

**COMMONWEALTH 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-2022-0001

SUBJECT: Informative Motion and
Request for Extension of Deadline To
File Proof of Execution of Aggregation
Agreements and Approval of Revised
Emergency DR Program Budget

**INFORMATIVE MOTION AND REQUEST FOR EXTENSION OF DEADLINE TO
FILE PROOF OF EXECUTION OF AGGREGATION AGREEMENTS AND
APPROVAL OF REVISED PROGRAM BUDGET**

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. Relevant Procedural History

1. On June 21, 2022, LUMA filed with the Energy Bureau a proposed Energy Efficiency (“EE”) and Demand Response (“DR”) Transition Period Plan containing the description of various EE and DR Programs to be implemented by LUMA during the Transition Period and associated budgets for Fiscal Years (“FY”) 2023 and 2024, including a Battery DR 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 DR 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 Motion Submitting Proposed EE/DR Transition Period*

Plan in Case No. NEPR-MI-2021-0006, *In Re: Demand Response Plan Review, Implementation and Monitoring* of that date and its *Exhibit 1* (this Exhibit 1, the “Proposed TPP”).

2. After other procedural events, on February 16, 2023, the Energy Bureau issued a Resolution and Order (the “February 16th Resolution and Order”) in the instant proceeding in which it considered, amended and approved the Proposed TPP (the Proposed TPP, as approved by the Energy Bureau, the “Approved TPP”).

3. In the February 16th Resolution and Order, Energy Bureau established deadlines or milestones for various activities under the Approved TPP, including, among others, for filing the EE Rider, implementing the EE Rider, implementing certain programs, and reporting. In addition, the Energy Bureau 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”; “leverage the capabilities of third-party aggregators to launch this program”; and “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.*

4. On March 8, 2023, LUMA filed a motion requesting reconsideration of certain requirements or determinations in the February 16th Resolution and Order. *See Motion for Reconsideration of Resolution and Order of February 16, 2023, and Request to Vacate Deadlines* of that date (“March 8th Motion”).

5. On April 3, 2023, the Energy Bureau issued a Resolution and Order (“April 3rd Resolution and Order”) in which it made several determinations regarding LUMA’s March 8th Motion and, among others, ordered LUMA to file a petition for approval of the EE Rider on or before April 11, 2023 (*see* April 3rd Resolution and Order on page 5) and 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 “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.*).

6. On April 11, 2023, LUMA submitted a petition for approval of the EE Rider (“EE Rider Petition”).

7. 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 and to consolidate the Emergency DR and Battery DR Programs into one program.

8. On May 19, 2023, in compliance with the May 5th Bench Order, LUMA filed revised Exhibits 1 and 2 of the EE Rider Petition (these along with the April 11th Motion, the “Revised EE Rider Petition”). *See Motion to Submit Revised Exhibit 1 to EE Rider Petition and Translation Thereof, in Compliance with Bench Order of May 5, 2023* (“May 19th Motion”). The revised Exhibit 1 consolidated the Emergency DR and Battery DR Programs into one program as required by the Energy Bureau in the May 5th Bench Order. *See id.* at pages 3-4 and Exhibit 1. ¹

9. 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 5th Motion”) requesting the Energy Bureau to issue a clarification regarding the applicability of

¹ A translation of Exhibit 1 of the Revised EE Rider Petition submitted to the Energy Bureau on June 9, 2023. *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.

certain provisions of 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 of the Regulation for Demand Response, Regulation 9246 (“DR Regulation”), with respect to the DR Aggregators or the Emergency DR Program and explaining that the uncertainty surrounding the applicability of these provisions presented a barrier for the third-party DR Aggregators to proceed with enrollment and could delay the execution of the aggregation agreements between LUMA and the third-party DR Aggregators.

10. On June 15, 2023, the Energy Bureau issued a Resolution and Order (“June 15th Order”) addressing LUMA’s June 5th Motion clarifying the issues regarding the applicability of certain provisions of Regulation 8701 and the DR Regulation and ordering 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.

