

**COMMONWEALTH 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:** Response to orders staying approval and implementation of EE Rider and request for suspension of deadlines to submit proof of customer enrollment and documentation regarding capability to call events related to the Emergency DR Program

**RESPONSE TO ORDERS STAYING APPROVAL AND IMPLEMENTATION OF EE RIDER AND REQUEST FOR SUSPENSION OF DEADLINES TO SUBMIT PROOF OF CUSTOMER ENROLLMENT AND DOCUMENTATION ON CAPABILITY TO CALL EVENTS RELATED TO EMERGENCY DR PROGRAM**

**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. Background and Procedural History**

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).

<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”). *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 on 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 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 February 16<sup>th</sup> Resolution and Order on page 5.* In addition, the Energy Bureau established deadlines for various activities under the Proposed TPP,

including for filing the EE Rider, timing for the EE Rider to enter into effect and reporting requirements.

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.

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 and informed that it anticipated filing the EE Rider by the established deadline. *See Motion for Reconsideration of*

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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.

*Resolution and Order of February 16, 2023, and Request to Vacate Deadlines* of that date (“March 8<sup>th</sup> Motion”).

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. Among others, the Energy Bureau ordered LUMA to file the EE Rider petition on or before April 11, 2023 (*see* April 3<sup>rd</sup> Resolution and Order on page 5), vacated certain dates tied to the Performance Incentives Metrics (*see id.* at page 3) and ordered 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.

16. On May 19, 2023, in compliance with the May 5<sup>th</sup> Bench Order, LUMA filed a *Motion to Submit Revised Exhibit 1 to EE Rider Petition and Translation Thereof, in Compliance with Bench Order of May 5, 2023* (“May 19<sup>th</sup> Motion”) in which it submitted revised Exhibits 1 and 2 of the EE Rider Petition, as Exhibits 1 and 2 of the May 19<sup>th</sup> Motion. In the May 19<sup>th</sup> Motion,

LUMA also explained that the revised Exhibits 1 and 2, along with the April 11<sup>th</sup> Motion, constitute the revised EE Rider Petition (“Revised EE Rider Petition”). *See* May 19<sup>th</sup> Motion on page 4. The revised Exhibit 1 consolidates the Emergency Demand Response and Battery Demand Response programs into one program as required by the Energy Bureau in the May 5<sup>th</sup> Bench Order. *See id.* at pages 3-4 and Exhibit 1. The Revised EE Rider Petition continued to contemplate that the entire budget of \$20,538,083 for the FY2024 programs would be fully funded by the EE Rider. *See* Revised EE Rider Petition, Exhibit 1, page 4.

17. On June 5, 2023, LUMA filed an *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<sup>th</sup> Motion”). In this motion, LUMA informed that, in accordance with the February 16<sup>th</sup> Resolution and Order, it had 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. *See* June 5<sup>th</sup> Motion on page 6. In this regard, LUMA also informed that it had made 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 third party aggregators to prepare for the customer enrollment they would perform. *See id.* LUMA further informed, however, that there were uncertainties regarding whether the aggregators (on whose capabilities LUMA would depend to implement the Emergency Battery DR program) were subject to Section 2.02B (requiring that aggregators 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, as amended (“Regulation 8701”))

and provide the standard form letter or electronic communication and agreement they intend to submit to the customers to be enrolled, among others) and/or Section 2.03G (requiring third-party DR aggregators to 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.* at pages 6-8. LUMA further explained that the uncertainty surrounding the applicability of Sections 2.02B and 2.03G of the DR Regulation presented a barrier for the third-party DR aggregators to proceed with enrollment and could delay the execution of the Aggregator Agreements between LUMA and the third-party DR aggregators. LUMA explained that execution of the Aggregator Agreements should precede customer enrollment and that the timing for customer enrollment depended on how these issues were resolved and the celerity with which the third-party DR aggregators could enroll customers. *See id.* at pages 8-9.

