

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

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IN RE: THE PERFORMANCE OF THE
PUERTO RICO ELECTRIC POWER
AUTHORITY

CASE NO.: NEPR-MI-2019-0007

SUBJECT: Motion Requesting Partial Stay of
Resolution and Order of October 18, 2024

**MOTION REQUESTING PARTIAL STAY OF RESOLUTION AND ORDER OF OCTOBER 18, 2024
TO THE PUERTO RICO ENERGY BUREAU:**

COMES NOW, LUMA ENERGY SERVCO, LLC, pursuant to its duties under Section 5.6 of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (“T&D OMA”), through the undersigned legal counsel and respectfully states and requests the following:

1. On May 14, 2019, the Puerto Rico Energy Bureau (“Energy Bureau”) entered a Resolution and Order requiring the Puerto Rico Electric Power Authority (“PREPA”) to submit quarterly reports on specified system data. Thus, pursuant to Section 5.6 of the T&D OMA, LUMA, as an agent of PREPA, every quarter submits systems data regarding the Transmission and Distribution System (“T&D System”). As instructed by the Energy Bureau, LUMA submits PREPA’s system data regarding generation as well, provided by Genera, PR LLC (“Genera”).

2. In parallel, the Energy Bureau conducted the *In re: Performance Targets for LUMA Energy Servco, LLC* proceeding, Case No. NEPR-AP-2020-0025, to elucidate a proposal filed by LUMA Energy Servco, LLC and LUMA Energy, LLC, to adopt an incentive Performance Metrics scheme that arises under Annex IX of the T&D OMA (“LUMA Targets Proceeding”) and pertains

to LUMA's ability to earn the incentive fee that the parties to the T&D OMA negotiated as stated in Section 7.1 (c) of the T&D OMA. The Performance Metrics proposed by LUMA in a Revised Annex IX of the T&D OMA that was submitted for consideration by this Energy Bureau, included J.D. Power Customer Satisfaction Survey (Residential Customers); J.D. Power Customer Satisfaction Survey (Business Customers); Average Speed of Answer (minutes); Customer Complaint Rate; Abandonment Rate; OSHA Recordable Incident Rate; OSHA Fatalities; OSHA Severity Rate; OSHA Days Away, Restricted, and Transfer Rate; System Average Interruption Frequency Index ("SAIFI"); System Average Interruption Duration Index ("SAIDI"); Distribution Line Inspections & Targeted Corrections; Transmission Line Inspections & Targeted Corrections; T&D Substation Inspections & Targeted Corrections; Operating Budget; Capital Budget: Federally Funded; Capital Budget: Non-Federally Funded; Days Sales Outstanding: General Customers; Days Sales Outstanding: Government Customers; and Overtime, and Major Outage Performance Metrics ("MOE Metrics"). The Energy Bureau also approved additional metrics that it had required LUMA to include in its proposal: Vegetation Maintenance Miles Completed (230kV, 115kV, 38kV, primary Distribution); Energy Savings as Percent of Total Energy Sales, Peak Demand Savings as a Percent of Total Peak Demand, and NEM Project Activation Duration ("the Additional Performance Metrics"). Several of LUMA's proposed Performance Metrics are already being reported in this instant proceeding, albeit with a different methodology in some instances.

3. On January 26, 2024, the Energy Bureau issued a Resolution and Order in the LUMA Targets Proceeding approving LUMA's proposed Performance Metrics, the Additional Performance Metrics, and the MOE Metrics. However, the Final Resolution and Order introduced amendments to the Revised Annex IX of the T&D OMA. LUMA timely filed a Motion for

Reconsideration. Intervenor, the Local Environmental and Civil Organizations (“LECO”) also filed a request for reconsideration. On June 14, 2024, the Energy Bureau issued a Resolution and Order granting LUMA’s motion for reconsideration in part and denying LECO’s request (jointly with the Resolution and Order of January 26, 2024, “Final Resolution and Order”).

4. Thereafter, LUMA sought judicial review of the Final Resolution and Order before the Puerto Rico Court of Appeals, in a writ for administrative review, Civil Case No. KLRA202400375, which was later consolidated with Civil Case No. KLRA202400377.¹ Specifically, LUMA sought vacatur or reversal of key determinations of the Final Resolution and Order that LUMA argues are arbitrary, issued in violation of due process of law, and materially interfere with its contractual expectations and LUMA’s ability to have a reasonable opportunity to earn the incentive fee: (1) the Energy Bureau’s modification of the contractually agreed upon tier structure for non-binary metrics as was negotiated by the parties to the T&D OMA; (2) the decision to change the tiers for the MOE Metrics; (3) modification of the approach to performance measurements for certain Performance Metrics different from LUMA’s proposal; (4) modification of the base points allocated to certain Performance Metrics as to originally proposed by LUMA; (5) modification of the performance baseline for certain Performance Metrics, in some instances considering LUMA’s performance data from Fiscal Years 2022 and 2023, as reported in this proceeding; (6) modification of the Annual Performance Targets employing three different approaches; and (7) the determination to approve Performance Metrics that LUMA did not submit for consideration on the following performance areas: (a) Interconnections; (b) Energy Efficiency/Demand Response; and (c) Vegetation Management. The Puerto Rico Court of Appeals is currently considering LUMA’s writ of administrative review.

¹ Case No. KLRA202400377 was filed by intervenor LECO.

5. On October 18, 2024, the Energy Bureau issued a Resolution and Order in this instant proceeding to align the data reported in the instant docket with the metric specifications in the LUMA Targets Proceeding, where applicable (“October 18th Order”). Because the October 18th Order was issued during the evening of Friday, October 18th, and LUMA was set to file the quarterly report on Monday, October 21st, the Energy Bureau extended the original reporting deadline up to and including November 20, 2024.

