

**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: Extension of Transition Period
Plan by One Year; Extension of DR
Aggregator Certification Deadline

RESOLUTION AND ORDER

I. Introduction and Procedural History

On June 21, 2022, LUMA¹ submitted a Proposed Transition Period Plan ("Proposed TPP") to the Energy Bureau in accordance with Regulation 9367, "Regulation for Energy Efficiency" ("EE Regulation").² As envisioned by Section 4.02(C) of the EE Regulation, the Proposed TPP incorporated an integrated approach to demand response, so the Proposed TPP was also a Demand Response Plan in accordance with Regulation 9246, "Regulation for Demand Response" ("DR Regulation").³ On June 28, 2022, the Energy Bureau initiated this proceeding for the review of LUMA's Proposed TPP.

On June 29, 2022, the Energy Bureau of the Public Service Regulatory Board of Puerto Rico ("Energy Bureau") held a workshop in this proceeding at which LUMA presented a summary of the Proposed TPP and the Energy Bureau requested comments from stakeholders. On July 13, 2022, VEIC and The Solar and Energy Storage Association of Puerto Rico ("SESA") filed comments on the Proposed TPP in response to the Energy Bureau's request.

On October 12, 2022, the Energy Bureau issued a Resolution and Order ("October 12 ROI") in which it made Requests for Information and Comments, with two sets of questions. The first set was to be answered by all interested stakeholders including LUMA ("Appendix A"), while the second was for LUMA only ("Appendix B"). The Energy Bureau required responses to these requests by October 28, 2022⁴ and scheduled a technical conference to discuss responses for November 4, 2022⁵.

On October 27, 2022, LUMA filed a document titled *Motion Requesting Extension to Submit Responses to Requests for Information in Resolution and Order of October 12, 2022, Rescheduling of Related Technical Conference and Extension of Attendant Reply Comment Period* ("October 27 Request"), in which LUMA requested a one-week extension of the deadline for responses to the Requests for Information and Comments to November 4, 2022. LUMA also requested that the technical conference be rescheduled for a date no sooner than 10 days after the responses are filed (that is, no sooner than November 14, 2022).⁶

On November 2, 2022, the Energy Bureau issued a Resolution and Order ("November 2 Order"), in which it established a revised schedule, consisting of workshops and filings and reply filings.

¹ LUMA Energy, LLC and LUMA Energy ServCo, LLC (jointly referred as. "LUMA").

² Regulation for Energy Efficiency, number 9367, March 25, 2022 ("Regulation 9367").

³ Regulation for Demand Response, number 9246, December 21, 2020 ("Regulation 9246").

⁴ October 12 ROI, p. 3.

⁵ October 12 ROI, p.1.

⁶ October 27 Request, p. 8.



On November 4, 2022, the Energy Bureau held the first of the two workshops, received verbal input from stakeholders in advance of their more formal responses to Appendix A, and received LUMA's responses to Appendix B. Ten stakeholders participated including LUMA, the Independent Consumer Protection Office (ICPO), Southern Alliance for Clean Energy (SACE), Instituto de Competitividad y Sostenibilidad Económica (ICSE), VEIC, Tesla, Sunnova, SESA, Interstate Renewable Energy Council (IREC), and Energy Justice for PR.

On or before November 9, 2022, the Energy Bureau received responses to Appendix A from LUMA, SACE, ICPO, ICSE, VEIC, Tesla, Sunnova, and SESA. On November 16, 2022, the Energy Bureau held the second of the two workshops. The purpose was to summarize the comments received and further discuss six topic areas where stakeholders provided diverse positions or raised new questions in their responses to Appendices A and B. These topic areas included: EE branding, DR, low-income incentives and participation, program approval, performance targets, and funding.

On November 23, 2022, LUMA filed a document titled *Motion to Request Extension to Submit Reply Comments Required in Orders of October 12, 2022 and November 2, 2022* ("November 23 Request") motion requesting a two-day extension to file reply comments, until December 2, 2022.⁷ On or before December 2, 2022, the Energy Bureau received reply comments from LUMA and Tesla.

On February 16, 2023, the Energy Bureau issued a Resolution and Order ("February 16 Order") stating its determination on LUMA's Proposed Transition Period Plan filed on June 21, 2022.

On March 8, 2023, LUMA filed a document titled *Motion for Reconsideration of Resolution and Order of February 16, 2023, and Request to Vacate Deadlines of the February 16 Order*, regarding the February 16 Order establishing provisions on activity-based performance targets.