11. On June 29, 2023, LUMA filed with the Energy Bureau motion expressing concerns regarding the lack of funding to implement the Approved TPP and requesting the Energy Bureau urgently issue a determination regarding the Revised EE Rider Petition. *See 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.*

12. 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 30th 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 30th Resolution and Order, page 11.

13. On July 1, 2023, the Energy Bureau issued a Resolution and Order in the Permanent Rate Case (“July 1st 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 1st Resolution and Order, page 2.

14. On July 14, 2023, LUMA filed a motion requesting the 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. *See 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* of that date (“July 14th Motion”) on pages 10-11.

15. On July 31, 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*, (“July 31st Order”), in which it determined, in pertinent part, that the cost of DR programs will not form part of the EE rider and ordered LUMA to contemplate the DR programs as part of the proposal of factors corresponding to the purchase power cost adjustment (“PPCA”) mechanism. *See* July 31st Order on pages 8 and 10.

16. On August 11, 2023, the Energy Bureau issued a Resolution and Order in which, among others, ordered LUMA to file: (a) on or before August 23, 2023, for the Energy Bureau’s approval, the associated cost related to the compensation to be offered to the DR Aggregators

and/or ratepayers that participate in the DR Program to be recovered through the PPCA; (b) within two weeks of the Energy Bureau's approval of the compensation to the participants, proof it has published Emergency DR program terms, established agreements with DR Aggregators, and enrolled customers in the program; and (c) within two weeks of its filing proof of customer enrollment and documentation showing that LUMA has the capability to call Emergency DR events². *See id.* at page 3.

17. In compliance with the August 11th Order, on August 23, 2023, LUMA submitted to the Energy Bureau the proposed estimated costs associated with the Emergency Battery DR Program (“BEDRP”), including the cost related to the compensation to be offered to the DR Aggregators that participate in the BEDRP to be recovered through the PPCA. *See Motion to Submit Costs Associated with Emergency DR Program In Compliance with Resolution and Order of August 11, 2023, and Request for Confidential Treatment* filed August 23, 2023 (“August 23rd Motion”). In Exhibit 1 of the August 23rd Motion, LUMA indicated that the costs of the BEDRP proposed to be recovered through the PPCA would be approximately \$5,060,938 and provided a breakdown and description of these costs. These costs included the compensation to be offered to the DR Aggregators. In addition, in the August 23rd Motion and its Exhibit 1, LUMA provided a proposed timeline to achieve the various tasks related to the implementation of the BEDRP and indicated it might not be able to meet the deadlines established by the Energy Bureau for some of these tasks given the time needed to complete certain intervening steps before the execution of the aggregator agreements, including the issuance of a Request of Acquisition to notify potential DR Aggregators about the opportunity of enrolling in the program and to gather qualifications to identify eligible DR Aggregators.

² According to the Energy Bureau, this documentation “shall be a report on a successful test dispatch event, including the number of participants and the capacity dispatched”. *See id.*

18. On August 29, 2023, the Energy Bureau issued a Resolution and Order (“August 29th Resolution and Order”) approving the compensation level proposed by LUMA in the August 23rd Motion and determining that the BEDRP budget proposed by LUMA “is aligned with the budget for the equivalent program as approved in the [Approved TPP]” and determined such estimated budget was reasonable to launch the program. *See* August 29th Resolution and Order on page 2. In addition, the Energy Bureau indicated that it was “**COGNIZANT** that this estimate will vary as the program is developed” and therefore, the Energy Bureau would “**MONITOR** the success and development of the program to assure estimated project costs and compensation are prudent and reasonable for the purpose of the [BEDRP]”. *See id.* at page 2.

