

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

NEPR

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

CASE NO. NEPR-AP-2020-0025

**SUBJECT: Motion Submitting Rebuttal
Testimony of Witness Mario Hurtado**

**MOTION SUBMITTING REBUTTAL TESTIMONY OF
WITNESS MARIO HURTADO**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME now **LUMA Energy, LLC** (“ManagementCo”), and **LUMA Energy ServCo, LLC** (“ServCo”) (jointly “LUMA”), and respectfully states and request the following:

1. On February 1, 2022, LUMA filed with this Puerto Rico Energy Bureau (“Energy Bureau”) a *Motion Submitting Rebuttal Testimonies*. LUMA submitted the rebuttal testimonies of five of its witnesses and reiterated that the remaining testimonies would be filed by the set date of February 17, 2022.

2. On February 16, 2022, LUMA filed an *Urgent Request for Extension of Time to File Rebuttal Testimony of Witness Mario Hurtado* (the “Urgent Request”). LUMA informed that Mr. Mario Hurtado (“Mr. Hurtado”), Chief Regulatory Officer for LUMA, had an unexpected family emergency outside the jurisdiction of Puerto Rico that made it unattainable for him to finalize his testimony by the due date. Consequently, LUMA requested an extension up to February 25, 2022, to file Mr. Hurtado’s rebuttal testimony.

3. On February 17, 2022, LUMA filed *LUMA’s Motion Submitting Additional Rebuttal Testimonies*, whereby it submitted the rebuttal testimonies of six witnesses on the

intervenors' pre-filed direct testimonies. The testimonies included those of four LUMA employees and two rendered by LUMA's expert witnesses. *See*, Exhibits 1 and 2 of *LUMA's Motion Submitting Additional Rebuttal Testimonies*.

4. On February 23, 2022, this Energy Bureau entered a Resolution and Order whereby it granted LUMA's Urgent Request and, therefore, extended the deadline for LUMA to file Mr. Hurtado's rebuttal testimony until February 25, 2022. This Energy Bureau granted the parties and intervenors in this proceeding ten (10) days from LUMA's filing of that testimony to submit any additional discovery related solely to such rebuttal written testimony of Mr. Hurtado.

5. On that same day, February 23, 2022, LUMA filed an *Urgent Request for an Additional Extension of Time to File Rebuttal Testimony of Witness Mario Hurtado* requesting an additional brief extension of time until March 3, 2022, to file Mr. Hurtado's rebuttal testimony due to his unexpected family emergency.

6. On March 1, 2022, the Energy Bureau issued a Resolution and Order granting LUMA until March 3, 2022, to the rebuttal testimony of Mr. Hurtado.

7. In compliance with the Resolution and Order of March 1, 2022, LUMA respectfully submits with this Motion as **Exhibit 1** the pre-filed witness rebuttal testimony of Mr. Hurtado.

WHEREFORE, LUMA respectfully requests that this Energy Bureau **receive and accept** the rebuttal testimony of Mr. Hurtado, submitted as **Exhibit 1** to this Motion; and **deem** that LUMA fully complied with the requirements of this Energy Bureau with regards to the pre-filed witnesses' rebuttal testimonies.

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; and Katiuska Bolaños-Lugo, kbolanos@diazvaz.law, the Office of the Independent Consumer Protection Office, Hannia Rivera Diaz, hrivera@jrsp.pr.gov,

and counsel for the Puerto Rico Institute for Competitiveness and Sustainable Economy (“ICSE”), Fernando Agrait, agraitfe@agraitlawpr.com, counsel for the Colegio de Ingenieros y Agrimensores de Puerto Rico (“CIAPR”), Rhonda Castillo, 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, rstgo2@gmail.com, notificaciones@bufete-emmanuelli.com, pedrosaade5@gmail.com, jessica@bufete-emmanuelli.com; rolando@bufete-emmanuelli.com.

In San Juan, Puerto Rico, this 3rd day of March 2022.



