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

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

CASE NO. NEPR-AP-2020-0025

SUBJECT: LUMA's Brief

LUMA'S BRIEF IN SUPPORT OF THE REQUEST FOR APPROVAL OF THE PROPOSED ANNEX IX TO THE T&D OMA, LUMA'S PERFORMANCE METRICS TARGETS

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 states and requests the following:

I. Introduction

This proceeding involves consideration by this Puerto Rico Energy Bureau ("Energy Bureau" or "PREB") of a proposal filed by LUMA to adopt an incentive Performance Metrics scheme that arises under the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement of June 22, 2020 ("T&D OMA"). LUMA hereby supports its request for approval by this Energy Bureau of LUMA's Revised Performance Metrics Targets and Revised Annex IX to the T&D OMA ("Revised Annex IX"), filed on October 28, 2022, the testimonies of its twelve (12) witnesses and two (2) expert witnesses, and the exhibits admitted during the Evidentiary Hearing, which are uncontested and were not substantively challenged by the intervenors or any evidence admitted for the record as will be discussed in detail in this Brief.

II. Procedural Background

The Puerto Rico Electric Power Authority ("PREPA") and the Puerto Rico Public-Private Partnerships Authority ("P3 Authority") entered into T&D OMA with LUMA for LUMA to (i) provide management, operation, maintenance, repair, restoration and replacement, and other related services for the transmission and distribution system ("T&D System"), in each case that is customary and appropriate for a utility T&D System service provider, and (ii) establish policies, programs, and procedures with respect thereto. *See* T&D OMA Section 5.1.

Pursuant to Section 4.2(f) of the T&D OMA, ManagementCo was required to prepare a "revised Annex IX of the T&D OMA including (i) proposed baseline, Target and Minimum Performance Levels for certain Performance Metrics [as the term is defined in the T&D OMA]; (ii) Key Performance Metrics; (iii) Major Outage Event Performance Metrics, together with an explanation of the basis for each" and submit them to the P3 Authority for review and comment. Once the review and comment phase was completed with the P3 Authority, the revised Annex IX would be submitted to this Energy Bureau for review and approval. *See*, *Id*. The T&D OMA included three main Performance Categories: (i) Customer Satisfaction; (ii) Technical, Safety, and Regulatory; and (iii) Financial Performance, in addition to the Major Outage Event Performance Metrics ("MOE Metrics"). *See* Table 1 of Annex IX of the T&D OMA. Table 2 of Annex IX of the T&D OMA further specifies the Performance Metrics included in each category, and Table 3 the MOE Metrics.

On December 23, 2020, the Energy Bureau commenced this proceeding by issuing a Resolution and Order setting forth the legal and regulatory framework pursuant to which it would conduct the evaluation and establishment of the Performance Targets and Performance Incentive Mechanisms ("PIMs") that would further the compliance and implementation of the public policy

and objectives established through Act 57-2014, known as the *Puerto Rico Energy Transformation and RELIEF Act* and Act 17-2019, known as the *Puerto Rico Energy Public Policy Act*. Through the December 23 Resolution and Order, this Energy Bureau also published public interest principles and determined that the baselines and minimum compliance benchmarks for the Puerto Rico electric system established in Case No. NEPR-MI-2019-0007 (the "Baseline Proceeding") would guide LUMA in requesting approval of the PIMs.

On February 25, 2021, LUMA filed its *Submittal and Request for Approval of Revised Annex IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement,* whereby it submitted a revised Annex IX pursuant to the December 23 Resolution and Order (the "February 25th Submittal and Request"). The revised Annex IX filed with the February 25th Submittal and Request included Performance Metrics Targets that were the result of the iterative review process conducted by LUMA and the P3 Authority pursuant to Section 4.2(f) of the T&D OMA, pursuant to which the P3 Authority reviewed and commented on LUMA's proposed Performance Metrics Targets and proposed revised Annex IX.

On April 23, 2021, the Independent Consumer Protection Office ("ICPO") filed a *Petition for Intervention* before this Energy Bureau. Its request for intervention was granted in a Resolution and Order issued by this Energy Bureau on May 7, 2021. Then, on July 15, 2021, the Puerto Rico Local Environmental and Civil Organizations ("LECO") filed a *Joint Petition for Intervention* before this Energy Bureau. Their request for intervention was granted by a Resolution issued on August 5, 2021.

On August 18, 2021, LUMA filed a revised *Submittal of Request for Approval of Revised Annex IX to the T&D OMA* (the "August Performance Metrics Targets Request"), which included as Exhibit I, a revised Annex IX. LUMA also submitted the pre-filed testimonies of eight witnesses

in support of its Revised Performance Metrics Targets Request. Through its August Performance Metrics Targets Request, LUMA requested that this Energy Bureau (i) accept the revised Annex IX to the T&D OMA and LUMA's Revised Performance Metrics Targets; (ii) approve the revised Annex IX to the T&D OMA as filed; (iii) set the Performance Metrics and Targets to apply for an initial period of three years of operations; and (iv) allow the periodic review of the performance baseline metrics and Targets in accordance with the T&D OMA and Energy Bureau *Regulation for Performance Incentive Mechanisms*, Regulation No. 9137 dated December 17, 2019 ("Regulation No. 9137"). LUMA also raised concerns regarding the significant gaps in PREPA's processes and data collection, which posed a challenge to setting realistic targets for the proposed Performance Metrics.

On November 17, 2021, ICPO and LECO submitted the pre-filed testimonies of their proposed witnesses, which included proposals to add additional Performance Metrics as part of the revised Annex IX. LECO presented the testimonies of Agustín Irizarry Rivera, an electrical engineer, and José Alameda, an economist. ICPO propounded the testimonies of Gerardo Cosme, also an electrical engineer, and Beatriz González, an attorney.

Discovery processes were conducted between November 18, 2021, and December 28, 2021. Throughout that period, LUMA answered eight Requirements for Information issued by the Energy Bureau, four notified by LECO and one served by ICPO. Meanwhile, LECO answered three Requests for Information issued by LUMA. ICPO responded to four Requests for Information served by LUMA.

On December 22, 2021, the Energy Bureau entered a Resolution and Order, concluding that additional performance-based incentive metrics must be evaluated as part of this procedure ("December 22 Resolution and Order"). To that end, the Energy Bureau identified three additional

categories of Performance Metrics: (i) Interconnection of Distributed Energy Resources; (ii) Energy Efficiency and Demand Response; and (iii) Vegetation Management. In the December 22 Resolution and Order, the Energy Bureau ordered LUMA to file a revised Annex IX to the T&D OMA, including Targets and supporting metrics for (i) Interconnection; (ii) Energy Efficiency/Demand Response; and (iii) Vegetation Management. This Energy Bureau also ordered LUMA to provide supplemental or revised direct pre-filed testimonies for the new metrics and Targets. This Energy Bureau also allowed additional discovery by the intervenors and LUMA related to the three additional metrics and amended the procedural calendar to provide for such discovery.

On February 17, 2022, LUMA filed *LUMA's Response in Opposition and Objection to December 22, 2021 Resolution and Order and Request to Vacate or Grant LUMA Relief from the December 22, 2021 Resolution and Order* ("LUMA's Objection"). LUMA argued that the entry of the December 22 Resolution and Order was arbitrary and in violation of LUMA's due process rights for several reasons. Specifically, upon entering the December 22 Resolution and Order, the Energy Bureau incorrectly relied on several supplemental responses to discovery propounded by the Energy Bureau and by intervenor Local Environmental and Civil Organizations ("LECO") that LUMA was ordered to provide without being afforded the prior opportunity to be heard concerning the objections to the additional Performance Metrics that LUMA had timely raised.

