

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

**NEPR**

**Received:**

**Sep 9, 2021**

**3:15 PM**

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

**CASE NO. NEPR-AP-2020-0025**

**SUBJECT: Request for Authorization to  
Substitute Pre-Filed Testimony of Esther  
González**

**MOTION REQUESTING AUTHORIZATION TO SUBSTITUTE  
THE PRE-FILED TESTIMONY OF ESTHER GONZÁLEZ**

**TO THE HONORABLE PUERTO RICO ENERGY BUREAU:**

**COME** now **LUMA Energy, LLC** (“ManagementCo”), and **LUMA Energy ServCo, LLC** (“ServCo”), (jointly referred to as the “Operator” or “LUMA”), and respectfully state and request the following:

1. On August 18, 2021, LUMA filed a *Motion Submitting Pre-Filed Testimonies* before this Honorable Puerto Rico Energy Bureau (“Energy Bureau”). Therein, LUMA submitted the pre-filed testimonies of the nine (9) witnesses it intended to present at the evidentiary hearing. Among the pre-filed testimonies, was the direct testimony of Ms. Esther C. González, Vice President of Health, Safety, Environmental & Quality for ManagementCo. Her testimony covered the performance metrics related to safety, specifically on topics such as: OSHA Recordable Incident Rate, OSHA Fatalities, OSHA Severity Rate, and OSHA Days Away, Restricted and Transfer Rate (“OSHA DART Rate”)

2. LUMA hereby informs that Mrs. González is no longer employed with the company with effect on September 1<sup>st</sup>, 2021. This unfortunate situation is evidently due to circumstances

that are beyond LUMA's reasonable control. As such, LUMA requests this Energy Bureau to allow the designation of a new witness that can provide the above-described testimony.

3. LUMA has identified Mr. Jorge Meléndez, Safety and Training Lead for ServCo as a witness to offer the testimony in support of the performance metrics related to safety. Mr. Meléndez has extensive professional experience in developing, evaluating, and maintaining safety programs, and participated and/or lead many incidents investigations. He also gave Mrs. González support in the analysis of the data and safety metrics when she was preparing her pre-filed testimony for this proceeding. Mr. Meléndez is knowledgeable of the pertinent data and workpapers as part of his employment duties. Thus, he is the person within LUMA that can provide testimony on the specific topics that were going to be originally covered by Mrs. González's testimony.

4. The testimony that Mr. Meléndez expects to provide by no means intends to vary substantially from the subject-matter of Mrs. González's pre-filed testimony. In fact, Mr. Meléndez's testimony is limited to support LUMA's Performance Metrics Targets Revised filing on the performance metrics related to safety; concretely on the OSHA Recordable Incident Rate, OSHA Fatalities, OSHA Severity Rate, and OSHA DART Rate, which were precisely the same areas covered by the pre-filed testimony of Mrs. González. The only variations to Mrs. González's pre-filed testimony are the responses to the questions that pertain to the academic and professional background of the witness, as well as the disclosure of any previous appearances before this Energy Bureau to provide testimony.

5. In view of the foregoing, LUMA respectfully requests that this Energy Bureau receive and accept the Pre-Filed Testimony of Mr. Jorge Méndez in substitution of the one filed for Mrs. Esther C. González on August 18, 2021. The Pre-Filed Testimony of Mr. Jorge Méndez is hereby included as Exhibit 1. This request is done in good faith and responds to LUMA's need to substitute the witness person that will provide testimony on the performance metrics related to safety due to Mrs. González inability to serve as witness for LUMA.

**WHEREFORE,** LUMA respectfully requests that the Energy Bureau **receive and accept** the Pre-Filed Testimony of Mr. Jorge Méndez in substitution of the one filed for Mrs. Esther C. González on August 18, 2021.

**RESPECTFULLY SUBMITTED.**

We hereby certify that we filed this motion using the electronic filing system of this Energy Bureau and that I will send an electronic copy of this motion to the attorneys for PREPA, Joannely Marrero-Cruz, [jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law); and Katuska Bolaños-Lugo, [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law), the Office of the Independent Consumer Protection Office, Hannia Rivera Diaz, [hrivera@jrsp.pr.gov](mailto:hrivera@jrsp.pr.gov), and counsel for the Puerto Rico Institute for Competitiveness and Sustainable Economy ("ICSE"), Fernando Agrait, [agraitfe@agraitlawpr.com](mailto:agraitfe@agraitlawpr.com), counsel for the Colegio de Ingenieros y Agrimensores de Puerto Rico ("CIAPR"), Rhonda Castillo, [rhoncat@netscape.net](mailto:rhoncat@netscape.net), and counsels for Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc., Enlace Latino de Acción Climática, Alianza Comunitaria Ambientalista del Sureste, Inc., Coalición 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](mailto:larroyo@earthjustice.org), [rstgo2@gmail.com](mailto:rstgo2@gmail.com), [notificaciones@bufete-emmanuelli.com](mailto:notificaciones@bufete-emmanuelli.com), [pedrosaade5@gmail.com](mailto:pedrosaade5@gmail.com), [jessica@bufete-emmanuelli.com](mailto:jessica@bufete-emmanuelli.com); [rolando@bufete-emmanuelli.com](mailto:rolando@bufete-emmanuelli.com).

