



GOVERNMENT OF PUERTO RICO
PUBLIC SERVICE REGULATORY BOARD 2021 JUL -9 PM 4: 03
PUERTO RICO ENERGY BUREAU

IN RE: PERFORMANCE TARGETS FOR LUMA ENERGY SERVCO, LLC	CASE NO. NEPR-AP-2020-0025 SUBJECT: COMMENTS ON LUMA'S PROPOSED PERFORMANCE TARGETS
--	--

**INSTITUTO DE COMPETITIVIDAD Y SOSTENEABILIDAD ECONOMICA DE PUERTO RICO
COMMENTS TO PERFORMANCE TARGET FOR LUMA ENERGY SERVCO, LLC**

TO THE BUREAU:

Now comes Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico (ICSE) represented by appearing counsel and respectfully alleges and prays:

1. In approaching the subject of performance targets, we distinguish targets that LUMA may use for the purpose of internal management, from targets which are approved by the PREB. The latter should relate to the quality of the services which LUMA provides the public. The design of PREB-approved metrics should be guided by three principles, as follows:

- a. Develop and use strategic focus metrics and targets. An excessive quantity of metrics raises administrative costs, which customers ultimately pay. We request PREB to limit itself to a few key metrics tailored to the energy public policy of Act 17-2019. The attributes of service quality which LUMA itself has identified as well below standards elsewhere in the industry (i.e., reliability and customer service) are an appropriate place to start. The elimination of a bonus concept tied to compliance with safety and labor laws (PROSHA for instance), or internal QA/QC processes (like equipment inspections) that are standards

compelled by law on any employer rather than actual service outcome improvements is another good first step for the PREB.

- b. Use metrics which measure outcomes, rather than inputs. The PREB should avoid the temptation to micro manage LUMA with metrics that relate to how operations are organized and managed. LUMA should have discretion to use its experience and judgement. LUMA was selected because of its experience. Let it use that experience and earn bonuses clearly linked to noticeable customer benefits, building LUMA-PREPA and PREB institutional trust. The PREB should focus on results, not how they are achieved.
- c. Use metrics to link win-win Customer-LUMA financial incentives.
 - i. It is appropriate and necessary for consumers to understand and support PREB-approved targets with financial incentives. That focuses LUMA's management attention on service outcomes prioritized by the PREB. With target financial incentives, LUMA's public service obligations can be explicitly aligned with the financial goals of LUMA's owners and managers.
 - ii. The dismal state of PREPA industry baseline metrics, the lack of public understanding and trust in the LUMA selection process, the establishment of contract targets and the public's opportunity to influence how they relate to LUMA financial bonus allow time and opportunities to build the transparency and citizen participation promoted by Act 17. LUMA contract Act 17 compliance should be validated by sophisticated and also by unsophisticated intervenors in PREB hearings in Spanish, where LUMA and PREB educate, build participation, and support.

Measuring LUMA's Recommended Performance Targets

2. Reliability is commonly measured through the System Average Interruption Duration Index (SAIDI) and the System Average Interruption Frequency Index (SAIFI). SAIDI measures the average duration of outages experienced by customers; SAIFI, the average number of interruptions. SAIDI and SAIFI values are calculated by the utility, pursuant to standards established by the Institute of Electrical and Electronics Engineers,¹ and reported to the U.S. Energy Information Administration.² This allows each utility to compare its performance to that of other utilities.

3. Customer service is usually measured through customer surveys. The J.D. Power Electric Utility Residential Customer Satisfaction StudySM,³ is a commonly used survey tool which measures residential customer satisfaction across six factors: Power Quality and Reliability; Price; Billing and Payment; Communications; Corporate Citizenship; and Customer Care. A key feature of the J.D. Power's tool is that it allows the user to benchmark (compare) its results to those of other large and midsize U.S. electric utilities.

Financial Incentive's Design

4. In designing financial incentives, the PREB needs to consider both the structure and strength of such incentives. Regarding structure, the PREB needs to decide whether to (a) offer only rewards for performance that exceeds specified targets, (b)

¹ See IEEE, Standard 1366-2003: <https://standards.ieee.org/standard/1366-2003.html>

² See EIA, *Annual Electric Power Industry Report, Form EIA-861 detailed data file*: <https://www.eia.gov/electricity/data/eia861/>

³ J.D. Power, *Electric Utility Residential Customer Satisfaction Study*: <https://www.jdpower.com/business/utilities/electric-utility-residential-customer-satisfaction-study>

impose only penalties for outcomes that fall below target, or (c) administer both rewards and penalties, depending on measured outcomes. We recommend an initial rewards-only design, recognizing that the PREB can subsequently impose penalties if it deems them appropriate. The period of performance for an initial incentives pilot (e.g., 12 months) should be defined up front.

Additional Performance Targets

5. The following are the Additional Performance Metrics that relate to inspections proposed by LUMA in Annex IX to the OMA: (a) Distribution Line Inspections & Targeted Corrections; (b) Transmission Line Inspections & Targeted Corrections (c) T&D Substation Inspections & Targeted Corrections.