In its Objection, LUMA also argued that upon entering the December 22 Resolution and Order, the Energy Bureau unfairly admitted those responses to discovery requests as evidence. In addition, the Energy Bureau did not first allow LUMA to file rebuttal testimonies regarding the information and documentation in the record from which the Energy Bureau drew its conclusion to include additional categories of Performance Metrics in this proceeding. Nor did the Energy

Bureau wait until the conclusion of the evidentiary hearing with the benefit of the full record to issue a determination on whether additional categories of metrics are warranted.

LUMA also argued that the December 22 Resolution and Order constituted an improper exercise of the Energy Bureau's ability to take administrative notice of filings made in other regulatory proceedings as it did not provide LUMA a reasonable opportunity to be heard. Moreover, as LUMA outlined in its Objection, the Energy Bureau established an abbreviated procedural calendar for LUMA to add the new metrics to the Revised Annex IX to the T&D OMA, which only underlines the unfair and impractical nature of the December 22 Order and Resolution.

Then, on March 14, 2022, LECO filed a *Reply to LUMA's Response in Opposition to the December 22, 2021 Resolution and Order on Additional Metrics*. LECO averred that the Energy Bureau has the authority to require the inclusion of additional metrics in this proceeding and that the Determination of Completeness entered by the Energy Bureau on August 25, 2021, did not prohibit the Energy Bureau from requiring consideration of additional metrics. LECO also set forth that the December 22 Resolution and Order preserves the due process rights to all parties in this proceeding and that LUMA's Objection constitutes a tardy motion for reconsideration.

On March 24, 2022, LUMA filed *LUMA's Response to LECO's Reply to LUMA's Response in Opposition to the December 22, 2021 Resolution and Order on Additional Metrics*. LUMA posed that as a threshold procedural matter, LUMA's Objection was not a motion for reconsideration because it does not seek reconsideration of a final or partial resolution or order entered by the Energy Bureau but of an interlocutory determination. In addition, the opportunity to conduct discovery as to the additional Performance Metrics does not cure the December 22 Resolution and Order's defects arising from the fact that it was entered in violation of LUMA's due process rights. As such, LUMA restated its request for this Energy Bureau to vacate the

December 22 Resolution and Order or otherwise grant LUMA relief from that portion of the December 22 Resolution and Order that requires LUMA to add three additional Performance Metrics categories to the Revised Annex IX to the T&D OMA.

On August 1, 2022, this Energy Bureau entered a Resolution and Order, whereby it denied LUMA's Objection ("August 1st Order"). In turn, it ordered LUMA to file within twenty (20) days: (i) a revised Annex IX to the T&D OMA, including Targets and supporting metrics for Interconnection, Energy Efficiency/Demand Response, and Vegetation Management; and (ii) a supplemental or revised direct pre-filed testimony for Targets and supporting metrics for the Performance Metric Targets described in the December 22 Resolution and Order.

On October 28, 2022, LUMA filed a *Submission of Revised Annex IX to the T&D OMA*. The filing included the Revised Annex IX to conform to the August 1st Order with the inclusion of the three additional metrics. LUMA also submitted the pre-filed testimonies of two witnesses in support of its Revised Performance Metrics Targets Request. LUMA requested that this Energy Bureau (i) accept the revised Annex IX and LUMA's Revised Performance Metrics Targets; and (ii) deem LUMA complied with the December 22nd and August 1st Orders.

On January 30, 2023, this Energy Bureau issued a Resolution which included, as Attachment A, a *Hybrid Evidentiary Hearing Protocol* detailing various aspects of how the evidentiary hearing scheduled would be conducted. Among other matters, this Energy Bureau instructed that any documentary evidence the parties proposed to introduce into evidence during the Evidentiary Hearing must be provided by e-mail or hand delivery to the Energy Bureau and to all other parties in PDF format or JPG format before the Hearing; no later than February 2, 2023, at 5:00 pm (E.T.).

On that same day, January 30, 2023, LUMA filed a *Motion Requesting Clarification on Evidentiary Hearing Protocol*. Therein, LUMA requested the Energy Bureau to provide clarification on (a) the order of the witnesses; (b) if the parties will be allowed to leave documents and materials in the hearing room overnight; (c) the sitting arrangements for the witnesses and the parties' counsel; (d) if only one attorney per party would be allowed to examine a witness; and (e) if witnesses would be sworn each day at the start of each session. LUMA also requested that the Energy Bureau identify who the Energy Bureau's consultants examining witnesses at the hearing will be.

On February 1, 2023, this Energy Bureau entered a Resolution informing that case management issues, such as a potential breakdown of the hearing sessions by sub-topics, will be addressed during the hearings. This Energy Bureau clarified then that the parties would be allowed to utilize only one attorney per topic. On that same day, this Energy Bureau also issued a separate Resolution setting the Evidentiary Hearing Agenda for February 7-10, 2023. The Evidentiary Hearing Agenda was included as Attachment A to the Resolution. The Energy Bureau divided the hearing days into various Performance Metrics categories.

During the first session of the Evidentiary Hearing on February 7, 2023, Mr. Dennis Seilhammer conducted the proceedings as the Hearing Examiner. On the first day of the Evidentiary Hearing, the Energy Bureau called those witnesses whose testimony pertained to the "general approach to the Performance Metrics" proposed in this proceeding. After a discussion on the pending procedural matters, including case management issues, the cross-examinations took place. This Energy Bureau decided that cross-examination of the witnesses would be performed as follows: first, the consultants for the Energy Bureau and the Commissioners would have the first turn to make questions to all witnesses scheduled for the session. Then counsel for intervenors

would have a turn to examine all the witnesses. LUMA would close all cross-examinations. During the first day of the Evidentiary Hearing, cross-examinations were conducted on witnesses Mario Hurtado, Donald Hall, Branko Terzic, and Juan Lara for LUMA; and Agustín Irizarry and José Alameda for LECO.

The second session of the Evidentiary Hearing was held on February 8, 2023. In the second session, the Energy Bureau arranged to receive the testimony of the witnesses that pertained to the "Technical, Safety, and Regulatory" Performance Metrics. This category included the following Performance Metrics: 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"); Vegetation Maintenance Miles Completed (230kV, 115kV, 38kV, primary Distribution); Distribution Line Inspections & Targeted Corrections; Transmission Line Inspections & Targeted Corrections; T&D Substation Inspections & Targeted Corrections; NEM Project Activation Duration; Energy Savings as Percent of Total Energy Sales; and Peak Demand Savings as a Percent of Total Peak Demand. Cross-examinations were conducted for witnesses Curtis Clark, Lee Wood, Don Cortez, and Diane Watkins for LUMA; Agustín Irizarry for LECO; and Gerardo Cosme for ICPO.

The third session of the Evidentiary Hearing was held on February 9, 2023. The Energy Bureau scheduled the examination of the witnesses on the "Customer Satisfaction" Performance Metrics in the morning session. The metrics under the "Customer Satisfaction" classification include J.D. Power Customer Satisfaction Survey (Residential Customers); J.D. Power Customer Satisfaction Survey (Business Customers); Average Speed of Answer (minutes); Customer Complaint Rate; and Abandonment Rate. Cross-examinations were conducted on witnesses Jessica Laird and Melanie Jeppesen for LUMA; Agustín Irizarry for LECO; and Beatriz González

for ICPO. For the afternoon session, the Energy Bureau programmed the examination of those witnesses presented for the "Finance" Performance Metrics. The metrics in that category included: Operating Budget; Capital Budget: Federally Funded; Capital Budget: Non-Federally Funded; Days Sales Outstanding: General Customers; Days Sales Outstanding: Government Customers; and Overtime. As such, cross-examinations were conducted on witnesses Juan Fonseca and Kalen Kostyk for LUMA; Agustín Irizarry for LECO; and Gerardo Cosme for ICPO.

During the testimony of Mr. Juan Fonseca, the Energy Bureau requested LUMA to research and present findings on the existing low-income subsidies or other assistance available to customers of the electric utilities in the following jurisdictions of the United States of America: Louisiana, Arkansas, and Mississippi. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 95, line 25, and p. 96, lines 1-9; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:35:15]. Compliance with said order was required on or before February 21, 2023. The Energy Bureau also directed the intervenors to state their position on LUMA's findings before February 28, 2023.