18. Given the circumstances described above, in the June 5<sup>th</sup> Motion LUMA requested the Energy Bureau to clarify the questions regarding the applicability of Section 2.02B and 2.03G of the DR Regulation and extend the deadline for enrollment of customers in the Emergency DR Program to a later date following the issuance of a Resolution and Order from the Energy Bureau resolving these questions. *See id.*

19. On June 9, 2023, LUMA filed a translation of Exhibit 1 of the Revised EE Rider Petition. *See Motion to Submit Translation of Revised Exhibit 1 to EE Rider Petition in Compliance with Bench Order of May 5, 2023* of that date.

20. On June 15, 2023, the Energy Bureau issued a Resolution and Order (“June 15<sup>th</sup> Order”) addressing LUMA’s June 5<sup>th</sup> Motion, among others, in which it determined that certain provisions of Regulation 8701 apply to aggregators, established the deadline of December 1, 2023

for DR aggregators participating in the Emergency DR Program to apply for certification under Regulation 8701 and waived those applicable sections for the duration of the TPP unless a resolution is issued by the Energy Bureau amending such waiver. *See* June 15<sup>th</sup> Resolution and Order on pages 4-5. The Energy Bureau also determined to defer the requirements of the DR Regulation regarding review of customer communications. *See id.* at page 5. The Energy Bureau then ordered LUMA to file, on or before July 14, 2023, proof that it has enrolled customers in an Emergency DR program and file, on or before July 31, 2023, documentation showing that LUMA has the capability to call Emergency DR events. *See id.*

21. On June 29, 2023, LUMA filed with the Energy Bureau an *Urgent Motion Requesting Determination Regarding the Revised EE Rider Petition and Clarifying the Calculated Factor in the Revised EE Rider Petition and Clarifying the Calculated Factor in the Revised EE Rider Petition Submitted on May 19, 2023* (“June 29<sup>th</sup> Motion”). In the June 29<sup>th</sup> Motion, LUMA informed that, as directed by the Energy Bureau through its February 16 Resolution and Order, LUMA had been in continuous communication with government agencies to identify areas of collaboration, including through state or federal funds for the implementation of the Approved TPP, but notwithstanding the government’s optimism in leveraging disaster recovery and federal funding opportunities, the amount and timeline of availability of government funds for the implementation of the Approved TPP in FY2024 remained uncertain. *See* June 19<sup>th</sup> Motion on page 10. LUMA further explained that given the aforementioned situation, government funding would not be available for LUMA to proceed with the implementation of the Approved TPP by July 1, 2023 and that the only currently available funding mechanism was the EE Rider. *See id.* at page 11. LUMA requested the Energy Bureau to urgently issue a determination regarding the Revised EE Rider Petition so that LUMA could proceed with the implementation of the Approved



TPP. *See id.* at page 13. LUMA stressed that, without such determination and absent a confirmed alternative source of funds, it could not proceed with the implementation of the Approved TPP for FY2024. *See id.* at page 11.

22. On June 30, 2023, the Energy Bureau issued a Resolution and Order in Case No NEPR-MI-2020-0001, *In Re: Permanent Rate of the Puerto Rico Electric Power Authority* (“Permanent Rate Case”) (“June 30<sup>th</sup> Resolution and Order”) wherein it determined, among others, to suspend the EE Charge [EE Rider] for the month of July 2023 given the “great probability that the costs associated with [EE] programs will be paid with funds not associated with the EE Charge [EE Rider].” *See* June 30<sup>th</sup> Resolution and Order, page 11.<sup>4</sup>

23. On July 1, 2023, the Energy Bureau issued a Resolution and Order in the Permanent Rate Case (“July 1<sup>st</sup> Resolution and Order”) wherein it clarified that it did not suspend the EE and DR programs as a result of the suspension of the EE Charge [EE Rider] and ordered LUMA to continue with the implementation of the TPP and the EE/DR programs. *See* July 1<sup>st</sup> Resolution and Order, page 2.

