

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

NEPR Received: Nov 7, 2023 7:37 PM

IN RE:
ENERGY EFFICIENCY AND DEMAND
RESPONSE TRANSITION PERIOD PLAN

CASE NO.: NEPR-MI-2022-0001

SUBJECT: 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 Fiscal Year; and Motion to Extend the Deadline for Emergency Battery Demand Response Program Aggregators to be Certified as Electric Service Companies under Regulations 8701 and 9246

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 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

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME now DR Third Party Aggregators to respectfully submit the following comments and motion. The comments are in support of the October 30, 2023 motion filed by LUMA Energy, LLC and LUMA Energy ServCo (collectively, “LUMA”) requesting that the Puerto Rico Public Service Regulatory Board (“Energy Bureau”) extend the term of the Energy Efficiency (“EE”) and Demand Response (“DR”) Transition Period Plan (“TPP”) for an additional fiscal year and also extend by one year the deadline to file the Three-Year Demand Response Plan (“Three-Year DR Plan”) and concomitant deadlines. The motion requests that the Energy Bureau extend until, March 1, 2024, the deadline for aggregators participating the TPP Battery Emergency Demand

Response Program (“BEDRP”) to apply to be certified as Electric Service Companies (“ESCs”) under the processes established in Regulations 8701 and 9246.

I. Procedural History and Background

1. On December 10, 2020, the Energy Bureau adopted the Regulation for Demand Response (“DR Regulation”) requiring that the Puerto Rico Electric Power Authority (“PREPA”) or its successor, LUMA, file with the Energy Bureau a Three-Year DR Plan (“Three-Year DR Plan”).

2. On January 21, 2022, the Energy Bureau published the final version of the Regulation for Energy Efficiency (“EE Regulation”) requiring that PREPA or LUMA file with the Energy Bureau a plan to implement “quick start” EE programs during a two-year TPP.

3. On June 21, 2022, LUMA filed with the Energy Bureau, in the DR Proceeding, a proposed TPP for Fiscal Years 2023 and 2024.

4. On February 16, 2023, the Energy Bureau issued a Resolution and Order in *In re: Energy Efficiency and Demand Response Transition Period Plan*, stating its determinations on LUMA’s filed proposal TPP.¹ The Resolution and Order included firm deadlines for LUMA to meet certain BEDRP milestones, including enrolling customers by April 15, 2023, and demonstrating capability to call BEDRP events by May 15, 2023.

5. On March 8, 2023, LUMA filed a Motion requesting that the Energy Bureau reconsider the deadlines set forth in its February 16 Resolution and Order.

¹ See Resolution and Order, Determination of LUMA's June 21, 2022, Proposed Transition Period Plan, Case No. NEPR-MI-2022-001 (issued Feb. 16, 2023)(citing and approving with modifications, LUMA’s Proposed Transition Period Plan).

6. On April 3, 2023, the Energy Bureau issued a Resolution and Order modifying certain program deadlines, including ordering LUMA to file proof of customer enrollment by June 9, 2023, and to demonstrate capability to call BEDRP events by July 14, 2023.

7. On April 11, 2023, LUMA filed a Motion to Submit EE Rider with estimated program costs and rate calculation.

8. On June 5, 2023, LUMA filed a motion to request clarification on the applicability of several terms on the Regulation for Demand Response Regulation 92461 to the BEDRP. LUMA also requested that the Energy Bureau extend the deadline for enrolling customers in the BEDRP by at least 30 days from the date of issuance of an order providing clarification.

9. On June 5, 2023, DR Third Party Aggregator filed a motion for clarification of the requirements of the DR Regulation and Regulation 8701 with respect to certification of aggregators.

10. On June 15, 2023, the Energy Bureau issued a Resolution and Order waiving certain sections of the Regulation 8701 and establishing a deadline of December 1, 2023, for aggregators participating in the BEDRP to apply for certification as ESCs.

11. On June 29, 2023, LUMA filed an urgent motion requesting that the Energy Bureau provide a determination regarding implementation of LUMA's Revised EE Rider Petition.

12. On June 30, 2023, the Energy Bureau issued a Resolution and Order in Case No. NEPR-MI-2020-0001, suspending the EE Charge for July 2023.

13. On June 30, SESA filed a request in Case No. NEPR-MI-2020-0001 for the Energy Bureau to authorize LUMA to move forward with EE/DR TPP implementation.

14. On July 1, 2023, the Energy Bureau issued a Resolution in Case No. NEPR-MI-2020-0001, clarifying that it did not suspend the Energy Efficiency and Demand Response Programs, and ordering LUMA to continue with the implementation of the TPP and the EE/DR programs. In that Resolution, the Energy Bureau assured LUMA that the required funds for the EE/DR programs would either be identified by the Governor or collected through the EE Rider.