The fourth and final session of the Evidentiary Hearing was held on February 10, 2023. The Energy Bureau scheduled the examination of the witnesses concerning the MOE Metrics for that session. At the initial portion of the session, counsel for LUMA objected to any cross-examination of Mr. Agustín Irizarry on the MOE Metrics since that witness had provided no substantive opinion on this topic. After a *voir dire* was conducted, the Energy Bureau allowed the testimony. Cross-examinations were conducted on witnesses Mario Hurtado, Abner Gómez, and Terry Tonsi for LUMA; Agustín Irizarry for LECO; and Gerardo Cosme for ICPO.

Upon conclusion of the testimonies, the Energy Bureau instructed LUMA to clarify, in writing, the request included in its proposed Annex IX to the Puerto Rico Transmission and

Distribution System Operation and Maintenance Agreement, pp 35 through 37, regarding any proposed relief from the "Day Sales Outstanding" Performance Metrics for three (3) to six (6) months after the end of any government-mandated moratorium period has been lifted. Particularly, the Energy Bureau directed LUMA to explain how such relief would be implemented, what would be considered, and how the weight distribution for said Performance Metrics would operate.

On February 14, 2023, LUMA requested the audio recording of the proceedings to prepare a transcript. Upon receiving the audio recording of the proceedings, LUMA commissioned a court reporter to produce a transcript. The transcript is referenced throughout this brief and will be filed via a separate motion.

Between February 16th and 17th, 2022, public hearings were held. As the docket of this proceeding shows, three individuals submitted written comments on February 16, 2023.

On February 21, 2023, LUMA filed a *Motion in Compliance with Bench Orders Issued During the Evidentiary Hearing* (*Motion in Compliance*). LUMA submitted its findings on the existing low-income subsidies or other assistance available to customers of the electric utilities in the United States jurisdictions of Louisiana, Arkansas, and Mississippi, as well as supporting information on its proposal for relief from the "Day Sales Outstanding" Performance Metrics for three (3) to six (6) months after a moratorium period has been lifted.

On February 22, 2023, the Energy Bureau entered a Resolution and Order granting the request for the audio recording of the Evidentiary Hearing and instructed the Secretary of the Energy Bureau to provide it as soon as possible.[1]

On February 24, 2023, the LECO filed a *Motion Requesting PREB's Official Evidentiary Hearing Transcript*. Therein, LECO stated that according to the Hybrid Evidentiary Hearing

[1] The Secretary of the Energy Bureau provided LUMA with the audio recording of the Evidentiary Hearing on February 17, 2023.

protocol, the Energy Bureau committed to providing the official transcript of the Evidentiary Hearing. According to LECO, the transcript is essential to work on the legal brief. Given the current deadline to file the final substantive and legal briefs for all parties, LECO requested an extension to file the legal briefs at least fifteen days after the initial transcript is provided.

On February 28, 2023, the ICPO filed a motion entitled *Comentarios a Moción en Cumplimiento de Orden Radicada por LUMA el 21 de Febrero de 2023*. In summary, ICPO alleged that LUMA did not provide the information requested on the totality of subsidies available in Louisiana, Mississippi, and Arkansas. As such, ICPO claimed it could not submit its position with the information provided. Performance Metric

On March 3, 2023, LUMA filed a *Motion Requesting the Energy Bureau to Amend Procedural Calendar*. Therein, LUMA requested that the Energy Bureau take notice that at least one (1) month was required for LUMA to complete the proceeding transcript. Therefore, LUMA requested an amendment to the procedural calendar to extend the March 10, 2023, deadline to submit the final substantive and legal briefs until at least two (2) weeks after the official transcript is provided to the parties and the Energy Bureau has deemed that LUMA complied with its bench orders.

On March 9, 2023, the Energy Bureau issued a Resolution and Order whereas it ruled that LUMA complied with the Bench Orders issued during the Evidentiary Hearing and denied ICPO's *Comentarios a Moción en Cumplimiento de Orden Radicada por LUMA el 21 de Febrero de 2023*. Further, the Energy Bureau determined that the Microsoft Teams recording would serve as the official record of the Evidentiary Hearing and clarified that it would not produce an official transcript to avoid further delays. The Energy Bureau ruled that the parties should cite the recording in their remaining filings in this proceeding, where applicable, referring to the hours,

minutes, and seconds of the testimonies. Finally, this Energy Bureau amended the procedural calendar and set March 30, 2023, as the deadline to file the final substantive and legal briefs.

On March 17, 2023, LUMA filed a *Motion to Further Amend Procedural Calendar*. LUMA informed the Energy Bureau it had already commissioned a transcript of the Evidentiary Hearing, as it was necessary for ease of reference and to have an orderly proceeding. LUMA argued that the Energy Bureau's instruction to refer to hours, minutes, and seconds of the testimonies in the briefs could be problematic, not only because it makes it more time-consuming to draft briefs and for the Energy Bureau to review the same, but it does not necessarily provide the parties and the Energy Bureau with a precise and universal mechanism to identify the testimonies. LUMA further expressed it was amenable to sharing the transcript with the Energy Bureau and all parties in order to reach a stipulation to adopt said transcript as the official transcript. As such, LUMA requested that the March 30, 2023, deadline to submit the final substantive and legal briefs be extended until at least two (2) weeks after the parties stipulate the official transcript and all remaining deadlines be extended accordingly.

On March 24, 2023, LUMA, LECO, ICPO, and PREPA jointly filed an *Informative Motion on Parties' Agreement on the Evidentiary Hearing Transcript and Renewed Request to Amend the Procedural Calendar*. LUMA reported that counsel for the parties had agreed to examine the different volumes of the transcript commissioned by LUMA and compare them against the audio recording to stipulate the transcript that all parties will be referring to in the instant proceeding. The parties requested that the March 30, 2023, deadline be extended at least two (2) weeks beyond the date the parties would stipulate the transcript.

On March 29, 2023, the Energy Bureau entered a Resolution and Order, extending the deadline to submit the final legal and substantive briefs to April 27, 2023. The deadlines for the

replies to the final briefs, the public to submit general comments, and the *amicus curiae* to file their briefs were extended as well. Notwithstanding, the Energy Bureau reiterated that the references to the Evidentiary Hearing must be made exclusively based on the Microsoft Team recording.

On April 19, 2023, LUMA filed an *Informative Motion on the Evidentiary Hearing Transcript and Request for Final Amendment of the Procedural Calendar*. LUMA informed that it had a full set of certified transcripts of the Evidentiary Hearing and that the last transcript of the proceeding was received from the reporter on April 14, 2023. LUMA further stated that counsel for PREPA confirmed that it required a period of two weeks to review the transcripts. In view of the above, LUMA requested that the April 27, 2023 deadline to file final substantive and legal briefs by the parties be extended until at least May 11, 2023, to allow LUMA and PREPA to review and stipulate transcripts.

Lastly, on April 21, 2023, the Energy Bureau issued a Resolution and Order ("April 21st Resolution and Order") granting LUMA's request to amend the procedural calendar of this proceeding. The Energy Bureau established May 11, 2023, as the deadline to submit the final and substantive legal briefs by the parties. Also, June 1, 2023, was set as the time limit to file the replies to the final briefs by the parties. Finally, June 8, 2023, was fixed as the last day for the public to submit general comments and the *amicus curiae* to file their briefs. In accordance with the April 21st Resolution and Order, LUMA hereby submits its final legal and substantive brief.

III. Discussion

Considering the testimonies of the witnesses for LUMA, LECO, and the ICPO, the materials submitted in this docket, and the evidence presented during the Evidentiary Hearing,

LUMA hereby supports its request for approval of the Revised Annex IX and presents several requests.