19. In the August 29th Resolution and Order, the Energy Bureau also determined that a separate qualification step for the DR Aggregators is not contemplated in the DR Regulation and is not required to achieve the objectives of the Emergency DR program, stated that it expected LUMA to be able to publish program terms without delay, and amended the timeline for certain Emergency DR program milestones. *See id.* at pages 4-5. Specifically, the Energy Bureau ordered LUMA to file, on or before September 22, 2023, proof of executed aggregation agreements for the Emergency DR program and, on or before, October 13, 2023, proof of customer enrollment and the capacity to call Emergency DR events. *See id.* at page 5.

II. Submittal of Information, Request for Extension, and Request for Approval of Revised Budget

20. LUMA respectfully informs that, as detailed in the document attached herein as Exhibit 1 providing a revised implementation deadline for the BEDRP, in attention to the Energy Bureau’s determinations in the August 29th Order, LUMA discontinued the aggregator qualification process. In addition, on September 8, 2023, LUMA launched the BEDRP webpage

and published the BEDRP Guidelines for DR Aggregators. The attached Exhibit 1 provides more information about this webpage.

21. In addition, as explained in Exhibit 1, after the BEDRP Guidelines were published, LUMA provided to potential DR Aggregators that expressed interest in the BEDRP the standard form of aggregation agreement to be executed by them to participate in the BEDRP (“Master Aggregation Agreement”) and has been working with the potential DR Aggregators to finalize and execute the Master Aggregation Agreement. However, these potential DR Aggregators have posed questions regarding some of the provisions of the Master Aggregation Agreement which LUMA is currently working on resolving. LUMA needs additional time to file proof of execution of the Master Aggregation Agreements in order to resolve these questions and proceed with execution. LUMA expects these questions to be resolved by September 22, 2023, but will likely need an additional week to execute the final Master Aggregation Agreements, barring any unforeseen complications with DR Aggregators. Accordingly, LUMA respectfully requests the Energy Bureau to grant LUMA an additional seven (7) days following September 22, 2023 to file evidence of execution of the Master Aggregation Agreements. In Exhibit 1, LUMA provides a revised timeline for the activities to implement the BEDRP taking into account these most recent hurdles and the resulting revised estimated timeframes. LUMA emphasizes, however, that it does not have certainty about when DR Aggregators will be able to begin enrolling customers and dispatching test events, as those activities are beyond LUMA’s control. The dates in the revised timelines represent LUMA’s current best estimate, and the actual timeline is beyond LUMA’s control.

22. In Exhibit 1, LUMA also includes a proposed revised budget for the BEDRP. LUMA has realized that the administrative costs line item in the budget proposed in its August 23rd Motion assumed a full year of program operation, while in reality the BEDRP will operate for

only three quarters of FY 2024. To correct this, LUMA reduced the original administrative cost estimate in the BEDRP budget by 25%. In order to maintain the total program cost at around \$5 million (i.e., the \$5,060,938 approved), LUMA proposes to shift this cost reduction to increase the budget for estimated annual DR events, resulting in an increase in the total annual energy delivered under the BEDRP and total annual DR Aggregator payments. LUMA respectfully submits that this revised budget, which is slightly less overall, will result in increasing the benefits of the program as reflected in additional generation reliability. LUMA respectfully requests the Energy Bureau to approve this minor change to the BEDRP budget as set forth in Exhibit 1.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned, **grant** LUMA's request for an extension of the deadline to submit proof of execution of aggregator agreements for the Emergency DR program for an additional seven (7) days after September 22, 2023 (i.e., September 29, 2023), and approve the minor change to the BEDRP Program Budget as set forth in Exhibit 1 hereto.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 20th day of September 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; the Independent Office for Consumer Protection at hrivera@jrsp.pr.gov; and agraitfe@agraitlawpr.com, info@sesapr.org, elevin@veic.org, and mrios@arroyorioslaw.com.