6. In the October 18th Order, the Energy Bureau directed LUMA to make methodology changes to align the Performance Metrics reported in this proceeding with the Performance Metrics that the Energy Bureau approved in the LUMA Targets Proceeding. This, despite the fact that the Energy Bureau’s Final Resolution and Order issued in the LUMA Targets Proceeding is under judicial review. Thus, the Puerto Rico Court of Appeals may vacate or amend the Energy Bureau’s rulings.

7. Further, in the October 18th Order, the Energy Bureau added Performance Metrics approved in the LUMA Targets Proceeding that were not previously reported in this instant proceeding. Among those new Performance Metrics to be reported are: J.D. Power Customer Satisfaction Survey (Residential Customers); J.D. Power Customer Satisfaction Survey (Business Customers); Customer Complaint Rate; Capital Budget: Federally Funded; Capital Budget: Non-Federally Funded Miles Completed (230kV, 115kV, 38kV, primary Distribution); and NEM Project Activation Duration.

8. Considerations of procedural economy, efficiency, and fairness support this course of action, particularly because the Energy Bureau’s Final Resolution and Order in the LUMA Targets Proceeding is not final and binding. Implementation, even if partial, of the Final Resolution and Order before it is final, runs counter to procedural fairness principles in adjudicative proceedings

that the Energy Bureau shall follow by virtue of the Puerto Rico Energy Transformation and RELIEF Act, Act 57-2014, as amended, which provides that any process for which Act 57-2014 does provide specific rules, shall be governed by the Uniform Administrative Procedure Act of the Government of Puerto Rico, Act 38-2017. *See* PR Laws Ann. Tit. § 1054t.

9. Section 1.2 of Act 38-2017 establishes that its provisions shall be construed liberally to ensure that administrative procedures are carried out in a speedy, just, and inexpensive manner, ensuring a fair solution to the cases under consideration by an agency. PR Laws Ann. Tit. 3 § 9602. This language tries as much as possible to remain faithful to the guiding principle of flexibility under Puerto Rico Administrative Law. *Lozada Sánchez v. JCA*, 184 DPR 898, 983 (2012).

10. A stay of the portion of the October 18th Order that instructs LUMA to align the data reported in the instant proceeding with the definition and methodology adopted in the LUMA Targets Proceeding, furthers procedural economy and averts inconsistencies with any determination that the Puerto Rico Court of Appeals may issue. The requested stay will also advance clarity and consistency regarding the System Data that LUMA has reported to the Energy Bureau since Service Commencement in 2021 and avoid confusion by the general public. For example, the System Data regarding those Performance Metrics that overlap with the Performance Metrics approved in the LUMA Targets Proceeding, has been submitted in this proceeding using monthly calculations. However, that methodology for some of the Performance Metrics would now change prospectively to annual values if LUMA is required to align reporting with the Performance Metrics approved in the LUMA Targets Proceeding.² In addition, one of the issues challenged by LUMA before the Puerto Rico Court of Appeals was the baselines imposed by the

² Those Performance Metrics are: Average Speed of Answer, Abandonment Rate; Distribution Line Inspections & Targeted Corrections; Transmission Line Inspections & Targeted Corrections; T&D Substation Inspections & Targeted Corrections; Operating Budget; Days Sales Outstanding: General Customers; Days Sales Outstanding: Government Customers; and Overtime.

Energy Bureau in the Final Resolution and Order in the LUMA Targets Proceeding, which modified LUMA's proposal by considering LUMA's performance for Fiscal Years 2022 and 2023, as reported in this instant proceeding, contrary to what was initially decided by the Energy Bureau on the applicable baselines.³ Aligning the reporting with the Performance Metrics as approved in the LUMA Targets Proceeding, could place LUMA at a disadvantage in what baseline would control without the Final Resolution and Order becoming final and firm.

11. LUMA's request to partially stay the effects of the October 18th Order is meant to allow the Puerto Rico Court of Appeals to consider LUMA's writ of judicial review without carrying a process in parallel that may undermine the Court's determinations. It also preserves LUMA's right to have the Court of Appeals review a final decision of this Energy Bureau.

12. It is respectfully submitted that once appellate proceedings conclude, the Energy Bureau will be in a better position to edit the reporting template, as needed, to align the data reported in the instant proceeding with the metric specifications in the LUMA Targets Proceeding, if it chooses to do so.

WHEREFORE, LUMA respectfully requests that this Honorable Bureau **take notice of** the aforementioned; and **partially stay** the Resolution and Order of October 18, 2024, particularly, the requirement to align the data reported in the instant proceeding with the metric specifications in the LUMA Targets Proceeding.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 7th day of November 2024.

³ The referenced Performance Metrics are: Average Speed of Answer (minutes); Customer Complaint Rate; Abandonment Rate; OSHA Recordable Incident Rate; OSHA Fatalities; OSHA Severity Rate; OSHA Days Away, Restricted, and Transfer Rate; SAIFI; SAIDI; and NEM Project Activation Duration.

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 PREPA's counsel of record, Alexis Rivera Medina, arivera@gmlex.net and Mirelis Valle Cancel, mvalle@gmlex.net, and Genera PR LLC, through its counsel of record Jorge Fernández-Reboredo, jfr@sbglaw.com and Alejandro López Rodríguez, alopez@sbglaw.com, and the Independent Consumer Protection Office, Hannia Rivera Diaz, hrivera@jrsp.pr.gov.



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