

**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:** LUMA August 23, 2023, Motion  
filing its Emergency Demand Response  
Program Cost and Timeline.

**RESOLUTION AND ORDER**

**I. Introduction and Procedural Background**

On August 11, 2023, the Energy Bureau of the Public Service Regulatory Board of Puerto Rico ("Energy Bureau") issued an Order in which it ordered LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively, "LUMA") to submit information regarding the Emergency Demand Response ("Emergency DR") Program ("August 11 Order"). On August 23, 2023, LUMA filed a document titled *Motion to Submit Costs Associated with Emergency DR Program in Compliance with Resolution and Order of August 11, 2023, and Request for Confidential Treatment* ("August 23 Motion"), in which it contains the Emergency DR Program cost information required by the Energy Bureau in its August 11 Order.<sup>1</sup> This information includes the compensation amount and structure (in the form of payment per kWh of energy delivered) to be offered to DR aggregators participating in the program, the total anticipated budget for the program assuming a given number of dispatch events (\$5.06 million for this fiscal year), and the breakdown of that budget among LUMA administrative costs and payments to DR aggregators. LUMA states that its budgeted administrative costs include "all program management, system operations, customer service, professional services, and program evaluation expenses that can be directly attributed and allocated to the [Battery Emergency Demand Response Program]."<sup>2</sup>

The August 23 Motion also provides LUMA's anticipated process to achieve program launch, which includes the issuance of program terms through the PowerAdvocate platform, the qualification of DR aggregators to participate in the program, the execution of agreements between LUMA and the participating aggregators, the recruitment and enrollment of customers in aggregator programs, the dispatch of a test event, and a LUMA filing to the Energy Bureau documenting these steps.

In the August 23 Motion, LUMA requests confidential treatment of the compensation amount and structure offered to DR aggregators. LUMA argues that disclosure of this information could result in attempts to negotiate this compensation, which would be contrary to the purpose of the pilot to test a standardized program with non-negotiable compensation, which aims to pay the minimal amount required to attract DR resources. LUMA further argues that disclosure could hamper its ability to make changes to the program after the initial transitional and testing phase.<sup>3</sup>



<sup>1</sup> Resolution and Order, *In re: Energy Efficiency and Demand Response Transition Period Plan*, Case No. NEPR-MI-2022-0001, August 11, 2023. ("August 11 Order").

<sup>2</sup> August 23 Motion, Exhibit 1, page 7.

<sup>3</sup> August 24 Motion, pp. 15-16, ¶ 36.

## II. Discussion

The August 23 Motion raises four issues: (1) program compensation design and budget; (2) oversight for tracking LUMA's administrative costs; (3) program launch process and timeline; and (4) confidential treatment of compensation details. This section addresses and resolves each issue.

### A. Program compensation design and budget

The program design for the Emergency DR program uses a fixed per-kWh level of compensation. Participants would be paid this amount for net energy exported from battery systems during emergency events, defined as events during which LUMA acting as System Operator determines the system will be unable to meet forecasted energy requirements (thus forcing load shedding). This structure is consistent with the Energy Bureau's previous approvals of the Emergency DR program and its associated budget within the context of the Transition Period Plan.

The per-kWh amount that LUMA proposes to use to compensate aggregators (and through the aggregators, participating customers) is several times larger than the current retail rate, including the cost of power supply. This greater level of compensation is required to compensate customers for losses within their battery systems, as well as for use of their battery assets otherwise fully available to meet participants' own load.

The Regulation for Demand Response (Regulation 9246, or "DR Regulation")<sup>4</sup> requires that LUMA should never compensate a DR resource more than the value that resource provides to the Puerto Rico electric system, and to pay the minimum required to attract the DR resource. As for the value of the resource to the Puerto Rico electric system, the compensation level that LUMA has proposed is reasonable since the alternative to the use of this resource in emergency situations is to shed load. The value of lost load is generally much higher than the retail cost of electricity, and higher than the level that LUMA has proposed to compensate aggregators for these resources.<sup>5</sup>

As for the instruction to pay the minimum required to attract the DR resource, one purpose of the deployment of this program during the Transition Period Plan is to test customer acceptance of the level of compensation offered, to inform refinements. LUMA has considered this criterion and estimated the proposed level as one that would comply with this criterion.

The Energy Bureau **APPROVES** the compensation level proposed by LUMA in the August 23 Motion.

Regarding the program budget (aside from administrative costs discussed below), LUMA has estimated the budget for a reasonable level of participation that would, in aggregate, provide a noticeable and useful resource on the Puerto Rico electric system. The overall budget is aligned with the budget for the equivalent program as approved in the Transition Period Plan therefore the Energy Bureau deems **REASONABLE** such estimated budget to launch the program. The Energy Bureau is **COGNIZANT** that this estimate will vary as the program is developed, therefore the Energy Bureau shall **MONITOR** the success and development of the

<sup>4</sup> Regulation for Demand Response, December 21, 2020.