A. General Framework of LUMA's Performance Metrics Targets, Revised Annex IX to the T&D OMA

LUMA proposes a revised set of Performance Metrics originally adopted in Annex IX of the T&D OMA for measuring and reporting LUMA's performance as the Operator of the T&D System and determining the incentive fee LUMA is eligible to receive each applicable Contract Year. *See* Exhibit 1 of the Evidentiary Hearing (Direct Testimony, M. Hurtado, August 18, 2021), pp. 60-64. LUMA will be entitled to earn the incentive fee for any given Contract Year if it achieves or exceeds the Performance Metrics Targets. *Id.*, lines 64-65.

The Performance Metrics Targets and incentives, and its conceptualization in the T&D OMA, were part of a competitive procurement process conducted by the Government of Puerto Rico. *See* Exhibit 1 of the Evidentiary Hearing, lines 70-71. As Mr. M. Hurtado explained during the Evidentiary Hearing, "[t]he request for proposals and then . . .[the] competitive process had a draft OMA agreement, operation and maintenance agreement, and the Annex IX was part of that . . . "[W]hen . . .the agreement was executed, Annex IX was part of that as well." *See* Evidentiary Hearing, Vol. 1, p. 59 lines 16-21 (M. Hurtado English); AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [1:45:00]. The Annex IX of the T&D OMA was developed during an 18-month negotiation period led by the P3 Authority and its Partnership Committee. *Id.*, lines 71-73. The evaluation of proposals included the comments made by proponents on customer service, technical, and operational and financial Performance Metrics to improve the T&D system. *Id.*, lines 73-76. As stated in the Partnership Committee Report for the Puerto Rico Public-Private Partnership for the Electric Power Transmission and Distribution System dated May 15, 2020, LUMA's approach was considered by the Partnership Committee as more favorable and aligned

with Puerto Rico's goals. *Id.*, lines 76-79.[2] "LUMA essentially accepted the Performance Metrics as defined in the Final Form of O&M Agreement… The other Proponent provided differing views on the Performance Metrics and the calculation of the Incentive Fee from what was included in the Final Form of O&M Agreement."[3]

Revisions to Annex IX to the T&D OMA were then made according to Section 4.2 of the T&D OMA, which indicates that during the Front-End Transition Period, LUMA was required to establish a planning team with PREPA and the P3 Authority to prepare, with the input of said planning team, "a revised Annex IX (Performance Metrics), including (i) proposed baseline, Target and Minimum Performance Levels for certain Performance Metrics, (ii) Key Performance Metrics and (iii) Major Outage Event Performance Metrics, together with an explanation of the basis for each of the foregoing." *Id.,* lines 82-88. Accordingly, LUMA concluded an iterative review process with the P3 Authority during the months of December 2020 and January 2021 before submitting the Performance Metrics to the P3 Authority on February 5, 2021, for their final review and comments, as required in the T&D OMA. *Id.,* lines 90-93. After reviewing and addressing the comments and suggestions of the P3 Authority, LUMA filed the Revised Annex IX on February 25, 2021, for approval by this Energy Bureau. *Id.,* lines 93-98.

LUMA subsequently re-filed the Annex IX of the T&D OMA and submitted revisions to this Energy Bureau on August 18, 2021, to consider the determinations in Case Number NEPR-MI-2019-0007, setting performance benchmarks and baselines for PREPA. *Id.,* lines 105-108. The revisions included data, and observations gathered by LUMA during the end of the Front-End Transition Period and the period of two months after assuming operations of the T&D System on

[2] The full text of the Partnership Report is available at https://www.p3.pr.gov/wp-content/uploads/2020/06/20-0520-02-partnership-committee-report-r18.pdf, *see e.g.,* pages 61 and 66. As stated in the Partnership Report, "LUMA generally accepted the Performance Metrics set out in the RFP with minor exceptions." *Id.* page 62.
[3] *Id.* page 66.

June 1, 2021. *Id.,* lines 108-112. As Mr. Hurtado explained during the Evidentiary Hearing, "additional data . . . was available to the team, in order to provide additional backing to the baselines, primarily the targets to make sure that there wasn't anything that needed to be changed." *See* Evidentiary Hearing, Vol. 1, p. 30, lines 22-25 and p. 31, line 1- (M. Hurtado English); AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [1:06:00]. "A lot of the data that our team found from . . . PREPA had issues in terms of accuracy, precision, quality of the data in general terms, and then the method of recording that data. So over time, we were able to basically continue our work to try to provide the best data we could on those specific metrics." *See* Evidentiary Hearing, Vol. 1, p. 31, lines 22-25 and p. 31, lines 9-16 (M. Hurtado English); AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [1:07:00].

Finally, as required by this Energy Bureau in orders issued on December 21, 2022, and August 1, 2022, on October 28, 2023, and to comply with those orders, LUMA submitted a Revised Annex IX to include additional Performance Metrics on Vegetation Management, Energy Efficiency and Demand Response, and Interconnections of DG Systems in order to comply with the Energy Bureau's orders on additional metrics.

The Performance Metrics Targets included in the Revised Annex IX, Section 2.0, track the requirements of the T&D OMA, Section 4.2(f), and thus include: (1) proposed baselines, Targets, and Minimum Performance Levels; (2) the designation of a subset of the Performance Metrics as "Key Performance Metrics"; and (3) the Major Outage Events Performance Metrics. *See* Exhibit 11. The Performance Metrics that apply during normal operations are grouped into three major categories tracking Annex IX to the T&D OMA and are consistent with the criteria on performance mechanisms of Act 17-2019 and Regulation No. 9137: Customer Services, Technical, Safety and

Regulatory, and Financial Performance.[4] *See* Exhibit 11 of the Evidentiary Hearing, Table 1-1, and Sections 1.3.3, 1.3.4, 2.4, and 2.5.

Section 14.1 (k) of the T&D OMA includes, among the events of default by LUMA, failure to "meet the Minimum Performance Threshold for any three (3) Key Performance Metrics during three (3) or more consecutive Contract Years and no such failure shall have been excused by a Force Majeure Event, an Outage Event or Owner Fault (a "Minimum Performance Threshold Default")." The Key Performance Metrics are: (i) Average Speed of Answer; (ii) Abandonment Rate; (iii) OSHA Fatalities; (iv) OSHA Severity Rate; (v) System Average Interruption Frequency Index (SAIFI); (vi) System Average Interruption Duration Index (SAIDI); (vii) Distribution Line Inspections & Targeted Corrections; (viii) Operating Budget; (ix) Capital Budget: Federally Funded; and (x) Capital Budget: Non-Federally Funded. *See* Exhibit 11 of the Evidentiary Hearing, Section 2.6.

The Revised Annex IX also includes a second category of Performance Metrics, the MOE Metrics. These Performance Metrics are binary and apply during a Major Outage Event ("MOE"). *See* Exhibit 11 of the Evidentiary Hearing, Section 1.3.3.

The proposed Performance Metrics Targets are linked to the execution of improvement programs and other plans to achieve targeted performance consistent with statutory and regulatory policy and goals. *See* Exhibit 11 of the Evidentiary Hearing, lines 122-124; *See* Evidentiary

[4] The Performance Metrics include: (i) Customer Satisfaction; (ii) Average Speed of Answer; (iii) Customer Complaint Rate; (iv) First Call Resolution; (v) Abandonment Rate; (vi) OSHA Recordable Incident Rate; (vii) OSHA Fatalities; (viii) OSHA Severity Rate; (ix) OSHA DART Rate; (x) System Average Interruption Frequency Index (SAIFI); (xi) Customers Experiencing Multiple Interruptions; (xii) System Average Interruption Duration Index (SAIDI); (xiii) Momentary Average Interruption Frequency Index; (xiv) Distribution Line Inspections & Targeted Corrections; (xv) Transmission Lines Inspections & Targeted Corrections (xvi) T&D Inspections & Targeted Corrections; (xvii) Operating Budget; (xviii) Capital Budget – Federally Funded; and (xix) Capital Budget – Non-Federally Funded; (xx) Days Sales outstanding, bifurcating general customers and government customers; (xxi) Reduction in Network Line Losses; and (xxii) Overtime. *See* Sections Table 1-1 and Section 2 of Exhibit 1. These Performance Metrics apply during normal operations of the T&D System.