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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

**Rebuttal Testimony of
Mr. Mario Hurtado
Chief Regulatory Officer and Vice President, LUMA Energy ServCo LLC
March 3, 2022**

1 **Q. Please state your name.**

2 A. My name is Mario Hurtado.

3 **Q. Please state your business mailing address, title, and employer.**

4 A. My business mailing address is PO Box 363508 San Juan, Puerto Rico 00936-3508. I am

5 the Chief Regulatory Officer for LUMA Energy.

6 **Q. Please state your educational background.**

7 A. I received a Bachelor of Arts degree in Political Science from Columbia University in

8 1990.

9 **Q. Please state your professional experience.**

10 A. I have over 25 years of professional experience developing and managing large electric

11 utility and energy businesses throughout the United States and Latin America. My

12 experience includes execution of multiple transactions of and management of electric

13 utility public private partnerships, including the assumption of operations and

14 management of formerly government-run operations. I have been a member of the senior

15 management team and on the Board of Directors of utility companies serving millions of

16 customers. I have developed electric utility and other energy infrastructure, including

17 during my time as an executive at Reliant Energy and Duke Energy. In October, 2021, I

18 was appointed as a member of the Electricity Advisory Committee of the United States

19 Department of Energy. In 2020, I joined LUMA Energy as Vice President of Regulatory.

20 **Q. Please describe your work experience prior to joining LUMA.**

21 A. Prior to joining LUMA, I was an advisor for Quanta Services, focused on the Request for

22 Proposal for Operation & Maintenance of the Puerto Rico Transmission and Distribution

23 System.

24 **Q. Have you previously testified and appeared before the Puerto Rico Energy Bureau?**

25 A. Yes. I have provided testimony under oath in Technical Conferences in several
26 proceedings, including: Initial Budgets, Case No. NEPR-MI-2021-0004, System
27 Operation Principles, Case No. NEPR-MI-2021-0001; System Remediation Plan, Case
28 No. NEPR-MI-2020-0019; Review of LUMA's Terms of Service, Case No. NEPR-MI-
29 2021-0007, LUMA's Model Bill, NEPR-MI-2021-0008; Vegetation Management Plan,
30 Case No. NEPR-MI-2019-0005, PREPA's 10 Year Plan, Case No. NEPR-MI-2020-0021,
31 Despliegue de Infraestructura de Cargadores para Vehículos Eléctricos, NEPR-MI-2021-
32 0013, Performance of the Puerto Rico Electric Power Authority, Case No. NEPR-MI-
33 2019-0007; Performance Targets for LUMA Energy ServCo, NEPR-AP-2020-0025;
34 Emergency Response Plan for the Puerto Rico Electric Power Authority, Case No.
35 NEPR-MI-2019-0006; PREPA's Permanent Rate Case, NEPR-MI-2020-0001;
36 Implementation of the Puerto Rico Electric Power Authority Integrated Resource Plan
37 and Modified Action Plan, NEPR-MI-2020-0012; Review of the Puerto Rico Electric
38 Power Authority's Physical Security Plan, NEPR-MI-2020-0018; and Puerto Rico
39 Electric Power Authority Data Security Plan NEPR-MI-2020-0017.

40 **Q. On whose behalf are you testifying before the Puerto Rico Energy Bureau?**

41 A. My testimony is on behalf of LUMA as part of the Puerto Rico Energy Bureau ("Energy
42 Bureau"), Commonwealth of Puerto Rico Public Service Regulatory Board proceeding
43 Case No. NEPR-AP-2020-0025, the Performance Targets for LUMA Energy ServCo,
44 LLC.