On April 3, 2023, the Energy Bureau issued a Resolution and Order ("April 3 Order") in which it established revised performance expectations for the establishment and launch of EE and DR programs in the form of a required schedule of actions and filings relating to petitioning for an EE Rider, launching an Emergency DR program, beginning to process efficiency rebate applications, filing its FY23 annual report, and developing and filing the FY2025-27 Three Year Plan.⁸

On April 11, 2023, LUMA submitted a document titled *Motion to Submit EE Rider* requesting the approval of the EE Rider ("April 11 EE Rider Petition"). In the EE Rider Petition, LUMA provided a budget for the EE and DR Programs for FY2024 for a total budget of \$20,534,875.⁹ On May 19, 2023, filed a document titled *Motion to Submit Revised Exhibit 1 to EE Rider Petition and Translation thereof, in Compliance with Bench Order of May 5, 2023* ("May 19 Motion") in compliance with a Bench Order issued during a Technical Conference held on May 5, 2023. Through the May 19 Motion, LUMA filed revised Exhibits 1 and 2 of the EE Rider Petition (these along with the April 11 EE Rider Petition, the "Revised EE Rider Petition").

⁷ November 23 Request, p. 4.

⁸ April 3 Order, pp. 5-6.

⁹ EE Rider Petition, Exhibit 1, p. 7.



On June 5, 2023, LUMA filed a document titled *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 Motion") requesting the Energy Bureau to issue a clarification regarding the applicability of certain provisions of Regulation 8701¹⁰, 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 and the Emergency DR Program.

On June 15, 2023, the Energy Bureau issued a Resolution and Order ("June 15 Order") addressing LUMA's June 5 Motion clarifying the issues regarding the applicability of certain provisions of Regulation 8701 and the DR Regulation and ordering LUMA to file specific proof of progress on the Emergency DR program.

On June 29, 2023, LUMA filed a document titled *Urgent Motion Requesting Determination Regarding the Revised EE Rider Petition and Clarifying the Calculated Factor in the Revised EE Rider Petition Submitted on May 19, 2023* ("June 29 Motion"), in which LUMA requested the Energy Bureau to issue a determination regarding the Revised EE Rider Petition.

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*, in which it determined that the cost of DR programs will not be part of the EE Rider and ordered LUMA to fund these programs using the purchase power charge adjustment ("PPCA") mechanism.

On August 1, 2023, DR Third Party Aggregators filed a document titled *Comments Proposing Program Launch Milestones for the Battery Emergency DR Program Under LUMA EE/DR Transition Period Plan* (August 1 Motion"), in which it submitted comments proposing deadlines for BEDRP¹¹ program launch milestones.

On August 11, 2023, the Energy Bureau issued a Resolution and Order ("August 11 Order") in which in its relevant part, it ordered LUMA to file (a) details regarding the DR program design it proposed to use; (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 events. In addition, to "reflect ongoing uncertainty in funding for energy efficiency programs," the Energy Bureau established an updated deadline for LUMA to file documentation showing that it is processing energy efficiency incentive/rebate applications of "60 days following the earlier of two dates: 1) the date on which the EE Rider is implemented with a value greater than zero, or 2) the date on which LUMA or the Energy Bureau secure a funding commitment from an external source (such as the government of Puerto Rico or Federal funds) sufficient to implement approved EE programs."

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 LUMA field estimated

¹⁰ Amendment to Regulation No. 8618 on Certification, Annual Fees, and Operational Plans for Electric Service Companies in Puerto Rico, Regulation Number 8701, February 17, 2016 ("Regulation 8701").

¹¹ Battery Emergency Demand Response Plan ("BEDRP").



costs associated with the 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. In the filing, LUMA also proposed a timeline to achieve various remaining launch milestones.¹²

On August 29, 2023, the Energy Bureau issued a Resolution and Order (“August 29 Resolution”) approving the compensation level proposed by LUMA in the August 23 Motion. In the August 29 Resolution, 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 and amended the timeline for certain BEDRP milestones.

On September 20, 2023, LUMA filed a document titled *Informative Motion and Request for Extension of Deadline to File Proof of Execution of Aggregation Agreements and Approval of Revised Program Budget* (“September 20 Request”), in which it indicated that it was in discussions with potential DR aggregators regarding the Master Aggregation Agreement and requested a seven-day extension to file the Master Aggregation Agreement with the Energy Bureau. LUMA stated that it did not have certainty about when DR Aggregators would be able to begin enrolling customers and dispatching test events, as those activities are beyond LUMA’s control.

