico Rules of Evidence and its interpretative case law to take official notice of such documents. LUMA raised objections to the Energy Bureau’s determination to take administrative notice of documents and information not submitted as evidence in the Evidentiary Hearing held in this proceeding or before the filing of the substantive and legal briefs by the parties.

10. LUMA’s Opposition to Energy Bureau Order on Administrative Notice is pending adjudication by this Energy Bureau. Thus, LUMA is not currently in a position to know if the administrative record will include the twelve (12) documents identified in the May 25<sup>th</sup> Order.

11. On June 9, 2023, LECO filed and *Local Environmental and Civic Organization’s Response to Resolution for Official Notice and Request to Take Official Notice on Additional Information* (“LECO’s June 9<sup>th</sup> Request to Take Official Notice”). It requested the Energy Bureau to take official notice of additional documents referenced in LECO’s legal brief, which include more than 30 documents ranging from news and media articles, reports, to a filing in

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NEPR-MI-2021-0004, (vi) an Order Approving the Scorecard for use by the New York Public Service Commission for Utility Emergency Performance Metrics, and (vi) two public reports about benchmarking for call center performance.

separate litigation before the Puerto Rico Court of First Instance, Energy Bureau orders issued in other proceedings, and information submitted by LUMA in different proceedings with this Energy Bureau.

12. Similarly, LECO's June 9<sup>th</sup> Request to Take Official Notice is pending before the consideration of the Energy Bureau. LUMA advances that it will file an opposition to such a request. However, LUMA is not currently in a position to know if the administrative record will include the documents identified in LECO's June 9<sup>th</sup> Request to Take Official Notice.

## **II. Request for Stay of Deadline to File Final Briefs**

13. As LUMA explained in its Opposition to Energy Bureau Order on Administrative Notice, the due process injury to LUMA involves the right to present evidence and have an administrative agency issue a final decision based on the administrative record. The determination to take official notice issued in the May 25<sup>th</sup> Resolution infringes on LUMA's rights to due process rights as it introduces new evidence to the record after the discovery process concluded, an evidentiary hearing was held, and the parties filed legal briefs, putting LUMA at a disadvantage and raising the prospect of expanding the scope of the administrative record without proper notice and at an advance stage of the process whereby LUMA had already submitted its case in chief during the evidentiary hearing and in its substantive legal brief.

14. LUMA's Opposition to the Energy Bureau Order on Administrative Notice may lead this Energy Bureau to reconsider the May 25<sup>th</sup> Order or limit the scope of the documents and information subject to official notice. Because the Energy Bureau has not issued a ruling on LUMA's Opposition to Energy Bureau Order on Administrative Notice, it is reasonable and procedurally equitable to stay the pending deadlines on reply briefs until the matter is

settled and, thus, provide LUMA the final opportunity to address the evidence in the administrative record in support of its request for approval of LUMA's Performance Metrics Targets the Revised Annex IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("T&D OMA").

15. It is respectfully submitted that LUMA's Opposition to the Energy Bureau Order on Administrative Notice includes developed argumentation supported by applicable law on procedural and substantive due process, as well as requirements under Puerto Rico law regarding taking official notice and establishes a substantial likelihood that LUMA may prevail in its opposition to the determination on official notice. Because LUMA put forth a timely and supported opposition to the May 25<sup>th</sup> Order, the proper course of action is to allow this Energy Bureau to consider and decide LUMA's Opposition to the Energy Bureau Order on Administrative Notice before LUMA is required to submit a final brief in this proceeding.

16. The need to stay the deadline for final briefs is heightened by the recent development anent the filing of LECO's June 9<sup>th</sup> Request to Take Official Notice whereby LECO requests that this Energy Bureau take official notice of at least 30 documents that include news and media articles, reports, a filing in a separate litigation before the Puerto Rico Court of First Instance, Energy Bureau orders issued in other proceedings, and information submitted by LUMA in different proceedings with this Energy Bureau, among others. Almost four months after the evidentiary record closed and almost a month after LUMA filed its legal brief, LECO belatedly requested that this Energy Bureau further expand the administrative record to consider admitting into evidence 30 documents that LECO did not present for the record during the discovery phase nor during the evidentiary hearing.

17. LECO's June 9<sup>th</sup> Request to Take Official Notice purports to conveniently release it from the duty to have presented its evidence for the record in the evidentiary hearing and, if granted, will allow a party to skirt the presentation of evidence months after the evidentiary record closed and after having received the final brief submitted by LUMA. Moreover, LECO's June 9<sup>th</sup> Request to Take Official Notice transforms the litigation by purporting to broaden the contents of the administrative record without allowing LUMA an opportunity to be heard, confront the evidence, and present documental and testimonial evidence in connection with LECO's proposed evidence. The substantive and procedural due process injury for LUMA is evident. Given these new circumstances, it is unreasonable and patently unfair to require LUMA to submit its final brief by the current deadline of June 22, 2023.