Hearing, Vol. 1, p. 32, lines 22-25 and p. 33, lines 1-16 (M. Hurtado English); AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [1:08:00]. The Performance Metrics and Targets were set to result in tangible benefits to customers. *Id.,* lines 126-127. It is important to note that, assuming sufficient funding, attaining the proposed Performance Metrics Targets will be under LUMA's control as Operator of the T&D System. *See* Exhibit 1 of the Evidentiary Hearing*,* lines 124-126.

Section 2.0 of Exhibit 11 provides the details on the calculations for incentives according to Targets and performance levels. It also includes performance objectives, descriptions, and details on the calculations of each of the Performance Metrics. Incentives are paid only when performance exceeds the Minimum Performance Levels. *See Id.*, lines 66-68; *see also* Exhibit 11 of the Evidentiary Hearing.

LUMA has presented evidence in this proceeding to support its request for approval of LUMA's Performance Metrics Targets, found in the Revised Annex IX submitted on October 28, 2022, including the corresponding objectives, descriptions, calculations, baselines, and targets, for which there is enough data to set baseline performance utilizing recognized industry practices and standards. *Id.*, lines 128-130; *see also* Exhibit 11 of the Evidentiary Hearing. In the substantive discussions for each of the metrics in this Brief, LUMA will reference the evidence on the record for those metrics where these issues with data influenced LUMA's analyses in setting baselines and targets and proposing to defer certain reliability metrics.

LUMA respectfully submits that the proposed Performance Metrics Targets included in the Revised Annex IX advance important public policy and interests. As the record shows, the performance of PREPA was well below industry standards. *Id.,* line 257. LUMA believes that the collection of Performance Metrics detailed in the filing before this Energy Bureau are strong

indicators of performance for a utility and are designed to bring performance in line with industry-standard over time. *Id.*, lines 257-260. The ultimate goal of the proposed Performance Metrics is to align LUMA's performance with improved results for customers and the achievement of the goals of energy public policy. *Id.,* lines 260-262. Establishing a robust set of Performance Metrics will enable transparency, reverse negative performance trends, and will further align LUMA with public policy. *Id.*, lines 266-267. This will also advance the specific key goals drawn from Puerto Rico energy public policy that are reflected in LUMA's strategic framework: Prioritize Safety; Improve Customer Satisfaction; System Rebuild and Resiliency; Operational Excellence; and Sustainable Energy Transformation. *Id.* lines 266-271.

B. Proposal on Revisions of Baselines and Targets

LUMA proposes that this Energy Bureau approve an initial set of Performance Metrics and that further proceedings are pursued to review —once set— the Minimum Performance Levels and Targets (25%-150%) for the appropriate metrics with the benefit of new data and while considering changes in circumstances and the state of the T&D System. It is in the public interest to have both metrics that are attainable, and that drive the necessary performance to meet contractual, legal, and public policy requirements. As Mr. Hurtado testified during the evidentiary hearing:

> It's important that . . . the metrics . . . have a direct relation to the state of the utility and the current conditions. So if there were major events that happened or major changes, there's always an opportunity to request a change in accordance with the impacts that that change might have had on the metrics.
>
> . . . the general concept is that you want metrics that are attainable and drive the necessary change in the different areas that will benefit customers and align with Puerto Rican Public Energy policy.

See Evidentiary Hearing, Vol. 1, p. 34, lines 6-25 and p. 35, lines 1-5 (M. Hurtado English); AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [1:11:50].

The Performance Metrics Targets included in the Revised Annex IX, Exhibit 11 of the Evidentiary Hearing, are an initial set of metrics that advance important statutory and public policy objectives to enable the transformation of PREPA's T&D System in accordance with the T&D OMA and allow LUMA a reasonable opportunity to earn the incentive payment set forth in the T&D OMA. Given the passage of time since LUMA submitted for approval the Revised Annex IX on February 25, 2021, and August 18, 2021, the Minimum Performance Levels and Targets should be revisited. There is new and updated information relevant to the applicable Minimum Targets that should be considered. *See* Evidentiary Hearing, Vol. 1, p. 56, lines 2-16 (M. Hurtado Spanish Portion); AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [2:47:31].

As the record shows, the proposed Performance Metrics Targets are the product of the negotiations that led to the execution of the T&D OMA in June 2020 and revisions during the Front-End Transition Period from July 2020 through February 2022. The experience of LUMA's operations of the T&D System since July 2021, new data obtained and maintained by LUMA, funding availability, and the current state of the T&D System should be considered in setting reasonable targets to allow LUMA a reasonable opportunity to earn the incentive fee. The targets were set based on the data that was available, and there is a direct relationship between the data that was available and the targets. Therefore, targets should be revised to consider the new data that is now available with the passage of time since LUMA's prior submissions of the Revised Annex IX to the T&D OMA. LUMA proposes that a key moment in time when Minimum Performance Levels and Targets should be revised is close to when PREPA exits Title III. Currently, that exit is expected to take place at the end of the calendar year 2023.

Pursuant to the Revised Annex IX, and the supporting testimonies by LUMA's representatives, the information that was available for some of the Performance Metrics Targets

was inaccurate or insufficient when LUMA prepared and submitted the Revised Annex IX to the T&D OMA. There were issues with the "accuracy, precision of the data in general terms and . . . the method of recording the data." *See* Evidentiary Hearing, Vol. 1, p. 31, lines 10-13 (M. Hurtado English Portion); AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [1:08:09].

As Mr. Hurtado explained during the Evidentiary Hearing, LUMA's proposal is that the Energy Bureau should determine which metrics should be used to measure LUMA's performance, and then give LUMA an opportunity to re-evaluate the Minimum Performance Levels and Targets. *See* Evidentiary Hearing, Vol. 1, p. 49, lines 17-19 (M. Hurtado English Portion); AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [1:33:05]. LUMA is not proposing that the Energy Bureau re-open a process to consider which metrics to include in Annex IX to the T&D OMA. *See* Evidentiary Hearing, Vol. 1, p. 53, lines 8-13 (M. Hurtado English Portion); AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [1:36:30]. The proposal is to recognize that some time has passed and that it is beneficial to consider data that was not available at the time prior to LUMA's taking over the operation of the T&D System and now is available. This review would avoid having a potentially large gap between the targets and LUMA's actual performance and the current state of the system. *See* Evidentiary Hearing, Vol. 1, pp. 97-100 (M. Hurtado English portion), AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [2:38:28]. The proposal is to review the Targets and the Minimum Performance Levels so that they are in line with the current system as it stands closer to the start of the application of the Performance Metrics. Evidentiary Hearing, Vol. 1, pp. 97-98, lines 14-25; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [2:38:28]. In terms of the Targets, LUMA proposes that there should be an opportunity to update and provide further information to the Bureau, once a determination has been made on what metrics will be used to evaluate LUMA's

performance and incentive fee payment. *See* Evidentiary Hearing, Vol. 1, p. 51, lines 19-25 (M. Hurtado English Portion), AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [1:35:33]. Regarding this topic, Mr. Hurtado testified as follows:

> In the context of where we are today, a lot of time has passed. So there's much more information. And there's also uncertainty as to when these metrics will start to apply to LUMA, because the key condition precedent for that is PREPA exiting Title 3, in addition to the approval of the metrics themselves. So LUMA would propose that there be a determination on which metrics are going to be applied to LUMA, and that when there's more information about the exit from Title 3 or at least closer to what that date is, LUMA can provide updated data. Because certainly there's a lot of time that's passed and there's a lot of information so that the Bureau can take that into account and decide whether these Targets should be adjusted or ·the baseline should be adjusted based on the data being presented.