45 **Q. What is the purpose of your rebuttal testimony?**

46 A. To respond to those portions of the pre-filed testimony of Mr. Agustín Irizarry ("Mr.

Irizarry”) on behalf of the Local Environmental and Civil Organizations (“LECO”), filed on November 16, 2021, in this proceeding, regarding his recommendations on Performance Metrics and Penalties in general and penalties on Financial metrics. Further, I will respond to those portions of the pre-filed testimony of Mr. Gerardo Cosme (“Mr. Cosme”) on behalf of the Independent Consumer Protection Office (“ICPO”), filed on November 17, 2021, in this proceeding, regarding his proposals on the Operational Budget metric, and the inclusion of three new metrics on: Generation from RPS eligible PPOA’s by % of sales; Overall Average Capacity Factor for RPS Eligible Capacity in terms of percentage; and Overall Number of Curtailed Hours from RPS Eligible Capacity. I also testify to further support LUMA’s Performance Metrics Targets filing of September 24, 2021 (“LUMA’s Performance Metrics Targets”).

Q. Did you consider any documents for your rebuttal testimony?

A. Yes, I did.

Q. Which documents did you consider for your rebuttal testimony?

- a. LUMA’s Performance Metrics Targets Revised filing submitted on September 24, 2021, in this proceeding, Case No. NEPR-AP-2020-0025,
- b. The direct testimonies of LUMA’s witnesses filed on August 18, 2021, September 9, 2021, and September 24, 2021,
- c. LUMA’s Comments on Baselines & Reply Comments filed on February 19, 2021 & February 22, 2021.
- d. The pre-filed testimony of Mr. Agustín Irizarry of November 16, 2021, filed in this proceeding, Case No. NEPR-AP-2020-0025 and his expert report, which is an exhibit of his pre-filed testimony,

- e. The responses provided by Mr. Agustín Irizarry to LUMA’s First and Second Sets of Interrogatories and Requests for Production of Documents notified on January 13, 2022,
- f. The responses provided by Mr. Agustín Irizarry to the Puerto Rico Energy Bureau’s Requirements for Information notified on December 20, 2021,
- g. The supplemental responses provided by Mr. Agustín Irizarry to LUMA’s First and Second Sets of Interrogatories and Requests for Production of Documents, notified on February 4, 2022,
- h. The pre-filed testimony of Mr. Gerardo Cosme of November 17, 2021, filed in this proceeding, Case No. NEPR-AP-2020-0025,
- i. The responses provided by Mr. Gerardo Cosme to LUMA’s First and Second Set of Interrogatories and Request for Production of Documents, which were notified on January 5 and 13, 2022,
- j. The responses provided by Mr. Gerardo Cosme to the Puerto Rico Energy Bureau’s Requirements for Information notified on December 27, 2021,
- k. The supplemental responses provided by Mr. Gerardo Cosme to LUMA’s First Set of Interrogatories and Request for Production of Documents, notified on January 31, 2022,
- l. Portions of the Second Amended and Restated Operations Services Agreement between Long Island Lighting Company d/b/a LIPA and PSEG Long Island LLC, dated December 15, 2021,
- m. The Partnership Committee Report, Puerto Rico Public-Private Partnership for the Electric Power Transmission and Distribution System, May 15, 2020.

n. The Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement of June 22, 2020, and

o. The rebuttal testimonies of experts Juan Lara and B. Terzic of February 16, 2022, and the rebuttal testimonies of LUMA's witnesses filed on February 1st and 17th, 2022.

Q. Did you rely on any other information for your testimony?

A. My professional experience, including my experience in connection with the Transmission and Distribution System of the Puerto Rico Electric Power Authority ("PREPA") and its operations ("T&D System").

Q. Do you have a response to Mr. Irizarry's recommendation to the Puerto Rico Energy Bureau (Energy Bureau) that it should open a truly participative process to determine specific, measurable objectives and propose metrics to measure progress toward these objectives, as stated on page 6, lines 1-6 and page 13, lines 6-5 of his direct pre-filed testimony?