18. LUMA respectfully requests reasonable time until June 29, 2023, to file a response to LECO's June 9<sup>th</sup> Request to Take Official Notice. Because LUMA will respond and oppose LECO's June 9<sup>th</sup> Request to Take Official Notice, LUMA is not in a position to file a rebuttal brief by the current deadline of June 22, 2023. More importantly, before submitting its final brief, it is crucial for LUMA to receive a ruling from this Energy Bureau on LUMA's Opposition to the Energy Bureau Order on Administrative Notice and in connection with LECO's June 9<sup>th</sup> Request to Take Official Notice.

19. Prior to submitting a final substantive brief, LUMA must know what evidence is considered admitted for the record. Given that this Energy Bureau has pending issuance of a Resolution and Order on LUMA's Opposition to the Energy Bureau Order on Administrative Notice and in light of LECO's recently crafted Request to Take Official Notice, LUMA requests that the Energy Bureau stay the deadline to file final briefs until at least twenty (20) days after this Energy Bureau issues a ruling on what information and documents, if any, it

will admit to the administrative record through the mechanism of taking official notice. As explained, this course of action is necessary to adequately secure LUMA's rights to due process to be put on notice of the evidence to be considered by the administrative agency, confront the same, and defend its position.

20. As the party that bears the burden of persuasion in this proceeding, LUMA should be allowed to file its final brief after a final determination is issued on the full scope of the evidence that will be deemed admitted as part of the administrative record in this proceeding. Otherwise, LUMA will be placed at the unfair disadvantage of having to submit its final brief without knowing what the full contents of the administrative record are, as is its right under Section 3.18 of the Puerto Rico Administrative Procedure Act, 3 LPRA § 9658 (2023) ("LPAU," by its Spanish acronym).

21. The public interest in ensuring fair and equitable administrative procedures that secure procedural due process rights is served if this Energy Bureau stays the deadline to submit final briefs while it considers LUMA's Opposition to the Energy Bureau Order on Administrative Notice. No material or cognizable harm is inured to any party with the stay. To the contrary, denial of LUMA's procedural right by requiring a final brief without first granting LUMA fair, reasonable, and timely notice of the evidence to be used by this Energy Bureau in this proceeding and that will be admitted and become part of the administrative record, will inure harm to LUMA that cannot be repaired subsequently and is thus, irreparable. *See e.g., Matthews v. Eldridge*, 424 U.S. 319, 333 (1976) (stating that a fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in meaningful manner"); *see also, Dusenbery v. US*, 534 US 161,167 (2002); *Rivera Rodríguez & Co. v. Stowell Taylor*, 133 DPR 881, 888-89 (1993) (same); *Domínguez Castro v. ELA*, 178 DPR 1, 47 (2010) (same).

**WHEREFORE,** LUMA respectfully requests that the Energy Bureau grant LUMA until June 29, 2023, to file a response to LECO’s June 9<sup>th</sup> Request to Take Official Notice; and stay the deadline to submit the replies to the final briefs and set that day for at least twenty (20) days after the Energy Bureau issues a Resolution and Order adjudicating LUMA’s Opposition to Energy Bureau Order on Administrative Notice and LUMA’s response to LECO’s June 9<sup>th</sup> Request to Take Official Notice.

**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 counsel for PREPA, Joannely Marrero-Cruz, [jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law); the Office of the Independent Consumer Protection Office, Hannia Rivera Diaz, [hrivera@jrsp.pr.gov](mailto:hrivera@jrsp.pr.gov), and counsel for the Puerto Rico Institute for Competitiveness and Sustainable Economy (“ICSE”), Fernando Agrait, [agraitfe@agrailawpr.com](mailto:agraitfe@agrailawpr.com), counsel for the Colegio de Ingenieros y a de Puerto Rico (“CIAPR”), Rhonda Castillo, [rhoncat@netscape.net](mailto:rhoncat@netscape.net), and counsels for Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc., Enlace Latino de Acción Climatica, Alianza Comunitaria Ambientalista del Sureste, Inc., Coalicion 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](mailto:larroyo@earthjustice.org), [rstgo2@gmail.com](mailto:rstgo2@gmail.com), [notificaciones@bufete-emmanuelli.com](mailto:notificaciones@bufete-emmanuelli.com), [pedrosaade5@gmail.com](mailto:pedrosaade5@gmail.com), [jessica@bufete-emmanuelli.com](mailto:jessica@bufete-emmanuelli.com); [rolando@bufete-emmanuelli.com](mailto:rolando@bufete-emmanuelli.com), [lvez@earthjustice.org](mailto:lvez@earthjustice.org), [rmurthy@earthjustice.org](mailto:rmurthy@earthjustice.org), [jcassel@earthjustice.org](mailto:jcassel@earthjustice.org).

In San Juan, Puerto Rico, this 15<sup>th</sup> day of June 2023.





**DLA Piper (Puerto Rico) LLC**  
500 Calle de la Tanca, Suite 401  
San Juan, PR 00901-1969  
Tel. 787-945-9107  
Fax 939-697-6147

*/s/ Margarita Mercado Echegaray*  
Margarita Mercado Echegaray  
RUA NÚM. 16,266  
[margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com)

*/s/ Yahaira De la Rosa Algarín*  
Yahaira De la Rosa Algarín  
RUA NÚM. 18,061  
[yahaira.delarosa@us.dlapiper.com](mailto:yahaira.delarosa@us.dlapiper.com)