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Exhibit 1

BEDRP Revised Timeline and Revised Budget



Battery Emergency Demand Response Program (BEDRP) Revised Timeline and Cost Structure

Case No. NEPR-MI-2022-0001
September 20, 2023

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1.0 Battery Emergency Demand Response Program (BEDRP) Progress

LUMA continues hard at work in the development and execution of the Battery Emergency Demand Response Program (BEDRP) milestones as established by the Energy Bureau in the August 29, 2023 Resolution and Order. As part of the key milestones required to effectively launch the BEDRP, on September 8, 2023, LUMA launched the [BEDRP webpage](#) and published the BEDRP Terms and Conditions for DR Aggregators. The customer-facing BEDRP website provides information and resources about the BEDRP and an email address for DR Aggregators that are interested in participating. More information will be included such as DR Aggregator contact information once the DR Aggregators are ready to begin enrollment. LUMA continues the development of a website that is a constant resource for customers over time and a trusted source of information regarding the behavioral changes the consumer can implement to realize cost savings while continuing to perform the same tasks.

After the BEDRP Guidelines were published on the BEDRP website, LUMA provided a copy of the Master Aggregation Agreement to DR Aggregators that expressed interest in participating in the Program. As part of any business process, the DR Aggregators that expressed interest posed questions on certain terms of the agreement. For this reason, LUMA requests additional time to file proof of executed Agreements in order to address remaining questions about the Agreement that have arisen among potential DR Aggregators during the execution process. LUMA expects these questions to be resolved by September 22 but will likely require an additional week to execute the final Agreements (once the questions have been resolved), barring any unforeseeable complications. LUMA has prepared an updated weekly timeline below, to reflect this requested extension. Tasks 6-8 have also been revised accordingly, however, LUMA does not have certainty about when DR Aggregators will be able to begin enrolling customers and dispatching test events, as those activities are beyond LUMA's control. These dates represent LUMA's current best estimate and the actual timeline for is beyond LUMA's control.

Table 1. BEDRP Timeline Update

Task	Description	Week											
		21-Aug	28-Aug	4-Sept	11-Sept	18-Sept	25-Sept	2-Oct	9-Oct	16-Oct	23-Oct	30-Oct	
1	LUMA PPCA Cost Filing	█											
2	Energy Bureau Approval of PPCA Costs		█										
3	LUMA Publication of Program Guidelines			█									
4	LUMA and Aggregators Execute Aggregation Agreements				█	█	█						
5	LUMA Files Proof of Executed Aggregation Agreements							█					
6	DR Aggregators Begin Recruiting & Enrolling Customers								█				
7	LUMA Dispatches Test Event									█	█		
8	LUMA Files Proof of Test Event												█

2.0 Update to BEDRP Cost Structure

LUMA also submits a revision to the program cost estimate filed in August 23, 2023, shown in Table 2 below. LUMA's original filing assumed a full program year of operation and neglected to consider that only 3 quarters remain in FY24. To correct this, LUMA reduced the original Administrative Cost estimate by 25% as seen in row K. To maintain a Total Annual Program Costs of \$5M, while accounting for this administrative cost reduction, LUMA increased the Estimated Annual Events (row G) from 75 to 81, which resulted in an increase in the Total Annual Energy Delivered (row I) and the Total Annual Aggregator Payments (row J). The revised budget, which is slightly less overall, will result in increasing the benefits of the program as reflected in additional generation reliability.

Table 2. BEDRP Cost Estimate as filed in the DR Cost Structure

	Inputs and Assumptions	Value	Calculations
A	Enrolled Customers (#)	6,500	
B	Average Battery Capacity (kWh/battery)	13	
C	Average Battery Reserve (%)	50%	
D	Total Available Energy per Event (kWh)	42,250	A x B x C
E	Total Available Capacity per Event (kW)	21,125	D / F
F	Average Event Duration (Hours)	2	
G	Estimated Annual Events (#)	81	
H	Aggregator Energy Payment (\$/kWh)	\$1.25	
	FY24 Program Totals		
I	Total Annual Energy Delivered (kWh/yr)	3,422,250	D x G
J	Total Annual Aggregator Payments (\$/yr)	\$4,277,813	H x I
K	LUMA Administrative Costs (\$/yr)	\$755,000	
L	Total Annual Program Costs	\$5,032,813	J + K