A. Yes, I do.

Q. Please explain your response.

A. Mr. Irizarry's recommendation is a vague assertion that is not clear in its meaning and implies that the Energy Bureau's proceedings are not adequate for a determination on LUMA's proposed Performance Metrics Targets. I disagree with Mr. Irizarry's suggestion that the current proceeding is not "truly participative." The current proceeding is an administrative, adjudicative proceeding which was initiated by the Energy Bureau in December of 2020 and follows the regulations established by the Energy Bureau. The process includes the opportunity for participation by intervenors. LECO's participation as an ad-hoc group composed of eight organizations who have asserted an interest in the

proceeding shows that the Energy Bureau has followed a “participative” process. The ICPO as the established representative of electric utility customers is also participating in this matter. To my knowledge all of the proceedings, including the motions filed and orders issued by the Energy Bureau, are available for review by the public. The Energy Bureau has the obligation and authority to take into consideration the evidence presented by the parties, including intervenors, and to weigh the evidence available to make a determination. The Energy Bureau will also hear public comment in this docket, which will become part of the record. Mr. Irizarry implies that there is something false about the Energy Bureau’s established processes, and that thus these are not legitimate. Mr. Irizarry does not present any evidence of how the Energy Bureau’s processes are not “truly” participative.

Q. Do you agree with Mr. Irizarry’s recommendation on page 6, lines 4-6 of his pre-filed testimony that metrics should incorporate both rewards for exceeding expectations and penalties for not achieving the expected?

A. No.

Q. Please state and explain your response.

A. The Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (T&D OMA) was the result of a eighteen month long, competitive proposal process. Prior to the procurement process, the Puerto Rico government decided that an operator structure under a public private partnership was the most appropriate method to improve the administration and management of the electric utility. Under this structure the operator was selected based on a specific allocation of risks and rewards, specifically designed for an operator and not an equity owner. As the Operator, LUMA’s

139 compensation is limited based on the fee structure. Article 7 of the T&D OMA
140 specifically includes an Incentive Fee as a component of the total Service Fee for the
141 operator. The Incentive Fee is not structured as a variable fee to reduce the total
142 compensation. The penalties or the disincentives for the operator are established as
143 default provisions in the T&D OMA and are part of the overall risk and reward equation
144 embodied in the T&D OMA. As stated in the Partnership Committee Report of the Puerto
145 Rico Public-Private Partnership for the Electric Power Transmission and Distribution
146 System issued May 15, 2020, LUMA's proposal was judged to be superior to that of
147 other competitors, including the acceptance by LUMA of the structure of the
148 performance metrics and incentives that were proposed by the Government of Puerto
149 Rico. This structure is a fundamental part of the public private partnership that was
150 established in the context of a failed electric utility. The assumption of operations of such
151 a utility is in itself a risky endeavor because of the multiple additional barriers to
152 execution not present in a normally functioning utility. While Mr. Irizarry refers
153 repeatedly to a "fixed fee," the performance metrics are tied to an Incentive Fee that is
154 not fixed. The amount of compensation for the operator has certain limits and lower
155 bounds, including that there are incentives for performance to add to the fixed portion of
156 the fee.

157
158 **Q. Do you agree with Mr. Irizarry's recommendation on page 7, lines 17-19, and page**
159 **50, lines 4-6, of his pre-filed testimony that it is important that there be**
160 **opportunities for independent monitoring and verification of LUMA's**
161 **performance?**

162 A. No.

163 **Q. Please explain your response.**

164 A. The means for monitoring and verification are already incorporated in the T&D OMA
165 and in the Energy Bureau's regulation of performance metrics. Under the public private
166 partnership structure the Puerto Rico Public-Private Partnerships Authority (P3 Authority), as
167 Administrator of the T&D OMA, has the ability to ask for information and review it, to verify
168 compliance with contract provisions, and to conduct audits. The Energy Bureau has jurisdiction
169 over the activities of LUMA and can request and review LUMA's performance The Energy
170 Bureau exercises its supervisory authority and reviews both LUMA's and PREPA's performance
171 in the parallel proceeding, Case NEPR MI 2019 0007.