15. On July 14, 2023, LUMA filed a response to LUMA's July 1, 2023 Order, requesting that the Energy Bureau suspend LUMA's deadline for enrolling customers and its deadline for demonstrating capability to call events in the BEDRP, in light of the Energy Bureau's suspension of the EE Charge.

16. On July 31, 2023, the Energy Bureau issued a Resolution and Order in Case No. NEPR-MI-2020-0001, directing that the costs of DR programs be recovered via the purchase power charge adjustment ("PPCA") mechanism.

17. On August 1, 2023, DR Third Party Aggregators submitted comments proposing deadlines for key BEDRP program launch milestones.

18. On August 11, 2023, the Energy Bureau issued a Resolution and Order, directing LUMA to meet certain deadlines for launching the BEDRP. The first of those deadlines was for LUMA to file on or before August 23, 2023, the cost related to compensation for DR aggregators and customers to be recovered through the PPCA. The second deadline was for LUMA to provide proof it had published Emergency DR program terms, established agreements with the participants, proof it has published Emergency DR program terms, established agreements with DR aggregators, and enrolled customers in the program within two weeks of the Energy Bureau's

approval of participant compensation. The third deadline was to show that it had the ability to call DR events within two weeks of its previous filing.

19. On August 23, 2023, LUMA filed estimated costs associated with the BEDRP. In the filing, LUMA also proposed a timeline to achieve various remaining launch milestones and noted that it might not be able to meet the deadlines that the Energy Bureau had established in its August 11, 2023, Resolution and Order.

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

21. On September 20, 2023, LUMA filed with the Energy Bureau an Informative Motion and Request for Extension of Deadline to File Proof of Execution of Aggregation Agreements, 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.

22. On September 29, 2023, LUMA filed a motion informing the Energy Bureau that it continued to have discussions with potential DR aggregators regarding the Master Aggregation Agreement.

23. On October 13, 2023, LUMA filed a motion informing the Energy Bureau that it had executed two Master Aggregation Agreements with DR aggregators.

24. On October 30, 2023, LUMA filed a request 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.

II. Comments in Support of LUMA’s Request for Extension

25. DR Third Party Aggregators fully support LUMA’s October 31, 2023 request to the Energy Bureau to extend the term of the TPP for an additional fiscal year and to similarly extend by one year the deadline to file the Three-Year DR Plan and concomitant deadlines. We echo LUMA’s request and reasoning submitted in its filing regarding the need for additional time under the TPP to gain the requisite insights and experience to adequately inform the design of the Three-Year DR Plan. We also offer an additional perspective of the value that a one-year TPP extension would provide in creating greater regulatory certainty and program stability for both customer participants and aggregators in the BEDRP as the new program launches after several delays.

26. Numerous delays in the BEDRP launch have left insufficient time to use the findings from the program to adequately inform the Three-Year DR Plan, which LUMA must file in draft form by December 2, 2023. The Three-Year DR Plan is meant to incorporate best practices and takeaways from the TPP in order to ensure that Puerto Rico residents and ratepayers end up with an evidence-based program that functions as intended and which incorporates feedback from all stakeholders. However, if LUMA must submit a Three-Year DR Plan in less than a month, it is likely that the utility will have very little information regarding the efficacy of the BEDRP or other TPP programs. In its February 16, 2023 Order approving the TPP, the Energy Bureau wrote that “getting early feedback from stakeholders will help ensure programs are best serving ratepayers.” Unfortunately, the current schedule for ending the TPP and launching the Three-Year DR Plan leaves very little time to get such feedback and risks not incorporating important stakeholder feedback in whatever BEDRP-like program may end up in the Three-Year DR Plan.

27. In addition to providing more time to understand the BEDRP, extending the TPP for an additional year will allow customer participants to gain greater comfortability and certainty

with the program. In its February 16 Order, the Energy Bureau acknowledged that the TPP “identifies lack of information as one of the barriers to customer adoption of energy efficient technologies, particularly in Puerto Rico, where there is no history of ratepayer-funded EE and DR programs.” Not only does it take time to get the word out about EE and DR programs and get customers to understand them, but it also takes time to get customers comfortable with the idea of using customer-owned resources for the benefit of the grid.

28. Any customer-facing program benefits from regulatory stability, in which customers have sufficient time to get used to participating in a program and can be certain that it will not suddenly disappear or undergo significant changes. But this stability is particularly important for programs that leverage customer-owned equipment, such as DR programs. Any rapid starting and stopping of such programs can frustrate customers from future participation, cause doubt about the values that such programs can provide, cause customers to distrust similar programs in the future, and lower overall participation rates.