On September 22, 2023, this Energy Bureau issued a Resolution and Order in Case *In re LUMA’s Initial Budgets*, Case No. NEPR-MI-2021-0004 whereby it decided that the costs of the energy efficiency programs that are a part of the Approved TPP would be recovered through base rate revenues, rather than through the EE Rider (“September 22 Budgets Order”).

On September 29, 2023, LUMA filed a document titled *Informative Motion Regarding Aggregation Agreements to the Honorable Puerto Rico Energy Bureau* (“September 29 Motion”), in which it informed the Energy Bureau that it continued to have discussions with potential DR aggregators regarding the Master Aggregation Agreement.

On October 13, 2023, LUMA filed a document titled *Motion to File Proof of Execution of Master Aggregation Agreements and Provide Update on Customer Enrollment* (“October 13 Motion”), in which it informed the Energy Bureau that it had executed two Master Aggregation Agreements with DR aggregators, and that it would file proof of customer enrollment as soon as this milestone is completed by DR aggregators.

On October 30, 2023, LUMA filed a document titled *Motion to Submit TTP FY2023 Annual Reports* (“October 30 Motion”), in which LUMA filed the TPP FY2023 Annual Report.

Also on October 30, 2023, LUMA filed a document titled *Request to Extend by One Additional Year the Deadline to File the Three-Year Plan, Concomitant Deadlines and Extend the Term of the Transition Period Plan for an Additional Fiscal Year* (“October 30 Request”), in which LUMA requested to extend by one year the deadline to file the Three-Year DR Plan and concomitant deadlines, and to extend the term of the TPP for an additional fiscal year.

On November 7, 2023, DR Third Party Aggregators filed a document titled *Comments in Support of LUMA’s Request to Extend by One Year the Deadline to File the Three-Year Plan, Concomitant Deadlines, and Extend the Term of the Transition Period Plan for an Additional*

¹² August 2 Motion, Exhibit 1, p. 9.



Fiscal Year; and Motion to Extend the Deadline for Battery Demand Response Program Aggregators to be Certified as Electric Service Companies under Regulations 8701 and 9246 (“November 7 Motion”), in which it supports LUMA’s October 30 Request and further requesting an extension in the timeline under which DR aggregators would be required to be certified as Electric Service Companies under Regulation 8701.

II. Summary of LUMA’s October 30 Filing

LUMA’s October 30 Request requests a one-year extension of the Transition Period Plan, and a one-year delay in the filing timeline for the first Three-Year EE and DR Plan. LUMA also provides a status update on the Emergency DR program, stating that it anticipates that the program will be able to call events beginning in November 2023. LUMA further states that it has contracted with an implementation contractor for EE programs and that the contractor is proceeding with program development and activities launch.

LUMA states that it will not have sufficient experience with either DR or EE program implementation to inform the development of a draft Three Year EE and DR Plan by December 2023, as envisioned by the Approved TPP, and to file a final plan by March 1, 2024. LUMA states that the purpose of the TPP is to “test and refine programs before full-scale implementation, to provide greater understanding of customer preferences and market readiness (such as contactor and equipment availability) and help LUMA understand internal organization and operational requirements required to effectively administer EE and DR programs.”¹³

LUMA further states that the Market Baseline and Potential Study will not be complete in time to inform development of the Three-Year EE and DR Plan. LUMA states that “[w]ithout these studies or program implementation experience, there will be no basis for determining how to optimize the programs and measures included in the Three-Year Plan, nor how much budget would be required for the Three-Year Plan.”¹⁴

LUMA states that the DR Regulation requires that DR programs be cost-effective, and the Energy Bureau has not yet completed its Avoided Cost Study. This study will be used to evaluate cost-effectiveness once it is complete.

LUMA states that an additional year for program implementation would allow for additional learning and program experience in order to inform the development of full-scale EE and DR programs. LUMA requests a one-year extension in the deadline to submit the Three-Year Plan (to March 1, 2025), and a one-year extension of the TPP (through the end of FY2025), with the same cadence of quarterly and annual reporting as in the Approved TPP and associated one-year delays in other milestones for the preparation of a draft Three-Year plan and stakeholder engagement regarding that plan.

LUMA also states that extending the term of the TPP would have the effect of extending the term of the Master Aggregation Agreements it has signed with DR aggregators, and thereby would ease the extension of the Emergency DR program for another year. LUMA states that “[a] longer term may result in attracting more DR Aggregators and customers interested in

¹³ October 30 Request, page 12.