See Evidentiary Hearing, Vol. 1, p. 50, lines 3-25, p. 51, line 1 (M. Hurtado English portion), AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [1:32:17].

"[P]rimarily what [LUMA] would be focused on is the Targets and the Minimum Performance Levels so that they are in line with the current system as it stands closer to the start of the application of the metrics." *See* Evidentiary Hearing, Vol. 1, p. 98, lines 20-24 (M. Hurtado English Portion); *See* AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [2:38:28].

In summary, LUMA proposes that to have the most appropriate metrics and set the right targets, this Energy Bureau should consider the current system and what LUMA has or has not achieved, and this is subject to new data and new information that the Energy Bureau can take into account. *See* Evidentiary Hearing, Vol. 1, p. 100, lines 2-7 (M. Hurtado English Portion); AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [2:40:47]. LUMA's proposal is meant to facilitate that the metrics reflect the current state of the system, where LUMA is today, and where it needs to be in the next three years to attain the results for the best interest of customers

and for policy. *See* Evidentiary Hearing, Vol. 1, p. 101, lines 10-15 (M. Hurtado English portion), AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [2:40:47].

C. Opposition to Proposal for Imposition of Penalties

On May 26, 2022, LECO filed a *Motion Requesting the Imposition of Penalties in LUMA's Performance-based Mechanism* whereby they requested from this Energy Bureau that the performance mechanism adopted as a result of the instant proceeding include a penalty scheme as a measure to encourage LUMA's compliance with its responsibilities and obligations pursuant to the T&D OMA.

LUMA opposed LECO's request for the imposition of penalties since it is inappropriate due to its inconsistency with the legal framework adopted by the Government of Puerto Rico and pursuant to which the T&D OMA was executed. Additionally, adopting the mechanism proposed by LECO would alter the contractual representations according to which LUMA balanced the risk inherent to the T&D OMA and assumed the responsibilities and obligations outlined in the contract, *See* Evidentiary Hearing, Vol. 1, p. 74, lines 21-25, p. 75, lines 1-4 (M. Hurtado English Portion); AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [2:07:00]. *See Opposition to LECO's Motion Requesting Imposition of Penalties in LUMA's Performance-Based Mechanism*, filed on June 23, 2022, which arguments are incorporated by reference to this Brief. *See* Exhibit A to this Brief.

1. This Energy Bureau should Reject LECO's Proposal on the Imposition of Penalties that is based on the LIPA Contract

LECO's filing on imposition of penalties was in furtherance of the pre-filed direct testimony of its expert witness, Mr. Agustín Irizarry, in which he recommended the Energy Bureau should adopt a performance-based incentive mechanism structure that recognized the imposition of penalties akin to the Long Island Power Authority ("LIPA") in its Second Amended Restated

contract with the private operator Public Service Enterprise Group ("PSEG") (hereinafter, the "LIPA contract"). *See* Exhibit 7 of the Evidentiary Hearing, Direct Testimony of Agustín Alexi Irizarry-Rivera (November 17, 2021), p. 8, lines 18-21. LUMA understands that adopting a structure similar to the one included in the LIPA contract is not appropriate, considering the state of the assets and the context in which the T&D OMA was executed.

In his pre-filed direct testimony, Mr. Agustín Irizarry, an expert for LECO, recommends that the Energy Bureau adopt metrics analogous to the "Gating Performance Metrics" and "Default Performance Metrics" from the LIPA contract with the PSEG in the performance-based mechanism to be applied to LUMA. *See* Exhibit 7 of the Evidentiary Hearing, p. 8, lines 18-21.

Mr. Irizarry testified in the Evidentiary Hearings that a structure of Gating Performance Metrics and eDefault Performance metrics is included in the LIPA contract. *See* Evidentiary Hearing Transcript, February 7, 2023 (Spanish Portion), p. 9, lines 3-21; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [0:23:43]. He described the "gating Performance Metrics" as metrics identifying some performance areas as crucial. *See* Evidentiary Hearing Transcript, February 7, 2023 (Spanish Portion), p. 9, lines 22-25; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [0:25:10]. Mr. Irizarry proposed in his testimony that the way Gating Performance Metrics work is that if a minimum performance is not achieved for metrics that are considered crucial, the company is disqualified from receiving bonuses in other areas that are not considered critical. *See* Evidentiary Hearing Transcript, February 7, 2023 (Spanish Portion), p. 10, lines 1-4 AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [0:25:31]. Mr. Irizarry claims such metrics do not exist in LUMA's T&D OMA, which he considers an important mechanism. *See* Evidentiary Hearing

Transcript, February 7, 2023 (Spanish Portion), p. 10, lines 5-8; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [0:25:54].

Furthermore, Mr. Irizarry testified that the way the Default Performance Metrics works is that if the indicated Default Performance Metrics are not attained, the company would be found in default of the contract, and, therefore, the contract would be canceled. *See* Evidentiary Hearing Transcript, February 7, 2023 (Spanish Portion), p. 11, lines 4-8; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [0:27:56]. Per Mr. Irizarry, such evaluation is done yearly instead of waiting for three years of terrible performance. *See* Evidentiary Hearing Transcript, February 7, 2023 (Spanish Portion), p. 11, lines 8-10; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [0:28:09]. Mr. Irizarry indicated that LUMA's proposal was ambiguous because it did not define what terrible performance is or how many metrics you need to be in a failure for the performance to be really terrible. *See* Evidentiary Hearing Transcript, February 7, 2023 (Spanish Portion), p. 11, lines 10-15; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [0:28:17].

On cross-examination, Mr. Irizarry admitted that the T&D OMA does not include the term "terrible" and stated that he did not know if the LIPA contract included the term "terrible." *See* Evidentiary Hearing Transcript, February 7, 2023 (Spanish Portion), p. 107, lines 18-122; p. 108, lines 20-25; p. 110, lines 3-25, page 111, lines 1-8, AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [4:15:16]. In fact, despite advocating for the adoption of components of the LIPA contract, Mr. Irizarry admitted that he did not read the full contents of the LIPA contract. *See* Evidentiary Hearing Transcript, February 7, 2023 (Spanish Portion), page 111, lines 3-8, AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [4:17:59].

The rebuttal testimony of Mr. Donald Hall, Lead of Performance Metrics for LUMA, refutes the generalized and skewed portrayal by Mr. Irizarry of the "Default Performance Metrics" and "Gating Performance Metrics" included in the LIPA contract. To wit, Mr. Hall explained in his pre-filed direct testimony submitted in the instant proceeding that the "Gating Performance Metrics" are those "in which PSEG's failure to achieve a Gating Performance Metric in any contract year results in a percentage reduction to the Variable Compensation Pool for that contract year by the percentage specified in the Gating Performance Metric and, accordingly, reduces the amount that may be earned across all Scope Function-Specific Performance Metrics for that contract year." *See* Exhibit 4 of the Evidentiary Hearing, Rebuttal Testimony of Donald Hall (February 17, 2022), p. 8, lines 158-161, and p. 9, lines 162-163.

In further rebuttal to Mr. Irizarry's opinion, Mr. Donald Hall testified in the Evidentiary Hearings that the "Gating Performance Metrics" "may not be a bad concept when applied to a mature utility with years of experience operating under incentive metrics. PSEG has operated LIPA under a public-private partnership with incentives based on Performance Metrics since 2014, that is, for approximately eight years". *See* Exhibit 4 of the Evidentiary Hearing, p. 9, line 192, and p. 10, lines 193-195. Therefore, he affirmed, "[a]pplying this concept to LUMA is premature. The utility LUMA inherited is far from mature, with most operations, business, and transmission & distribution system processes being built and rebuilt from the ground up". *See* Exhibit 4 of the Evidentiary Hearing, p. 10, lines 198-203.