172 As is clear from the documentation and testimony provided in the current proceeding, the
173 measurement and calculation of several of the metrics is highly technical and requires subject
174 matter expert knowledge to properly evaluate. The Energy Bureau, if necessary, can enlist
175 subject matter experts to supplement its existing substantial knowledge base.

176

177 **Q. Do you agree with Mr. Irizarry's recommendation on page 8, lines 1-4, and page 64,**
178 **lines 10-13, of his pre-filed testimony, that penalties should be included in**
179 **performance metrics that would be triggered if LUMA's performance falls below a**
180 **given level, such as the baseline performance of PREPA in the year leading up to**
181 **June 1, 2021?**

182 A. No.

183 **Q. Please state and explain your response.**

184 A. Firstly, PREPA was a failed operating utility and one of the failures was the lack of
185 written procedures that were followed to carry out utility functions. This absence of
186 procedures also affected the collection of data and the calculation of metrics and
187 reporting of results, as stated in LUMA's Performance Metrics Targets petition and
188 evidenced by the testimonies of several of LUMA's witnesses. LUMA's subject matter
189 experts have reviewed PREPA's data and it is in many cases highly suspect. Data sources
190 were often inconsistent or did not follow industry practice. Data was often not recorded
191 based on established procedures. As a general matter, PREPA did not systematically
192 follow industry practice and in particular it did not follow industry practice in the
193 collection, calculation and reporting of performance metrics.

194 Secondly, LUMA's Performance Metrics Targets are meant to provide incentives to the
195 operator and are not structured to be penalties. Introducing a penalty system is a punitive
196 measure, that would punish LUMA and erode the T&D OMA. LUMA, as Operator is not
197 the equity owner and its financial upside is limited by the terms of the T&D OMA.
198 LUMA's downside is also defined by the terms of the T&D OMA.

199 **Q. Do you agree with Mr. Irizarry's recommendation on page 8, lines 23-26, page 9,**
200 **lines 1-2, page 51, lines 13-18 and page 52, lines 4-9 of his pre-filed testimony, that if**
201 **LUMA consistently underperforms, during a number of evaluation periods, in key**
202 **metrics such as: public and labor safety, sustainability, reliability, resiliency, and**
203 **customer service, then the performance-based mechanism should provide for a**
204 **significant financial penalty in the fixed payment LUMA receives?**

205 A. No.

206 **Q. Please state and explain your response.**

207 A. "The T&D OMA" already includes a clause calling for cancellation for non-performance.
208 Under Section 14.1(k) of the T&D OMA, it shall constitute a default by LUMA the
209 failure to meet "the Minimum Performance Threshold for any three (3) Key Performance
210 Metrics during three (3) or more consecutive Contract Years and no such failure shall
211 have been excused by a Force Majeure Event, an Outage Event or Owner Fault". The
212 Key Performance Metrics under the T&D OMA are: OSHA Fatalities (number of work-
213 related fatalities), OSHA Severe Injuries (number of total work-related injury cases with
214 severity days), SAIFI (measures average outage frequency), SAIDI (measures average
215 outage duration), Operating Budget, Capital Budget – Federally Funded, and Capital
216 Budget – Non-Federally Funded (the last three measure the ability to stay within budget).
217 Therefore, the T&D OMA has envisioned a mechanism in which a failure by LUMA to
218 meet the minimum standard on specific performance metrics for consecutive years will
219 allow for the cancellation of the contract. The cancellation of the contract is the most
220 substantial penalty there can be. Tying a reduction in the fixed component of the Service
221 Fee to performance metrics would be a fundamental alteration of the risk reward equation
222 in the compensation provisions of the T&D OMA.

223 Q. Do you agree with Mr. Irizarry's recommendation on page 8, lines 23-26, page 9,
224 lines 1-2, page 51, lines 13-18, and page 52, lines 4-9 of his pre-filed testimony that if
225 LUMA fails to correct the deficiencies during a number of evaluation periods, in key
226 metrics such as: public and labor safety, sustainability, reliability, resiliency, and
227 customer service, its contract should be terminated?