In San Juan, Puerto Rico, this 9th day of September 2021.



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*EXHIBIT 1*

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

**IN RE:**

PERFORMANCE TARGETS FOR LUMA  
ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

Direct Testimony of  
Mr. Jorge Meléndez  
Safety and Training Lead, LUMA Energy ServCo LLC  
September 9, 2021

- 1    **Q.    Please state your name.**
- 2    A.    My name is Jorge Meléndez.
- 3    **Q.    Please state your business mailing address, title, and employer.**
- 4    A.    My business address PO Box 363508 San Juan, Puerto Rico 00936-3508. I am the Safety  
5    and Training Department Functional Lead at LUMA Energy LLC.
- 6    **Q.    Please state your educational background.**
- 7    A.    I have a bachelor's degree from Marshall University, WV with concentration in accounting  
8    studies.
- 9    **Q.    Please state your professional experience.**
- 10   A.    I have approximately twenty-one years of professional experience in the Occupational  
11   Safety and Health in the Power and Energy Industry. In 2003, I joined the Quanta Services  
12   Safety, Environmental, Health and Quality Department as a Corporate Training and Safety  
13   Manager Lead.
- 14   **Q.    Please describe your work experience prior to joining LUMA.**
- 15   A.    I have worked for several years developing, evaluating, and maintaining safety programs  
16   throughout all Quanta Services Companies. In addition, participated and/or lead many  
17   incidents investigations.
- 18   **Q.    On whose behalf are you testifying before the Puerto Rico Energy Bureau.**
- 19   A.    My testimony is on behalf of LUMA as part of the Puerto Rico Energy Bureau ("Energy  
20   Bureau"), Commonwealth of Puerto Rico Public Service Regulatory Board proceeding  
21   Case No. NEPR-AP-2020-0025, the Performance Targets for LUMA Energy ServCo,  
22   LLC.
- 23   **Q.    Are there any exhibits attached to your testimony?**

24 A. Yes, there is one exhibit attached to my testimony:

25 a. Exhibit A: KPI Metrics - Safety

26 **Q. Do you hold any professional licenses, if so, which?**

27 A. I hold the Certified Utility Safety Professional (CUSP) and Certified Health and Safety  
28 Technician (CHST) certifications.

29 **Q. Have you previously testified or made presentations before the Energy Bureau?**

30 A. No.

31 **Q. Which documents did you consider for your testimony?**

32 A. I considered the following documents:

33 a. LUMA's Performance Metrics Targets Revised filing submitted on August 18, 2021,  
34 in this proceeding, Case No. NEPR-AP-2020-0025,

35 b. The Resolutions and Order issued by the Puerto Rico Energy Bureau on April 8, 2021,  
36 May 21, 2021, and July 2, 2021, in Case NEPR-MI-2019-0007,

37 c. Motion resubmitting LUMA's comments on Performance Baselines and Metrics in  
38 Case No. NEPR-MI-2019-0007 submitted February 5, 2021 as revised on February 8,  
39 2021,

40 d. PREPA OSHA 300 and 301 log,

41 e. PREPA Casi Casi report, and

42 f. PREPA incident's log spreadsheet.

43 **Q. What is the purpose of your direct testimony?**

44 A. My testimony is in support of LUMA's Performance Metrics Targets Revised filing to be  
45 filed in this proceeding on August 18, 2021 ("LUMA's Performance Metrics Targets")  
46 on performance metrics related to safety, specifically:



- 47 a. OSHA Recordable Incident Rate – which is a calculation using total number of OSHA  
48 recordable incidents. An OSHA recordable incident is an injury or illness that results  
49 in one or more of the following: death, days away from work, restricted work or transfer  
50 to another job, medical treatment beyond first aid, loss of consciousness, a significant  
51 injury or illness diagnosed by a physician or other licensed health care professional,
- 52 b. OSHA Fatalities – which as per OSHA requires, considers all work-related fatalities be  
53 reported to OSHA within eight (8) hours. The industry standard target is 0 fatalities,  
54 which has determined the Baseline and Target Performance Levels,
- 55 c. OSHA Severity Rate– which is used to measure the severity of workplace injuries and  
56 is commonly used to measure safety performance across the utility industry. Its  
57 calculation considers the total number of restricted and lost time days incurred as a  
58 result of a work-related injury, and
- 59 d. OSHA Days Away, Restricted and Transfer Rate (“OSHA DART Rate”) – which is a  
60 calculation that considers the total number of injury cases that resulted in either lost  
61 time, restricted time, or a transfer from the employee’s regular job.