Regarding LIPA's "Default Performance Metrics," Mr. Hall stated that they work similarly to LUMA's T&D OMA cancellation for non-performance under Section 14.1(k) of the T&D OMA. *See* Exhibit 4 of the Evidentiary Hearing, p. 10, lines 206-212. Therefore, "the T&D OMA has envisioned a mechanism in which a default by LUMA to meet the minimum standard on

specific Performance Metrics for consecutive years will allow for the cancellation of the contract." *See* Exhibit 4 of the Evidentiary Hearing, p. 11, lines 217-219. Mr. Hall testified that for those reasons, Mr. Irizarry's recommendation was redundant, given the language of the T&D OMA. *See* Exhibit 4 of the Evidentiary Hearing, p. 11, lines 221-222.

Moreover, during the Evidentiary Hearing, Mr. Hall testified that to understand the LIPA contract, it is necessary to know the context in which it was executed. *See* Evidentiary Hearing Transcript, February 7, 2023 (English Portion), p. 117, lines 20-23; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [1:29:01]. The history behind that contract is that LILCO, the original electric company, was building a nuclear plant. However, in order to save money, a private operator was brought, ultimately PSEG. Also, to put things in perspective, the LILCO electric system was in fairly good shape for a 20th-century utility. *See* Evidentiary Hearing Transcript, February 7, 2023 (English Portion), p. 118, lines 3-17; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [1:29:21]. Mr. Hall further explained that one of the reasons behind the default and gating metrics included in the LIPA contract is that during PSEG's management, a severe storm took out much of the LIPA electric system. *See* Evidentiary Hearing Transcript, February 7, 2023 (English Portion), p. 118, lines 23-25, and p. 119, lines 1-4; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [1:30:08]. The storm uncovered problems with PSEG's management of the LIPA electric system. Thus, LIPA insisted on renegotiating the management contract to include harsher potential penalties and performance metrics in the contract. *See* Evidentiary Hearing Transcript, February 7, 2023 (English Portion), p. 119, lines 4-8; AP-2020-0025 Evidentiary-20230201_Meeting Recording 2 [1:31:00].

For those reasons, Mr. Hall stated there was no comparison with the Puerto Rico electric system. PSE&G operated a mature utility compared to LUMA with the Puerto Rico electric

system. *See* Evidentiary Hearing Transcript, February 7, 2023 (English Portion), p. 118, lines 18-19; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [1:30:08]. In fact, Mr. Hall explained that he had never seen an electric system comparable to the Puerto Rico electric system based on his professional experience working in different utilities across the United States and overseas. *See* Evidentiary Hearing Transcript, February 7, 2023 (English Portion), p. 118, lines 19-22; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [1:28:57]. The Puerto Rico electric system was in much worse shape than the LIPA electric system, from the condition of the assets to business processes, just about everything a utility does. *See* Evidentiary Hearing Transcript, February 7, 2023 (English Portion), p. 125, line 25, and p. 126, lines 1-3; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [1:40:11].

Mr. Hall further explained that the reason behind the default and gating metrics included in the LIPA contract is that during PSEG's management, a severe storm affected the LIPA electric system. *See* Evidentiary Hearing Transcript, February 7, 2023 (English Portion), p. 118, lines 23-25, and p. 119, lines 1-4. The storm uncovered problems with PSEG's management of the LIPA electric system. Thus, LIPA insisted on renegotiating the management contract to include harsher potential penalties and performance metrics. *See* Evidentiary Hearing Transcript, February 7, 2023 (English Portion), p. 119, lines 4-8; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [1:31:06].

In comparing the LIPA contract with LUMA's T&D OMA, Mr. Hall established that the LIPA contract only had three metrics under which PSEG would be considered in default if non-compliant. On the contrary, LUMA's T&D OMA has ten potential default metrics. *See* Evidentiary Hearing Transcript, February 7, 2023 (English Portion), p. 125, lines 9-11; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [1:39:33]. As such, Mr. Hall explained that

LUMA had much more to focus on to avoid default than PSEG does with LIPA. Therefore, LUMA's situation was more severe when compared to PSEG's under the LIPA contract. *See* Evidentiary Hearing Transcript, February 7, 2023 (English Portion), p. 125, lines 12-15; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [1:39:46].

Mr. Branko Terzic, an expert witness for LUMA, agreed with Mr. Hall's testimony that in Mr. Irizarry's pre-filed testimony, he did not consider the physical condition and service performance of the LIPA predecessor company, the investor-owned Long Island Power Company or circumstances leading to the transfer of ownership of its assets to the state-created LIPA were significantly different from the situation in Puerto Rico with PREPA at the time that the bidding and negotiation process that led to the T&D OMA contract took place. *See* Exhibit 5 of the Evidentiary Hearing, Rebuttal Testimony of Branko Terzic (February 16, 2022), p. 20, lines 406-408, and pp. 21, lines 409-411. Mr. Terzic also explained that "[u]nlike the situation cited by the Puerto Rico legislature enabling the management contract with LUMA, the New York legislature did not cite conventional electric generation, transmission, or distribution service quality as the reason for the legislation to create the public owned LIPA. LILCO was already a 20th century electric utility." *See* Exhibit 5 of the Evidentiary Hearing, p. 21, lines 414-419. Mr. Terzic opined that there was no reason to believe that the amended contract between LIPA and PSEG that added the gating performance metrics should be applied to PREPA. *Id*., p. 21, lines 438-440.

In sum, to voice his recommendation for the adoption of a scheme similar to the one included in the LIPA contract of "Gating Performance Metrics" and "Default Performance Metrics," Mr. Irizarry omitted to consider the context and circumstances in which the LIPA contract was agreed, which were very different from those surrounding the T&D OMA. Further, Mr. Irizarry completely ignored the state of the assets of LIPA in comparison with the poor state

of PREPA's assets. Those aspects are fundamental when considering transplanting an existing structure of incentives and penalties from one jurisdiction to another regarding an electric system. Mr. Irizarry does not explain in his analysis how those differences were considered before presenting his recommendation to the Energy Bureau. Thus, Mr. Irizarry's opinion lacks a thorough examination of the same structure he proposes adopting for LUMA.

As an argument for this Energy Bureau to impose "Gating Performance Metrics" and "Default Performance Metrics," Mr. Irizarry states that all metrics are not equal, and suggests, without explanation, that, contrary to the LIPA contract, LUMA does not recognize that. For example, he mentions that answering the phone quickly is very different from acting when an electric line falls to the ground while energized and that the LIPA contract recognizes this type of situation through "Gating Performance Metrics" and "Default Performance Metrics." *See* Evidentiary Hearing Transcript, February 7, 2023 (Spanish Portion), p. 10, lines 12-24; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [0:26:25]. However, Mr. Irizarry fails to recognize that the LIPA contract only includes metrics on areas such as customer service, emergency preparation and response, and cybersecurity under the "Default Performance Metrics." In turn, LUMA's proposal lists under the Key Performance Metrics, analogous to the "Default Performance Metrics" of the LIPA contract, the following ten metrics: (i) Average Speed of Answer; (ii) Abandonment Rate; (iii) OSHA Fatalities; (iv) OSHA Severity Rate; (v) System Average Interruption Frequency Index (SAIFI); (vi) System Average Interruption Duration Index (SAIDI); (vii) Distribution Line Inspections & Targeted Corrections; (viii) Operating Budget; (ix) Capital Budget: Federally Funded; and (x) Capital Budget: Non-Federally Funded. *See* Exhibit 11 of the Evidentiary Hearing, p. 38, Section 2.6. That is, LUMA's Key Performance Metrics

encompass metrics on safety, reliability, budget, and customer service and recognize the wide array of important and critical areas to an electric company's operation.

In addition, even though Mr. Irizarry made a recommendation to adopt the imposition of penalties in the incentive structure proposed by LUMA, he recognized during his testimony in the Evidentiary Hearing that the Energy Bureau could impose fines and penalties pursuant to the authority conceded by the law in Puerto Rico, irrespective of the Performance Metrics structure ultimately adopted for LUMA in the instant proceeding. Therefore, Mr. Irizarry admitted that a system was already in place which could subject LUMA to fines and penalties for non-compliance. *See* Evidentiary Hearing Transcript, February 7, 2023 (Spanish Portion), p. 15, lines 9-25, p. 16, lines 1-25, and p. 17, lines 1-3; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [0:27:34-0:29:17]. As such, the penalties scheme proposed by LECO is entirely redundant.

