

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

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IN RE:
PERFORMANCE METRICS TARGETS
FOR LUMA ENERGY SERVCO, LLC

CASE NO. NEPR-AP-2020-0025

**SUBJECT: Motion to Reiterate LUMA's Motion
for Partial Reconsideration of the Resolution of
August 17, 2023, and Reservation of Rights**

**MOTION TO REITERATE LUMA'S MOTION FOR PARTIAL
RECONSIDERATION OF THE RESOLUTION OF AUGUST 17, 2023, AND
RESERVATION OF RIGHTS**

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 states and requests the following:

1. On May 25, 2023, this Puerto Rico Energy Bureau ("Energy Bureau") issued a Resolution and Order in this proceeding with the subject matter "Administrative Notice," whereby this Energy Bureau, *motu proprio*, took administrative notice of twelve (12) documents that included Resolutions and Orders, and submissions from other proceedings before this Energy Bureau, an Order from the New York State Public Service Commission, and two reports about benchmarking for call center performance ("May 25th Resolution").

2. On June 9, 2023, LUMA filed *LUMA's Response and Opposition to Resolution and Order of May 25, 2023, Taking of Administrative Notice* ("June 9th Motion"). LUMA argued that the Energy Bureau did not comply with the requirements for taking administrative notice under Puerto Rico law and case law and the determination to take official notice issued in the May 25th Resolution infringed on LUMA's rights to due process as it introduced new evidence to the record

after the discovery process concluded, an evidentiary hearing was held, and the parties filed legal briefs, putting LUMA and the other parties at a disadvantage. Further, the May 25th Resolution did not provide LUMA with sufficient information to understand the relevance and purpose of the evidence that the Energy Bureau had chosen to consider by taking administrative notice in lieu of utilizing the main mechanism for the admission of evidence in an adjudicative proceeding: pre-filed testimonies and cross-examination of witnesses. Moreover, LUMA stated that the determination to take official notice was manifestly unfair, arbitrary, and capricious.

3. On August 17, 2023, the Energy Bureau entered a Resolution (“August 17th Resolution”) in which it addressed LUMA’s June 9th Motion and determined it was appropriate to take administrative notice of specific information: (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. NEPR-MI-2021-0004, and (vi) an Order Approving the Scorecard for use by the New York Public Service Commission for Utility Emergency Performance Metrics (“August 17th Resolution”).

4. Additionally, in the August 17th Resolution, the Energy Bureau decided for the first time to take administrative notice of two (2) additional documents that were not part of the disclosed documents in the May 25th Resolution. Those documents were the *Resumen Métricas Master July 2023*, included in the *Submission of Performance Metrics Report for April through*

June 2023, filed by LUMA on July 20, 2023, in Case No.: NEPR-MI-2019-0007, *In Re: The Performance of the Puerto Rico Electric Power Authority*; and the *Informe de Progreso de Interconexión de Sistemas de Generación Distribuida Trimestre abril a junio 2023* attached to the *Motion Submitting Interconnections Progress Report for April to June 2023 and Revised Report Presentation*, filed by LUMA on July 26, 2023, in Case No.: NEPR-MI-2019-0016, *In Re: Informes de Progreso de Interconexión de la Autoridad de Energía Eléctrica de Puerto Rico*. LUMA filed both documents in the respective proceedings after the Energy Bureau entered the May 25th Resolution.

5. In the August 17th Resolution, the Energy Bureau also determined that the parties should file their reply briefs no later than twenty-one (21) days from the notification of the August 17th Resolution. The Energy Bureau instructed that the parties may include any clarification they consider proper based on the facts subject to administrative notice.

6. On September 6, 2023, LUMA filed a *Motion for Partial Reconsideration of the Resolution of August 17, 2023*. Therein, LUMA reiterated that the Energy Bureau did not comply with the requirements for taking administrative notice under Puerto Rico law and case law. Moreover, LUMA underscored that the Energy Bureau took administrative notice of the two (2) documents described in paragraph 4, *supra*, that were not previously disclosed in the May 25th Resolution and that the Energy Bureau again failed to explain the relevance and purpose of taking administrative notice of the specific information contained in those documents.

7. The *Motion for Partial Reconsideration of the Resolution of August 17, 2023*, is still pending consideration by this Energy Bureau. Notwithstanding, LUMA and the other parties continue to be subject to the August 17th Resolution requiring them to file their reply briefs no later than September 21, 2023.

8. In an effort to comply with the August 17th Resolution and avoid delays in filing its replies to the briefs filed by the Local Environmental and Civil Organizations (“LECO”) on (“LECO’s Brief”) and the Independent Consumer Protection Office’s (“ICPO”) on May 11, 2023, LUMA is submitting today, its replies to those briefs. LUMA’s replies to LECO’s and the ICPO’s arguments did not require addressing the documents that the Energy Bureau determined in the August 17th Resolution are deemed admitted through administrative notice.

9. Considering that this Energy Bureau has not issued a ruling on LUMA’s *Motion for Partial Reconsideration of the Resolution of August 17, 2023*, LUMA respectfully reserves any and all rights that attach when the Energy Bureau issues a final determination on said Motion for Partial Reconsideration, including but not limited to, filing a motion or supplemental brief to address the Energy Bureau’s determination on the relevance of the documents that LUMA objected in its *Motion for Partial Reconsideration of the Resolution of August 17, 2023*, including portions of LUMA’s filing on the Annual Budget for Fiscal Year 2024 to 2026, data included in the Resolution and Order of February 27, 2023, and portions of LUMA’s Annual Report for Fiscal Year 2022, filed on February 27, 2023, filed in Case No. NEPR-MI-2021-0004; data included on interconnection progress reports from April to June 2023, January to March 2023, October to December 2022, August to September 2022, and May to July 2022, provided by LUMA in periodic filings in Case No. NEPR-MI-2019-0016; certain data on several metrics as included in *Resumen Métricas Master April 2023* and *Resumen Métricas Master July 2023*, which LUMA provided in Case No. NEPR-MI-2019-0007, and data contained in Attachment A of a related Resolution and Order dated August 18, 2022, in said Energy Bureau proceeding.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 21st day of September 2023.

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; the Office of the Independent Consumer Protection Office, Hannia Rivera Diaz, hrivera@jrsp.pr.gov, and counsel for the Puerto Rico Institute for Competitiveness and Sustainable Economy (“ICSE”), Fernando Agrait, agraitfe@agraitlawpr.com, counsel for the Colegio de Ingenieros y a de Puerto Rico (“CIAPR”), Rhonda Castillo, 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, rstgo2@gmail.com, notificaciones@bufete-emmanueli.com, pedrosaade5@gmail.com, jessica@bufete-emmanueli.com; rolando@bufete-emmanueli.com, lvelez@earthjustice.org, rmurthy@earthjustice.org, jcassel@earthjustice.org.



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