## **II. LUMA’s Response to Energy Bureau Order Suspending Approval and Implementation of EE Rider and Requests to Alter Deadlines for Milestones**

24. The determination to suspend approval and implementation of the EE Rider without an alternative funding source in place has placed constraints on LUMA’s ability to move towards the milestone for the Emergency DR Program of enrolling customers. Engaging in marketing for and enrollment of customers before there is certainty regarding availability of funding (through

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<sup>4</sup> On June 30, 2023, the Solar and Energy Storage Association of Puerto Rico (“SESA”) submitted to the Energy Bureau in connection with the Permanent Rate Case a letter regarding “SESA Request for PREB Authorization for LUMA to move forward with Energy Efficiency and Demand Response Programs (NEPR-MI-2020-0001)”, requesting, in response to the June 30<sup>th</sup> Resolution and Order, that the Energy Bureau “issue an order today, affirming the Emergency Battery Demand Response Program’s launch for tomorrow”. LUMA was not formally notified of this submittal.

the proposed EE Rider or other funding mechanism) is risky, inconsistent with best business practices, and not prudent. To wit, no assurances can be provided to customers or aggregators whether and when the Emergency DR Program will be implemented. In addition, aggregators are expected to incur potentially significant up-front costs to implement the initial steps of the program and, therefore, proceeding in this uncertain scenario presents significant commercial risks.

25. The uncertainty of funding to implement the TPP, including the Emergency DR Program, and of the mechanism or source of such funding also places constraints on LUMA and the aggregators' ability to demonstrate capability to call Emergency DR events, which is a milestone currently set for July 31<sup>st</sup>. With respect to this milestone, it is important to note that this deadline was previously established by this honorable Energy Bureau as contingent on the approval of the EE Rider. *See* April 3<sup>rd</sup> Resolution and Order on page 6 (wherein the Energy Bureau ordered 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" (emphasis added)). The Energy Bureau revised the deadline for this milestone in the June 15<sup>th</sup> Resolution and Order, establishing instead a fixed deadline of July 31, 2023.

26. Testing the capability to call Emergency DR events first requires customers to be enrolled in the Emergency DR Program. By moving from a deadline contingent on the establishment of a funding mechanism to a fixed date, the June 15<sup>th</sup> Resolution and Order restricts the time frame to meet this milestone. It also does not properly take into account customers' inability to be meaningfully enrolled without a financial structure that enables implementation, or the risky upfront financial commitments that the parties would have to incur to meet this milestone without certainty of if, when, how, and to what extent, the Emergency DR Program will be funded.

27. Therefore, LUMA respectfully submits that it would be reasonable to maintain the approach used to determine the deadline in the April 3<sup>rd</sup> Resolution and Order. This order recognized an established funding mechanism as a prerequisite for undertaking these commitments and provided reasonable time to meet these requirements once the appropriate funding mechanism was in place.

28. Given the circumstances described above, LUMA respectfully requests that: (i) this Energy Bureau suspend the deadlines to submit proof of customers enrolled in an Emergency DR program and documentation showing that LUMA has the capability to call Emergency DR events for the same time period during which the EE Rider is in suspense; and (ii) establish new deadlines based on the date on which the EE Rider is approved and implemented in LUMA's billing system or the date on which funds from an alternative funding source are disbursed to LUMA or are otherwise unencumbered and readily available to fully cover the cost of the Emergency DR Program.

29. In the meantime, LUMA will continue to work to secure alternative funding sources.

**WHEREFORE**, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned, **suspend** the deadlines in the June 15<sup>th</sup> Order to submit proof of enrollment of customers in the Emergency DR Program and to demonstrate capability to call DR events for the same time period during which the EE Rider is in suspense, and **establish** new deadlines based on the date when the EE Rider is approved and implemented in LUMA's billing system, or the date on which an alternative funding source is identified and the associated funds are disbursed to LUMA or are otherwise unencumbered and readily available to fund the Emergency DR Program.  
**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 14<sup>th</sup> day of July 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).



**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  
PR Bar No. 16,266  
[margarita.mercado@us.dlapiper.com](mailto:margarita.mercado@us.dlapiper.com)

*/s/ Laura T. Rozas*  
Laura T. Rozas  
RUA Núm. 10,398  
[laura.rozas@us.dlapiper.com](mailto:laura.rozas@us.dlapiper.com)