29. For this reason, the battery DR programs often launch with terms that provide customers with programmatic certainty over a multi-year horizon. In the Northeast, the ConnectedSolutions program provides customers a five-year “incentive lock” that not only guarantees the customer that the program and its terms will remain in place for five years but also that the customer’s performance compensation will remain unchanged.² Similarly, participation in the Energy Storage Solutions program in Connecticut is planned on a 10-year horizon.³ These longer horizons also are attractive to aggregators and can encourage greater competition in

² National Grid ConnectedSolutions Residential Battery Program. <https://www.nationalgridus.com/MA-Home/Connected-Solutions/BatteryProgram>

³ Energy Storage Solutions Program Manual. 2023 August 1. <https://www.dpuc.state.ct.us/dockcurr.nsf/8e6fc37a54110e3e852576190052b64d/736dc10d3b5f7dc1852589ff00588db0?OpenDocument>

programs that customers and aggregators know will remain in place. In contrast, the BEDRP currently provides no certainty to customers or aggregators beyond June 2024. Extending the TPP by even one additional fiscal year 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.

30. Therefore, the DR Third Party Aggregators fully support LUMA’s motion and urge the Energy Bureau to extend the TPP by an additional fiscal year and delay by one year the deadline for LUMA to file the Three-Year DR Plan and concomitant deadlines.

III. Motion to Extend Deadline for DR Aggregators to be Certified as ESCs

31. In addition, the DR Third Party Aggregators request that the Energy Bureau extend the deadline for DR aggregators participating in the TPP BEDRP to apply to be certified as ESCs under the processes established in Regulation 8701 until March 1, 2024 – a four-month extension from the current deadline of December 1, 2023. Extending the deadline to this new date will ensure that no DR aggregator will be excluded from participation in the BEDRP in the program’s first few months due to a delay in applying to be certified as an ESC. The extension also would serve to reduce barriers to BEDRP participation for smaller aggregators to participate in the BEDRP in the first few months of the program.

32. The Energy Bureau established the initial December 1, 2023, deadline for aggregators to apply for ESC certification in its June 15, 2023 Order, at a time when the BEDRP was set to launch in early July. In that Order, the Energy Bureau wrote that it provided the roughly five-month buffer between program launch and the ESC application deadline “in order to avoid delays due to the certification process” and “in the interest of allowing the Emergency DR program to launch quickly.” However, since that time, the BEDRP launch date has been delayed several times, resulting in a program launch date that is roughly four months later than the one directed by

the Energy Bureau when it issued its June 15, 2023 Order. Accordingly, the DR Third Party Aggregators request that the Energy Bureau similarly extends the deadline for aggregators to apply for ESC compliance by four months, resulting in a new deadline of March 1, 2024.

33. In the months since the Energy Bureau set the initial ESC application deadline, the BEDRP has faced numerous delays and uncertainties during which it was unclear whether the program would launch, when it would launch, or whether it would be adequately funded. This uncertainty also delayed the process of some aggregators in applying for ESC certification. Additionally, the Energy Bureau's initial ESC deadline had an additional layer of logic behind it: it ensured that aggregators would have certainty regarding the BEDRP launch date and overall program functionality prior to requiring that aggregators become certified as ESCs. Without that certainty, aggregators risked investing the time and resources of applying for ESC certification with no guarantee that the BEDRP would be funded or launch in a reasonable time frame. However, with the recent start to customer enrollments under the BEDRP, that improved certainty now exists. It would therefore be appropriate and helpful for the efficacy of the program for the Energy Bureau to provide a similar extension for aggregators to apply for ESC certification in the interest of allowing the BEDRP to launch quickly.

WHEREFORE, DR Third Party Aggregators respectfully requests that the Energy Bureau extend the deadline for DR aggregators participating in the Transition Period Plan Emergency Battery Demand Response Program to apply to be certified as an ESC under Regulation for Demand Response (Regulation 9264) Section 2.02 and Regulation 8701, from December 1, 2023 to March 1, 2024.

Respectfully Submitted.

Certificate of Service

It is hereby certified that, on this same date, I have filed the above motion with the Clerk of the Energy Bureau using its Electronic Filing System at <https://radicacion.energia.pr.gov/login>, and I will send an electronic copy of the filing to: PREPA through its attorneys at jmarrero@diazvaz.law, lionel.santa@prepa.pr.gov; LUMA through its legal representatives at margarita.mercado@us.dlapiper.com and laura.rozas@us.dlapiper.com; the Independent Office for Consumer Protection at hrivera@jrsp.pr.gov; and agraitfe@agraitlawpr.com, info@sesapr.org, elevin@veic.org, bfrench@veic.org, shanson@veic.org, evand@sunrun.com, forest@cleanenergy.org, customerservice@sunnova.com, jordangraman@tesla.com, javrua@sesapr.org, pjcleanenergy@gmail.com.

In San Juan, Puerto Rico, this 7th day of November 2023.

ARROYO & RÍOS LAW OFFICES, P.S.C.
PMB 688
1353 Ave. Luis Vigoreaux
Guaynabo, P.R. 00966
Tel.: (787) 522-8080
Fax: (787) 523-5696
E-mail: mrrios@arroyorioslaw.com

s/Moraima S. Ríos Robles

T.S. RUA – 15,743