228 A. No.

229 Q. Please state and explain your response.

230 A. As I have stated previously, the T&D OMA provides for a mechanism in which a failure
231 by LUMA to meet the minimum standard on specific performance metrics for
232 consecutive years will allow for the cancellation of the contract. Thus, Mr. Irizarry's
233 recommendation is redundant.

234 **Q. Do you agree with Mr. Irizarry's recommendation on page 9, lines 4-10, of his pre-**
235 **filed testimony that performance metrics adopted by the Energy Bureau should be**
236 **true performance-based, where rewards and penalties are clearly defined,**
237 **regardless of the "fix fee + additional fee" structure of the existing contract between**
238 **LUMA and PREPA?**

239 A. No.

240 **Q. Please state and explain your response.**

241 A. Mr. Irizarry's recommendation is a collateral attack on the T&D OMA. By saying that
242 the Energy Bureau adopt metricss that are "true performance-based," he is labeling the
243 performance incentive mechanism that is contractually agreed upon in the T&D OMA as
244 not "true" and somehow illegitimate. However, Mr. Irizarry does not include any support
245 in his testimony for the proposition that the proposed Performance Metrics Targets are
246 not "true performance-based."

247 The compensation structure in the T&D OMA is based on payment of a Service Fee that
248 has both a fixed component, the Fixed Fee, and an incentive component, the Incentive
249 Fee. The commercial intent is that the Operator can receive more than the Fixed Fee with
250 the Incentive Fee, based on the calculation of the points earned from the Performance
251 Metrics. The calculation of points is discussed in III.C. of Annex IX. The T&D OMA
252 states that the Operator does not earn any points if performance is not above the

Minimum Performance Level. It does not state that performance below the Minimum Performance Level results in negative points, as Mr. Irizarry is suggesting. Chart 1 in Annex IX clearly sets the calculation methodology with the Minimum Performance Level being the lower bound on the ability to earn points. It also states that results at or below the Minimum Performance Level there are , “no points awarded.” There is no statement or example for less than zero points. Effectively Mr. Irizarry is requesting that there should be penalties imposed when performance is below the Minimum Performance Level in contravention of the T&D OMA.

Q. Do you agree with Mr. Irizarry’s statement on page 9, lines 8-10, of his pre-filed testimony that a “fixed fee” compensation structure contradicts the purpose of a rewards and penalties system since a fixed fee structure promotes underachievement?

A. No.

Q. Please state and explain your response.

A. First, Mr. Irizarry does not include any evidence or support for the proposition that a fixed fee structure promotes underachievement. In any case, the T&D OMA does not have a compensation structure that is exclusively fixed fee. As state above, there is a Fixed Fee and an Incentive Fee.

In addition to achievement at or below the Minimum Performance Level resulting in zero points awarded, consistent performance below Minimum Performance Level for the Key Performance Metrics can result in an Event of Default and potential cancellation of the T&D OMA. More generally, the Energy Bureau has broad jurisdiction over the electric sector and can and does require specific performance on numerous matters. The

consequences for non-compliance with an Energy Bureau order can include fines and other penalties.

Q. Do you agree with Mr. Irizarry's statement on page 12, lines 10-17, of his pre-filed testimony that performance-based mechanisms encompass three basic "zones": penalties for underperformance ("does not meet expectations"), a dead band around adequate performance ("meets expectation" or doing your job), and incentives for excellence ("exceed expectations")?

A. No.

Q. Please state and explain your response.

A. Mr. Irizarry has created his three zones that are not based on the sources that he references in his testimony. In particular, he references the LIPA Agreement with PSEG Long Island. That contract does not utilize the three bands referenced by Mr. Irizarry and does not impose penalties or fines for the incentive performance metrics. In fact, adequate performance, referred to as "in the target range" under the LIPA Agreement with PSEG, performance metrics construct allows for the operator to earn points. It is not a dead band. There is no provision that allows for the imposition of negative points or the subtraction of points, as Mr. Irizarry suggests for his underperformance zone. In the LIPA Agreement with PSEG, the operator either earns zero points or some amount of points above zero.