¹⁴ *Id.*, p. 14.



enrolling in the program and otherwise provide insights into how the market responds to the BEDR Program.”¹⁵

III. Summary of DR Third Party Aggregators’ November 7 Filing

The DR Third Party Aggregators’ November 7th DR Motion supports LUMA’s request for a one-year extension for the TPP and a one-year delay in the filing of the Three-Year EE and DR Plan. The motion states that delays in program launch have “left insufficient time to use the findings from the program to adequately inform the Three-Year DR Plan.”¹⁶ the DR Aggregators state that “if LUMA must submit a Three-Year DR Plan in [December 2023], it is likely that the utility will have very little information regarding the efficacy of the BEDRP or other TPP programs.”¹⁷

The DR Aggregators also argue for the extension of time from the customer perspective. They state that “extending the TPP for an additional year will allow customer participants to gain greater comfortability and certainty with the program.”¹⁸ The DR Aggregators state that battery DR programs often provide participants with multi-year certainty regarding program design and compensation, and that this certainty attracts greater aggregator participation and competition. They state that the potential end of the Emergency DR program in June 2024 creates uncertainty and risk, and that a one-year extension will “provide a much better schedule for customers to gain trust in the program and grow comfortable with future iterations of EE, DR, and battery DR programs.”¹⁹

The November 7 Motion also contains a request to extend by four months the deadline for DR aggregators that participate in the Emergency DR program to become certified Electric Service Companies under Regulation 8701. The DR Aggregators state that the roughly four-month delay in the launch of the Emergency DR program, relative to the timeline envisioned when the December 1, 2023 certification deadline was established, justifies a four-month change in the certification deadline. The DR Aggregators state that uncertainty and delay in the program launch resulted in delays for DR Aggregators applying for certification.

IV. Discussion

A. TPP and Three-Year Plan Extension

LUMA’s EE and DR programs are launching more than one year later than envisioned when the Regulation for Energy Efficiency and DR Regulation were adopted and envisioned in the Approved TPP. The EE Regulation established the TPP to run from July 1, 2022, to June 30, 2024,²⁰ with LUMA required to begin implementation on or before July 1, 2022, even if the TPP were not approved by that date.²¹ The EE Regulation envisioned programs being

¹⁵ *Id.*, p. 16.

¹⁶ November 7 Motion, p. 6.

¹⁷ *Ibid.*

¹⁸ *Id.*, pp. 6-7.

¹⁹ *Id.*, p. 8.

²⁰ EE Regulation, Section 2.01(B).

²¹ EE Regulation, Section 2.01(C).



executed during the TPP that would be capable of providing savings of 0.1% of annual sales in the first year and 0.25% in the second year.²² In fact, LUMA obtained no EE savings during the first year of the Approved TPP, and will only begin achieving any savings about halfway through the second year.

The EE Regulation states that the purpose of the TPP is to facilitate the ramp-up of efficiency programs while providing time for completion of the market baseline and potential studies, and to facilitate the development of the energy efficiency services workforce.²³ The Energy Bureau understands that the delays in EE and DR program launch have made these objectives difficult to achieve on the original timeline.

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Section 4.03(A) of the EE Regulation establishes the procedural timeline for the Three-Year EE Plan. Specifically, the regulation establishes that the first Three Year EE Plan is due March 1, 2024, covering a three-year implementation period from July 1, 2024 to June 30, 2027. Section 4.03(A)(2) provides that the Energy Bureau may amend the filing date “as needed to allow time for appropriate stakeholder engagement or other reasons it may determine.” The Energy Bureau therefore has the authority to delay the filing date for the Three-Year Plan by a year, for the reason of the launch delays detailed by LUMA and the DR Aggregators and the associated need to conduct an additional year of program growth and learning before filing the Three-Year Plan. The Energy Bureau therefore **GRANTS** LUMA’s request to extend the Transition Period Plan by one year, to June 30, 2025, and to delay the schedule (including all required drafts and stakeholder engagement processes) for the Three-Year EE and DR Plan by one year, so that the Three-Year EE and DR Plan shall be filed by March 1, 2025.

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Section 3.02(C)(1) of the DR Regulation states that the Energy Bureau may set the schedule for the Three-Year DR Plan. the Energy Bureau **MAINTAINS** the joint filing schedule for EE and DR plans established in the February 16 Order, and LUMA’s filing in March 2025 must cover both EE and DR and meet the requirements of both the EE Regulation and the DR Regulation.