6. The objective of each performance metric is “to incentivize system safety and provide data to make decisions on effective reliability improvements, predictive maintenance, circuit hosting capacity and resiliency upgrades.” However, the activity for which LUMA seeks to be incentivized is limited to the conduction of inspections and devising a plan of correction to be implemented 60 days after identifying deficiencies.

7. The right conclusion regarding the spirit of Act 17-2019 is not merely identifying grid deficiencies, but to solve them while also optimizing the electric service. This means that simply “patching up” distribution lines, transmission lines, and substations is not enough to satisfy the “Go Above and Beyond” benchmark that LUMA presents in Annex IX to the OMA because our Legislature sought advancement and not the perpetuation of our deficient electric system. See Article 1.4 (ii) and (iv) of Act 17-2019.

8. Data collection is an indispensable activity to enable maintenance and additional projects, yet it simply is a precondition and not the resulting activity (maintenance)

that the legislation proposes. It is then unacceptable to incentivize acquiring data when this does not assure the general public that the grid will evolve in quality, reliability, and efficiency. See Article 1.5 (9)(g) of Act 17-2019. LUMA must be incentivized as our energy public policy requires, but the way of doing so, as already mentioned, is by identifying key targets and not such a self-serving one as collection of data. See Article 1.5 (9)(f) of Act 17-2019 which imposes a responsibility of insuring improvements of the electric power grid.

9. Historically, PREPA has been deficient in inspecting its infrastructure to the point that such omissions have been negligent or borderline negligent. So, LUMA's obligations are incremented due to the impoverished data estate they've inherited from PREPA. However, the baseline established should not be PREPA's past performance, but the accepted national practices in the energy industry. See Article 1.9 (5) of Act 17-2019. If progress is to be expected, the PREB should not conform to such poor performance metrics.

10. Therefore, LUMA should be incentivized for *completed* maintenance projects that reflect the statutory mandates regarding implementation of scientific advancements and new technologies such as DERs and microgrids. See Articles 1.4 (iv) and 1.5 (9) of Act 17-2019. This way, LUMA will be forced from the start to recognize easily achievable solutions and implement the most cost-effective corrections while concurrently devising plans for those projects that require more elaborate planification and the PREB's approval.

11. Legitimate preoccupation may arise that directing the incentives towards maintenance will result in LUMA's reluctance to collect data, but nothing limits the PREB's

faculty of enforcing Article 1.5 (3)(b) of Act 17-2019. In other words, incentives regarding data collection are not emancipated from our proposal, but simply require the cardinal or central activity of maintenance.

12. In addition, given concerns about LUMA's commitment to implement the vision for a modern integrated grid as set forth in Act 17-2019, we recommend the PREB include a metric tied to the interconnection of distributed generators and interconnection of prosumer. Interconnection of distributed generators and prosumers can be totaled on an annual basis by LUMA.

OSHA-related performance metrics

13. Employees' safety is crucial and its importance is a matter of federal and state public policy. However, the goal of the PREB is the implementation of the energy public policy and not that of the labor public policy. Let us not forget Puerto Rico's Department of Labor and Human Resources (DLHR). This is the appropriate local government entity to implement the labor public policy of the island. As such, Act 16 of August 5th, 1975 known as the "Act of Health and Safety in the Workplace" confers disciplinary powers to the Secretary of Labor and Human Resources and broadly describes the instances in which any employer is subject to liability by noncompliance with the statute or the DLHR's regulations. This is a matter that the DLHR is best suited for and not PREB.

14. Even if the PREB decides to not incentivize LUMA by the performance metrics regarding OSHA incidents (as it should not), LUMA must still comply with any federal and domestic regulation on labor public policy or be subject to the appropriate penalties.

15. Performance-based incentives may have a positive effect (yet an indirect one) on all the policies of Act 17-2019, but incentivizing activities related to labor law compliance is not in the direct jurisdiction nor expertise of the PREB.

16. There could be causality between safety of employees and the furtherance of the energy public policy in the same way that there are benefits obtained from the safety of customers. Injuries in the workplace is a factor that could adversely affect costs of service. However, the appropriate way of curtailing these is by having employee insurance and by complying with the applicable federal and state regulations on safety.

17. For all these reasons, ICSE finds advisable and strongly pleads that the PREB request the DLHR's intervention in this proceeding.

18. Incentive regulation represents an important new tool for the PREB. Properly designed and judiciously administered, incentives can help ensure that LUMA is working to realize the vision of modern integrated grid set forth in Act 17-2019. There will be a learning curve associated with the use of incentives in Puerto Rico. We applaud the PREB for focusing these issues in a transparent public proceeding.