62 **Q. Please describe the methodology for the Safety Performance Metrics.**

63 A. The methodology is aligned with OSHA requirements. As part of the OSHA requirements,  
64 every year employers must report to OSHA critical metrics that evidence their health and  
65 safety performance. Some of those metrics and their associated calculations are:

66 The reporting of these metrics is closely monitored by OSHA and the industries are subject  
67 to scrutiny based on their performance. These metrics are managed, tracked, and reported  
68 to ensure a safe & healthy workplace. Therefore, the primary value of these metrics is to  
69 evaluate and quantify the company’s safety performance. The description for each of the

metrics is as follows:

- a. OSHA Recordable Incident Rate: is the number of work-related OSHA recordable injury cases. The formula = (number of injuries and illnesses X 200,000) / Employee hours worked]
- b. OSHA Fatalities: is the number of work-related fatalities,
- c. OSHA Severity Rate is calculated on the basis of the OSHA Severe Injuries number of total work-related industry cases with severity days. The formula = (Total number of lost workdays or restricted x 200,000)/ actual hours worked by all employees, and
- d. DART Rate is the number of work-related injuries- The formula = (# of work-loss or restricted cases x 200,000) /# of hours worked.

**Q. What data, if any, was analyzed for the Safety Performance Metrics?**

A. Health and Safety Performance Metrics were established taking into consideration the PREPA OSHA 300 and 301 Logs and the PREPA Injury and Illness Data Reports including a Casi Casi report that PREPA began recording at the end of 2019. The data provided includes records from GENCO, Administration, and Transmission & Distribution ("T&D"). The first step during the analysis was to segregate the data to reflect T&D and Administration only and exclude generation.

**Q. How was the available data analyzed to calculate the baseline for these Safety Performance Metrics?**

A. The segregated data for the time period proposed in the Energy Bureau's Resolution and Order of May 21, 2021, was evaluated (2020 FY). Also, the cases or reportable injuries were reviewed, and recordable injury reports were validated. In LUMA's review process the following evidence was found that raises questions on the reliability of the data that

PREPA provided for Safety Metrics and that LUMA understands the Energy Bureau considered in its Resolution and Order of May 21, 2021:

1. New incident log for 2020 (Casi Casi) – A number of incidents and near misses included on a new report entitled ‘Casi Casi.’ These incidents were not classified as OSHA recordable injuries in the calculation of PREPA’s original safety metrics submission. However, based on the information on the Casi Casi report, most of the incidents should have been recorded on the OSHA logs because they were injuries with medical treatment that included time out of work and/or medication. This information was crucial on our decision to include the relevant Casi Casi incidents that had evidence of OSHA recordability in the calculations on the baseline numbers instead of the numbers provided in the Energy Bureau based on PREPA’s reported data, which exclude all Casi Casi incidents. I include two examples of incidents included on the Casi Casi report here for demonstration:

- Example 1 – on 1/03/2020 employee was involved on an official vehicle accident resulting on **10 days out of work**
- Example 2 – on 5/6/2020 an employee was struck by an insulated stick resulting on laceration on the right ear. Employee received **5 stitches**.

Based on a review of the data, the following information was included in the Casi Casi report but not included in the metrics data prepared by PREPA that LUMA understands was available to the Energy Bureau in issuing the Resolution and Order of May 21, 2021:

- 58 recordable injuries (for a revised total of 300 recordable injuries)
- 57 recordable injuries that resulted in lost workdays (for a revised total of 235



recordable injuries that resulted in lost workdays)

- A total of 510 lost workdays (for a revised total of 1990 lost workdays) - See Exhibit 121 A, Worksheet Casi Casi 2019 2020 – N, and
- The total number of hours worked was based on half of the total number of hours worked in 2019 (LUMA did not have monthly hours worked for the 2019 calendar year) plus the monthly hours worked from January 1 to June 30, 2021 - See Exhibit 125 A, Worksheet Casi Casi 2019 2020 – N.

**Q. What is your assessment of the data provided by PREPA to the Energy Bureau in connection with Safety Metrics?**

Evidence gathered during the front-end transition indicates that historical safety data compiled by PREPA contains inaccuracies. Although historical data for PREPA is available dating back to 2002, the detailed records to support that data are not available. In addition, interviews with individuals from the PREPA Occupational Health and Safety responsibility suggested that the supplied info contained inaccuracies. We also identified differences in the raw data that PREPA provided and OSHA records. Most of all the Health & Safety data is collected and manually entered an excel spreadsheet, which may result in data transcription errors when manipulating data.