<sup>5</sup> See *Final Resolution and Order, In re: Review of the Puerto Rico Electric Power Authority Integrated Resource Plan*, Case No. CEPR-AP-2018-0001, August 20, 2020, ¶¶692 to 696.





program to assure estimated project costs and compensation cost are prudent and reasonable for the purpose of the Battery Emergency Demand Response (“BEDR”) program.

## B. LUMA’s administrative costs

LUMA has proposed to recover the Emergency DR program administrative costs through the PPCA<sup>6</sup>, alongside its pass-through costs to aggregators. LUMA states in Exhibit 1 to the August 23 Motion that it “is solely responsible for calculating the cost of purchased power adjustments based on the information provided by generators and does not financially benefit from purchased power charge adjustments to customer bills.”<sup>7</sup>

At this moment, it is necessary and appropriate to recover the administrative costs for providing DR programs through the PPCA. Nevertheless, the Energy Bureau must oversee these expenditures to make sure they are limited, reasonable, and strictly related to the DR program. This will ensure this mechanism does not become a way to recover costs it would otherwise recover through the base rate. To ensure the appropriate oversight:

- The Energy Bureau **ORDERS** LUMA to conform to the quarterly and annual (year-end) financial reporting requirements in line with the requirements listed in NEPR-MI-2021-0004 (*Re: LUMA Initial Budgets and Related Terms of Service*) including the Fund Collections and Fund Balances to date. For clarity:
  - Report quarterly, within forty-five (45) days after the end of each fiscal year quarter:<sup>8</sup>
    - Detail quarterly and fiscal-year-to-date fund actuals receipt as compared to budgeted in-flows from the PPCA and the to-date actual fund balance.
    - Summarize quarterly and fiscal-year-to-date program information indicators in line with and compared to the assumptions used to develop the cost estimate in the August 23 Filing (Table 1. *BEDRP Cost Estimate*<sup>9</sup>), detailing any variances from the approved filing.
    - Detail quarterly and fiscal-year-to-date spending amounts for the program; broken out by spending line items,<sup>10</sup> and detailing any variances from the approved budget filing. These reports should also include details letting the Energy Bureau assess funding, withdrawals, and outstanding balances.
    - The quarterly reports should include an explanation for material variances (greater than 10%).

<sup>6</sup> Power Purchase Cost Adjustment – Rider.

<sup>7</sup> August 23 Motion, Exhibit 1, p. 4.

<sup>8</sup> For quarters, it is meant all 4 quarters of the Fiscal Year and Q4 would include the year-end report.

<sup>9</sup> Refer to Exhibit 1 (*Cost Associated with Emergency DR Program*) of the August 23 Motion.

<sup>10</sup> Refer to Table 1. BEDRP Cost Estimate of Exhibit 1 (*Cost Associated with Emergency DR Program*) of the August 23 Motion.



- The accounting of fund management should follow all the controls and requirements in NEPR-MI-2021-0004 (*Re: LUMA Initial Budgets and Related Terms of Service*).<sup>11</sup>
- The Energy Bureau **ORDERS** LUMA to include in these quarterly and annual reports a breakdown of program administrative costs among the categories of: (1) program management, (2) system operations, (3) customer service, (4) professional services, (5) program evaluation, and (6) other expenses. These reports must include a detailed summary of the primary purposes to which these funds have been spent over the reported period, how they have been attributed and allocated to the Emergency DR program, and any other information regarding administrative costs of which LUMA believes the Energy Bureau should be aware.

### C. Program launch process and timeline

The August 23 Motion notifies the Energy Bureau that LUMA does not believe it can achieve the timeline established in the August 11 Order. The August 11 Order required LUMA to file, within two weeks of today's Resolution and Order, proof that it has published DR program terms, established agreements with DR aggregators, and enrolled customers in the program. The August 11 Order further requires that LUMA file, two weeks after its customer enrollment filing, documentation showing that LUMA has the ability to call Emergency DR events, based on a successful test event.

The August 23 Motion includes a timeline wherein it would not sign agreements with DR aggregators until October, although the estimated gap between those agreements and proof of a test event would be less than a month (so that LUMA could file proof of DR dispatch also in October). The primary source of the delay in achieving signed agreements imposes a step wherein LUMA would qualify aggregators based on a posting on the PowerAdvocate platform.

Using a procurement and qualification process to screen DR aggregators before signing aggregation agreements is contrary to the structure established by the DR Regulation. Section 3.01(B) of the DR Regulation requires LUMA to develop and offer standardized programs, such as the Emergency DR program. Section 3.01(C) lets DR aggregators enroll in those programs. A separate qualification step is neither contemplated by the regulation, nor required to achieve the objectives of the Emergency DR program, which include a timely launch to reduce load shedding events. The program pays participating aggregators for their performance. In the event that an aggregator was to enroll and is not capable of meeting the program terms, or not capable of dispatching resources, the standardized terms of the program should allow LUMA to disenroll the aggregator and pay it only for the resources it has dispatched.