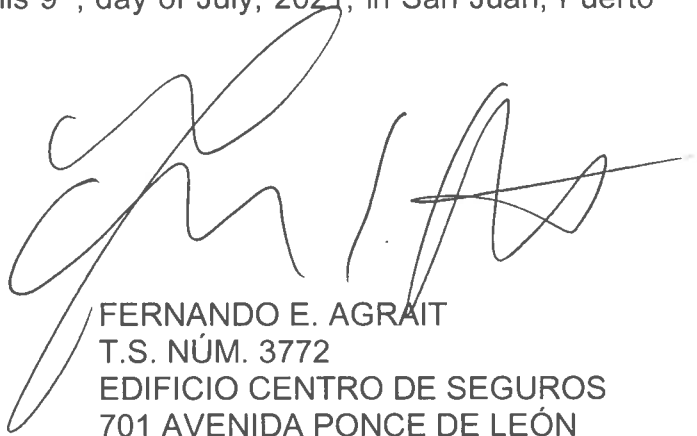
WHEREFORE, it is respectfully requested to exclude OSHA-related targets since they divert from the energy public policy and to include those that advance modernization, reliability, and accessibility; and to direct efforts on consumer education and participation.

CERTIFY: I hereby certify that, on this same date, we have filed this motion notified by electronic mail to: astrid.rodriguez@prepa.com, jorge.ruiz@prepa.com, margarita.mercado@us.dlapiper.com, carlos.reyes@ecoelectrica.com, Legal@lumamc.com, wayne.stensby@lumamc.com, mario.hurtado@lumamc.com, Ashley.engbloom@lumamc.com, Elias.sostre@aes.com; jesús.bolinaga@aes.com;

cfl@mcvpr.com; ivc@mcvpr.com; notices@sonnedix.com; leslie@sonnedix.com; victorluisgonzalez@yahoo.com; tax@sunnova.com; jcmendez@reichardescalera.com; r.martinez@fonroche.fr; gonzalo.rodriguez@gestampren.com; kevin.devlin@patternenergy.com; fortiz@reichardescalera.com; jeff.lewis@terraform.com; mperez@prrenewables.com; cotero@landfillpr.com; geoff.biddick@radiangen.com; hjcruz@urielrenewables.com; carlos.reyes@ecoelectrica.com; brent.miller@longroadenergy.com; tracy.deguse@everstreamcapital.com; h.bobea@fonrochepr.com; ramonluisnieves@rlnlegal.com; hrivera@jrsp.pr.gov; info@sesapr.org; yan.oquendo@ddec.pr.gov; acarbo@edf.org; pjcleanenergy@gmail.com; nicolas@dexgrid.io; javrua@gmail.com; JavRua@sesapr.org; lmartinez@nrhc.org; thomas.quasius@aptim.com; rtorbert@rmi.org; lionel.orama@upr.edu; noloseus@gmail.com; aconer.pr@gmail.com; dortiz@elpuente.us; wilma.lopez@ddec.pr.gov; gary.holtzer@weil.com; ingridmvila@gmail.com; rstgo2@gmai1.com; agc@agcpr.com; presidente@ciapr.org; cpsmith@unidosporuturado.org; jmenen6666@gmai1.com; cpares@maximosolar.com; CESA@cleanegroup.org; acasepr@gmail.com; secretario@ddec.pr.gov; julia.mignuccisanchez@gmail.com; professoraviles@gmail.com; gmch24@gmail.com; ausubopr88@gmail.com; carlos.rodriguez@valairlines.com; amaneser2020@gmail.com; acasellas@amgprlaw.com; presidente@camarapr.net; jmarvel@marvelarchitects.com; amassol@gmail.com; jmartin@arcainc.com; melitza.lopez@aep.pr.gov; eduardo.rivera@afi.pr.gov; leonardo.torres@afi.pr.gov; carsantini@gmail.com; directoralcaldes@gmail.com; imolina@fedalcaldes.com; LCSchwartz@lbl.gov; thomas@fundacionborincana.org; cathykunkel@gmail.com; joseph.paladino@hq.doe.gov;

adam.hasz@ee.doe.gov; Sergio.Gonsales@patternenergy.com; Eric.Britton@hq.doe.gov; energiaverdepr@gmail.com; Arnaldo.serrano@aes.com; gustavo.giraldo@aes.com; accounting@everstreamcapital.com; mgrpcorp@gmail.com; jcayas@landfillpr.com; Jeanna.steele@sunrun.com; mildred@liga.coop; rodrigo-masses@gmail.com; presidenciasecretarias@seguros multiples.com; psmith@cooperativahidroelectrica.coop; maribel@cooperativahidroelectrica.coop; apoyo@cooperativahidroelectrica.coop; cpsmith@cooperativahidroelectrica.coop.

RESPECTFULLY SUBMITTED this 9th, day of July, 2021, in San Juan, Puerto Rico.



FERNANDO E. AGRAIT
T.S. NÚM. 3772
EDIFICIO CENTRO DE SEGUROS
701 AVENIDA PONCE DE LEÓN
OFICINA 414
SAN JUAN, PUERTO RICO 00907
TELS 787-725-3390/3391
FAX 787-724-0353
EMAIL: agraitfe@agraitlawpr.com