Also, PREPA was historically using an erroneous formula for Severity Rate. PREPA was using: Lost days/Total Incidents. The correct formula is: (Total Lost days and restricted/Total actual worked hours) X 200,000. Lastly, the aggregated data also includes Generation which should not be considered for LUMA.}

Finally, LUMA requested from PREPA but did not receive, the reports of with the

Corporación del Fondo del Seguro del Estado to determine if the recordable injury details match. The data that was used in the Resolution and Order of the Energy Bureau on May 21, 2021 in Case No. NEPR-MI-2019-0007, has not been compared to the reports of the Corporación del Fondo del Seguro del Estado. There is a significant risk with the variable of "Lost Days". The determination for Lost Days comes from the Fondo del Seguro del Estado. The Fondo de Seguro del Estado is a government owned and operated organization. In Puerto Rico, the Fondo de Seguro del Estado must be used. However, there is little to no challenging of the outcomes of Fondo de Seguro del Estado and little to no modified work or restricted work

**Q. Why did LUMA propose different baselines for the Safety Performance Metrics?**

A. As previously stated, LUMA understands that the Energy Bureau's baselines were calculated using a different Fiscal Year period and safety data that was inaccurate based on OSHA standards. The baseline proposed by LUMA is calculated using the health and safety data that is compliant with OSHA standards.

**Q. In brief, what are your recommendations for the baselines applicable to LUMA's Safety Metrics?**

A. LUMA believes that PREPA understated Safety Performance Metrics beginning in January 2020 with the creation of the Casi Casi report. Inclusion of appropriate data from the Casi Casi report increases PREPA's Safety Performance Metrics to levels consistent with prior periods and more accurately represents PREPA's historical performance. As a result, LUMA requests that PREB approves LUMA's adjustment to the Safety Performance Metrics baselines inclusive of relevant incidents from the Casi Casi report.

The transparency and accuracy in the metrics reported is critical to avoid scrutiny from

federal and local agencies. Reporting mistaken health and safety metrics creates a misconception on how the business is performing related to critical aspects such as the well-being of our employees, along with the opportunity to implement performance improvement plans based on the trending data.

**Q. How were LUMA's targets set for the Safety Performance Metrics?**

A. LUMA removed the GENCO incidents and added the relevant incidents in the Casi-Casi report to the data on the PREPA OSHA recordable injury log for the FY2019 and 2020. The proposed targets are laid out in Tables 2-9, 2-10, 2-11 and 2-12.

OSHA Recordable Incident Rate target improvements were first compared to EEI industry standards then by assessing feasibility from PREPA's current state related to health and safety matters. A strategy was developed to lead LUMA to an Incident Reduction near 50% from the baseline in Year 3. Similar approaches were taken for OSHA Fatalities and OSHA DART Rate in terms of setting targets based on the goal to improve safety systems and processes.

OSHA Severity targets rely significantly on external factors outside of LUMA's control. For that reason, targets were set with the goal to improve performance, but providing flexibility to the extenuating circumstances that exist on a case-by-case basis.

**Q. How will the improvements be achieved for the Safety Performance Metrics?**

A. As explained in Section 3 of LUMA's Performance Metrics Targets Revised Filing, there are several opportunities for improvements from the creation and application of a safety plan involving a safety culture, training, assessing training needs, development of a safety training plan, analysis of metrics trends and causes and identification of prevention

182 strategies, and design an incident reporting system and process for analysis and follow up.

183 All of these opportunities will boost the health and safety program.

184 LUMA has prioritized objectives and initiatives to increase the level of safety for  
185 employees. The initiatives are supported by the programs in the Initial Budgets approved  
186 by the Energy Bureau, including establishing a software system for incident management,  
187 no-harm culture training and enhanced HSE&Q training programs and will also be  
188 supported by operational federally funded programs of the approved System Remediation  
189 Plan.

190 **Q. What is your request to the Energy Bureau?**

191 A. I request that the LUMA Safety Performance Metrics baselines and targets as detailed in  
192 LUMA's Revised Performance Metrics Targets Filing be approved as requested.

193 **Q. Does this complete your testimony?**

194 A. Yes.



## ATTESTATION

Affiant, Mr. Jorge Omar Meléndez, being first duly sworn, states the following:

The prepared Direct Testimony constitutes my direct testimony in the above-styled case before the Puerto Rico Energy Bureau. Affiant states that he would give the answers set forth in the Direct Testimony if asked the questions that are included in the Direct Testimony. Affiant further states that, facts and statements provided herein is his direct testimony and to the best of his knowledge are true and correct.



Acknowledged and subscribed before me by Mr. Jorge Omar Meléndez, in his capacity as Safety and Training Lead of LUMA Energy, who is personally known to me.

In San Juan, Puerto Rico, this 9 day of September 2021.

Affidavit # -8,441-



Public Notary





Direct Testimony

Exhibit A