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The EE Regulation establishes that the first Three-Year Plan ends on June 30, 2027. With a one-year delay in beginning that plan period, concluding the plan on that date would make for a two-year plan. At this time, the Energy Bureau believes that a three-year period is more appropriate for EE and DR program development and implementation. This is because it is important to both program implementation and customer engagement for programs to remain stable for a longer period of time. Nonetheless, when the Energy Bureau considers LUMA’s Three-Year Plan filing in 2025, the Energy Bureau will decide at that point whether to shorten the plan period to two years or to use a three-year period (and potentially either shorten a later three-year planning period or amend the EE Regulation).

The delays in TPP program launch have had some impact on LUMA’s expenditure of funds. Program operational and incentive budgets, for example, that were included in the Approved TPP, have not been spent because the programs to be funded have not been operational. LUMA’s October 30 Motion did not provide any information about EE or DR program budgets. In order to evaluate LUMA’s plans for the extended Transition Period Plan, the Energy Bureau requires information about LUMA’s expected budgets. The Energy Bureau therefore **ORDERS** LUMA to file, by December 8, 2023, the following:

²² *Id.*, Section 2.02(A)(2).

²³ *Id.*, Section 2.01(A).



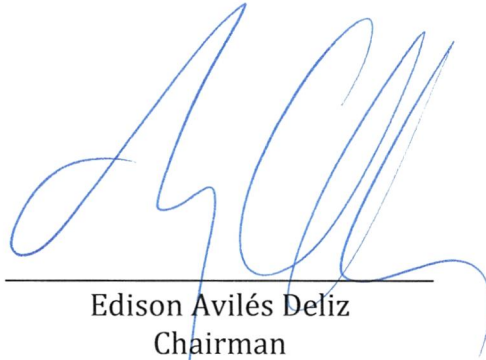
- A revised version of the Transition Period Plan document, reflecting the adjusted timeframe, LUMA's most up to date program plans, and any other updates required to convey an accurate summary of LUMA's current EE and DR plans.
- LUMA's most recent available schedule for the launch of EE programs, including which measures and market sectors will be targeted by each program, extending through the extended TPP (June 30, 2025).
- EE and DR program expenditures for FY2023, categorized by market sector and purpose in accordance with Table 2-3 of LUMA's Proposed TPP filed June 21, 2022, namely: Low-Income Residential; Non-Low-Income Residential; Small Business; Government/Public; Other Commercial/Industrial and Agricultural; Education and Outreach Program; and Cross-Cutting Planning, Admin, & Startup.
- EE program costs for FY2024 and FY 2025, categorized by market sector and activity (where activities are programs such as rebates, in-store discounts, direct installations, or other program implementation strategies, as well as education/outreach and planning/admin/startup costs), similar to Table 3-3 of LUMA's Proposed TPP. For FY2024, LUMA shall distinguish between expended funds as of the most recent available date and expected expenditures for the remainder of the year.
- DR program costs for FY2024 and FY 2025, categorized by market sector and activity (where activities are programs such as rebates, in-store discounts, direct installations, or other program implementation strategies, as well as education/outreach and planning/admin/startup costs), similar to Table 3-3 of LUMA's Proposed TPP. For FY2024, LUMA shall distinguish between expended funds as of the most recent available date and expected expenditures for the remainder of the year.
- In each of its annual cost reports and projections, LUMA shall separate costs paid from the base rate from costs that have been or will be recovered through the PPCA. LUMA shall identify any expected shortfall of funds (and when it is expected to occur) as well as any funds that may be carried over from one fiscal year to the next (or which LUMA would desire to carry over from one year to the next).

B. Certification of DR Aggregators


The Energy Bureau **GRANTS** the DR Third Party Aggregators' request to amend the deadline for DR aggregators to become certified under Regulation 8701 by March 1, 2024. The requested four-month delay in the deadline is a reasonable accommodation to reflect the fact that the Emergency DR program launched approximately four months later than expected.

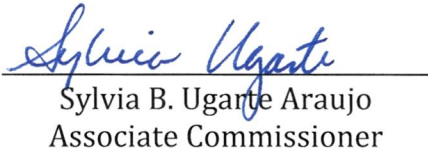
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Associate Commissioner

CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on November 29, 2023. I also certify that on November 29, 2023 a copy of this Resolution and Order was notified by electronic mail to agraitfe@agraitlawpr.com, info@sesapr.org; bfrench@veic.org; shanson@veic.org; ana.rodriguezrivera@us.dlapiper.com, laura.rozas@us.dlapiper.com; lionel.santa@prepa.pr, hriviera@jrsp.pr.gov; evand@sunrun.com; javrua@sesapr.org; mrios@arroyorioslaw.com; 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 November 29, 2023.


Sonia Seda Gaztambide
Clerk