Similar programs, such as the Emergency Load Reduction Program in California, do not require aggregator qualification steps. Aggregators can enroll in that program by emailing the program administrator and completing a standardized agreement.

While the Energy Bureau does amend the required program launch timeline in this Resolution and Order to reflect information in LUMA's filing on the steps required to achieve program launch, the Energy Bureau does not explicitly allow time in the calendar for

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<sup>11</sup> Example (for illustrative purpose and not all encompassing): Energy Bureau reapportionment approvals for fund transfer between line items that are >5% of the approved budget.





aggregator qualification. This table shows the timeline without such a step, and at a weekly level of resolution:

Task	Description	Week of							
		21-Aug	28-Aug	4-Sep	11-Sep	18-Sep	25-Sep	2-Oct	9-Oct
1	LUMA PPCA Cost Filing								
2	Energy Bureau Approval of PPCA Costs								
3	LUMA Publication of Program Terms								
4	LUMA and Aggregators Execute Aggregation Agreements								
5	LUMA Files Proof of Executed Aggregation Agreements								
6	DR Aggregators Begin Recruiting and Enrolling Customers								
7	LUMA Dispatches Test Event								
8	LUMA Files Proof of Test Event								

LUMA has had ample time to prepare its program design and terms; these activities have not been contingent on programmatic funding availability. Therefore, the Energy Bureau **EXPECTS** LUMA to be able to publish program terms without delay after the issuance of this Resolution and Order approving the program compensation structure. The light blue in the table for Tasks 4 and 6 indicates ongoing availability of the Emergency DR program to additional aggregators and customer enrollment.

Based on this timeline, the Energy Bureau **AMENDS** the required timeline for LUMA filings as follows:

- The Energy Bureau **ORDERS** LUMA to file, **on or before September 22, 2023**, proof of executed aggregation agreements for the Emergency DR program.
- The Energy Bureau **ORDERS** LUMA to file, on or before **October 13, 2023**, proof of customer enrollment and the capacity to call Emergency DR events. This documentation shall include a report on a successful test dispatch event, including the number of participants and the capacity dispatched.

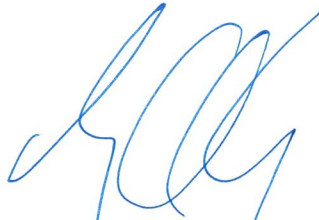
The Energy Bureau **STRONGLY WARNS** LUMA that, in accordance Art. 6.36 of Act 57-2014:<sup>3</sup> (i) noncompliance with this Resolution and Order, regulations and/or applicable laws may carry the imposition of fines and administrative sanctions of up to \$25,000 per day; (ii) any person who intentionally violates Act 57-2014, as amended, by omitting, disregarding, or refusing to obey, observe, and comply with any rule or decision of the Energy Bureau shall be punished by a fine of not less than five hundred dollars (\$500) nor over five thousand dollars (\$5,000) at the discretion of the Energy Bureau; and (iii) for any recurrence of non-compliance or violation, the established penalty shall increase to a fine of not less than ten thousand dollars (\$10,000) nor greater than twenty thousand dollars (\$20,000), at the discretion of the Energy Bureau.



#### D. Confidential treatment of compensation details

Demand response programs, including emergency demand response programs such as California's Emergency Load Reduction Program, generally publish their terms and conditions, including compensation, freely and publicly. Therefore, LUMA's request to keep the compensation under this program confidential are contrary to common practice. The reasons provided by LUMA to request confidentiality regarding the aggregator energy payment and the cost estimate included in Table 1, Exhibit 1 of the August 23 Motion do not persuade the Energy Bureau to grant such request. The Energy Bureau therefore **ORDERS** LUMA's, within five (5) days of the notification of this Resolution and Order, to provide compelling legal reasons to maintain such price confidential taking into consideration that such amounts shall be recuperated through the PPCA.

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 August 29, 2023. I also certify that on August 29, 2023 a copy of this Resolution and Order was notified by electronic mail to [agraitfe@agraitlawpr.com](mailto:agraitfe@agraitlawpr.com), [info@sesapr.org](mailto:info@sesapr.org); [bfrench@veic.org](mailto:bfrench@veic.org); [shanson@veic.org](mailto:shanson@veic.org); [ana.rodriquezrivera@us.dlapiper.com](mailto:ana.rodriquezrivera@us.dlapiper.com), [laura.rozas@us.dlapiper.com](mailto:laura.rozas@us.dlapiper.com); [jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law), [hrivera@jrsp.pr.gov](mailto:hrivera@jrsp.pr.gov); [evand@sunrun.com](mailto:evand@sunrun.com); [javrua@sesapr.org](mailto:javrua@sesapr.org); and 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 August 29, 2023.



Sonia Seda Gaztambide  
Clerk