Q. Do you agree with Mr. Irizarry's statement on page 22, lines 23-24, and page 23, lines 1-4, of his pre-filed testimony that LUMA has an incentive not to pursue sustainable solutions given that the contract does not prohibit subcontracting federal funds to its affiliate companies, mainly transmission and distribution system

299 **construction companies, not renewable energy companies?**

300 A. No.

301 **Q. Please state and explain your response.**

302 A. This statement mixes the issues of procurement, federal funding and “sustainability”.
303 LUMA must follow specific procurement rules and procedures in contracting for
304 services, including construction services. With regards to federally funded work, LUMA
305 must comply with applicable federal regulations LUMA directly supports sustainable
306 energy solutions for Puerto Rico. LUMA’s actions toward sustainability are the subject of
307 multiple proceedings, including those covering electric vehicles, energy efficiency,
308 demand response, microgrids, distributed generation and utility-scale renewable energy.
309 Federally-funded capital work for the T&D System tracks LUMA’s System Remediation
310 Plan (NEPR-MI-2020-0019) and Initial Budgets (NEPR-MI-2021-0004) that were
311 approved by the Energy Bureau. LUMA selected and prioritized improvement programs
312 (many of which are federally funded) based on a strategic framework consistent with
313 Puerto Rico’s public policy energy goals. Among these goals is supporting the
314 sustainable energy transformation of Puerto Rico. The Energy Bureau did not issue any
315 finding that LUMA’s planned federally-funded work would preclude achieving
316 sustainable solutions or incentivize LUMA not to achieve sustainable solutions. All
317 federally funded projects are also reviewed and approved by the Energy Bureau. Thus,
318 there is significant oversight to ensure that public policy objectives on sustainable
319 solutions are pursued and achieved by LUMA.

320 **Q. Do you agree with Mr. Irizarry’s recommendation on page 45, lines 7-9, that**
321 **“LUMA has not adequately evaluated whether its proposed incentives are tied to**

322 **difficult tasks or easy to fix areas”?**

323 A. No.

324 **Q. Please state and explain your response.**

325 A. Whether a task is difficult or easy is highly subjective. LUMA has documented
326 extensively the high degree of deterioration and deficiency of the electric utility in Puerto
327 Rico prior to June 1 of last year when LUMA began operations. In fact, as measured by
328 safety, reliability and customer satisfaction, PREPA was the worst performing utility of
329 comparable size in the United States. There were largely no written procedures for
330 fundamental utility and business operations. Those written procedures that existed were
331 not regularly implemented. Assuming operation of such a deteriorated and neglected
332 utility operation and then working to get it to an acceptable minimum industry standard
333 and ultimately to the level of its peers in North America is a monumental task. There is
334 nothing easy about it. Some tasks are more complex than others, but at this stage in the
335 process to transform the utility, practically all of the critical tasks are difficult.
336 One of the key criteria for appropriate performance metrics is suitability to the goal that
337 is sought, and for LUMA in particular alignment with energy policy objectives and
338 customer benefit. That does not include a subjective assessment of whether the work is
339 difficult.

340 **Q. Do you agree with Mr. Irizarry’s recommendation on page 51, lines 21-24, of his**
341 **pre-filed testimony to remove any incentive payment if LUMA stays within its**
342 **capital and operating budgets and instead follow the model of the LIPA contract, in**
343 **which failure to stay within budget should reduce LUMA’s ability to achieve**
344 **incentives in other categories?**

345 A. No.

346 **Q. Please state and explain your response.**

347 A. The LIPA Agreement with PSEG is for a mature utility. The contract states that LIPA's
348 operator has already reached adequate or acceptable levels in several performance areas.
349 That is not the case with the utility that LUMA has begun operating. Every metric
350 requires improvement to reach a North America industry standard.

351
352 **Q. Do you agree with Mr. Cosme's proposal on page 5, lines 192-194, of his pre-filed**
353 **testimony that the Operating Budget incentive metrics be contingent on the premise**
354 **that no event-related directly to Transmission & Distribution had occurred, which**
355 **had a direct impact on the rider's costs?**

356 A. No.

357 **Q. Please state and explain your response.**

358 A. Energy Bureau Regulation 9137 states that a "Performance Incentive Mechanism shall be
359 clearly defined, easily interpreted, and easily verified." A chain of casualty between a
360 specific transmission outage and a specific impact on generation would have to be
361 established conclusively to begin to define something like what Mr. Cosme is
362 suggesting.. Engineers spend many hours collecting and interpreting data to make such
363 judgements, which are often ambiguous and equivocal. The cost, complication and time
364 inherent in such a task, if it were really possible in a preponderance of occurrences,
365 would be extremely high. The interpretation of such outages would not be easy and
366 verification would also be difficult. In addition, establishing a trigger from a physical
367 transmission outage that allegedly causes higher fuel costs to the operating budget would

try to link two areas that cannot be clearly linked. Having a single outage eliminate the incentive to stay within budget would be against good practice on utility performance metrics. As Mr. Cosme notes in response to information requests on his proposal, the Energy Bureau already exercises its authority to investigate specific outages or system events. LUMA has been diligent, responsive and transparent in its investigations, and is taking steps to help prevent future outages like the ones Mr. Cosme uses as examples in his response to discovery requests.

Q. Do you agree with Mr. Cosme’s proposal on page 6, lines 235-261, of his pre-filed testimony to include metrics on Generation from RPS eligible PPOA’s by % of sales; Overall Average Capacity Factor for RPS Eligible Capacity in terms of percentage; and Overall Number of Curtailed Hours from RPS Eligible Capacity?

A. No.

Q. Please state and explain your response.

A. Although LUMA has visibility to report on these three metrics in its quarterly report in the Energy Bureau’s proceeding *In re: The Performance of the Puerto Rico Electric Power Authority*, Case No. NEPR-MI-2019-0007, several factors and the resulting metric are outside of LUMA’s control. For example, LUMA is not responsible for generation resource acquisition, which will be the primary factor in the Generation from RPS eligible PPOA’s by % of sales metric. For the Overall Average Capacity Factor for RPS Eligible Capacity in terms of percentage and Overall Number of Curtailed Hours from RPS Eligible Capacity metrics, the capacity factors of renewable resources will be driven by weather conditions, availability of the renewable generator (which is tied to the condition of the equipment installed at the renewable generation facility and its operation,

both under the control of the facility owner). LUMA could adversely impact the capacity factor on the margin due to Transmission & Distribution system outages. As I have discussed in my testimony establishing clear causality is not simple and unambiguous. Additionally, setting an appropriate baseline is quite difficult (i.e., it is not zero, as all systems will have some acceptable level of outages, and generation is curtailed and dispatched accordingly). As more renewables are added to the system over time, the greater the likelihood of curtailments of renewables because of the tendency of these sources to exhibit similar generation profiles, while at the same time, there is a need to manage other aspects of system reliability. Finally, some level of curtailment of renewable resources is expected in any bulk power system. In fact, a system with no curtailment would be economically suboptimal and would have worse reliability than one with curtailment.

Q. Does this complete your testimony?

A. Yes.

ATTESTATION

Affiant, Mr. Mario Hurtado, being first duly sworn, states the following:

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


Mario Hurtado

AFAE-47 No. 1053

Acknowledged and subscribed before me by Mr. Mario Hurtado in his capacity as Chief Regulatory Officer of LUMA Energy, of legal age, married, and resident of San Juan, Puerto Rico, who is personally known to me.

In San Juan, Puerto Rico, this 3rd day of March 2022.


Public Notary