In conclusion, this Energy Bureau should reject LECO's proposal, presented through the testimony of Mr. Irizarry, that the LIPA contract and several of its provisions regarding Gating and Default Performance Metrics may be considered to add to the T&D OMA to determine LUMA's ability to earn the incentive fee. As Mr. Hurtado testified during the Evidentiary Hearing, LUMA opposes a proposal, such as the one supported by LECO, to alter the risk and reward equation that was negotiated by the parties to the T&D OMA. "The incentive fee was set up in a particular way in the OMA and it's part of the risk-and-reward equation that's represented in the OMA and that the ability to earn the incentive fee generally under the terms that are represented there is an important part of that." *See* Evidentiary Hearing Transcript, February 7, 2023 (English Portion), p. 74, lines 21-25, p. 75, line 1; AP-2020-0025 Evidentiary-20230201_Meeting Recording 1 [2:07:00].

2. LECO's proposal on the imposition of penalties should be rejected as unsupported.

Through the testimonies of Mr. Irizarry and of economist José Alameda Lozada ("Mr. Alameda"), LECO proposes that this Energy Bureau should impose on LUMA penalties that are not included in Annex IX to the T&D OMA and that were not negotiated by the parties. LUMA's experts, Mr. Terzic and Dr. Juan Lara presented pre-filed and live testimonies that refute the proposals of LECO's witnesses.

Firstly, it bears noting that while Mr. Irizarry proposed that this Energy Bureau should impose penalties if LUMA fails to meet targets in certain performance categories, prior to his testimony in this proceeding, he had not made a publication on the topic of penalties applicable to an electric power utility, *see* Evidentiary Hearing Transcript, February 7, 2023 (Spanish Portion), p. 77, lines 11-21, p. 78, lines 1-3; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [3:40:04]. Additionally, he had not prepared a proposal on penalties to apply to an electric power service company. *See* Evidentiary Hearing Transcript, February 7, 2023 (Spanish Portion), page 78, lines 4-10; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [3:41:00]. In sum, a review of Mr. Irizarry's professional Background reveals that prior to presenting testimony in this proceeding, he had not researched nor published on the topic of performance metrics. Furthermore, Mr. Irizarry did not file with this Energy Bureau a proposal on performance metrics to consider for PREPA in the parallel proceeding where this Energy Bureau evaluates the performance of PREPA, Case NEPR-MI-2019-007. *See* Evidentiary Hearing Transcript, February 7, 2023 (Spanish Portion), p. 78, lines 11-15, p. 79, lines 1-7; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [3:41:30 & 3:42:03].

In sharp contrast, LUMA's expert on performance metrics, Mr. Terzic, enjoys a five-decade career in the regulated electric utility industry as a consultant, a state and federal regulator

as Commissioner on the U.S. Federal Regulatory Energy Commission ("U.S. FERC") (1990-1993) and Commissioner on the State of Wisconsin Public Service Commission (1981-1986), and the CEO of a regulated utility. *See* Exhibit 5 of the Evidentiary Hearing, lines 13-14; *see also Id.,* lines 15-112 for additional details on Mr. Terzic's experience, including experience in the regulation of electric utilities and with Performance Based Regulation. Mr. Terzic has offered speeches, been interviewed, and published articles over the past forty years where he supported the implementation of "Incentive Regulation," also called "Performance Based Regulation (PBR) for investor-owned utilities as a way of improving efficiency, safety, and operations of utilities. *See Id.,* lines 37-40. An example of an article authored by Mr. Terzic in support of incentive rate making appeared in the NR&E magazine Winter 1994 edition under the title "Incentive Regulation: Efficiency in Monopoly." *Id.,* lines 43-45. Mr. Terzic also has experience as a regulator with incentive regulation as a Commissioner on the State of Wisconsin Public Service Commission and the U.S. FERC. *Id.*, lines 45-47. Moreover, while serving as a Commissioner on the U.S. FERC, Mr. Terzic led a Task on Incentive Ratemaking which resulted in the U.S. FERC's issuance of a "Policy Statement on Incentive Regulation" issued on October 30, 1992, Docket No. PL92-1-000 "Incentive Ratemaking for Interstate Natural Gas Pipelines, Oil Pipelines and Electric Utilities." *See Id.*, lines 103-107. The issuance of the Policy Statement on Incentive Regulation was the result of Mr. Terzic's Task Force report and subsequent proceedings in that docket. *Id.,* lines 108-112.

Secondly, as Mr. Terzic established in this proceeding, Mr. Irizarry and Mr. Alameda mistakenly based their penalty schemes proposals on publications and principles of Performance-Based Ratemaking or Performance-Based Regulation, but the principles of Performance-Based Ratemaking or Performance-Based Regulation deal with rate making and apply to profit-

maximizing utilities unlike PREPA and are thus inapplicable in this proceeding that is convened to consider Performance Incentive Mechanisms. *See Id.,* lines 198-203. As Mr. Terzic explained, because the T&D OMA is a management contract, the issue in this proceeding is one exclusively of PIMs in the sense of "executive compensation" and/or "manager performance." *Id.*, lines 206-209. The T&D OMA reflects the reality that PREPA is a state-owned entity and does not have as its goals what Professor Irizarry cites as "the traditional utility goal of maximizing utility-owned capital investment and increasing sales. *Id.,* lines 210-213.

Mr. Terzic also established that Mr. Irizarry's and Mr. Alameda's proposals are flawed because they both reference and apply principles and concerns regarding the goals of traditional profit-maximizing utilities and investor-owned utilities that, unlike PREPA, have the ability to increase profits by increasing sales. *See Id.,* lines 226-246, 457-463, 495-516, 544-546, and 548-575.

As with Mr. Irizarry's proposals, Mr. Terzic highlights that Mr. Alameda's "reward-penalties schemes" proposal does not apply to the T&D OMA contract. Mr. Terzic explained that the authorities that Mr. Alameda cites for these schemes were all designed for investor-owned utilities and not for non-profit government entities and are not applicable to PREPA, which is a state-owned enterprise that does not have for-profit motivation. *See Id.,* lines 548-575. Similarly, Dr. Lara stressed in his testimony that Mr. Alameda errs in considering the literature on regulatory regimes different from the regulations applicable to PREPA. *See* Exhibit 6 of the Evidentiary Hearing, lines 194-253; *See* Evidentiary Hearing Transcript, Vol. 1 February 7, 2023 (English Portion), p. 153, lines 6-25, p. 154, lines 1-10; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [2:21:38]. During the Evidentiary Hearing, Dr. Lara expanded that Mr. Alameda's direct expert testimony cites literature that is not applicable to Puerto Rico.

The literature cited refers to a price gap mechanism that is not applicable to the existing Puerto Rico regulatory system. See Evidentiary Hearing Transcript, Vol. 1 February 7, 2023 (English Portion), p. 153, lines 6-11; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [2:21:38].

During the Evidentiary Hearing, Mr. Terzic further stated the following, showing why the regulatory mechanism on which Mr. Irizarry and Dr. Alameda rely to propose a reward-penalty scheme should be rejected:

> There was testimony in the case, well-researched testimony, about incentive rate making and performance-based rate making. Neither one is applicable either to PREPA or to – or to LUMA. And I chaired the Federal Energy Regulatory Commission task force on incentive rate making. I've spoken on incentive rate making. One of the magazines called me the "silver mouth commissioner," for being an advocate of incentive rate making, which I am, and continue to be. But incentive rate making is designed for for-profit utilities, which are monopolies and which ·have as their main goal profit maximization. And as the professors have pointed out in the documents and papers, the profit maximization. Comes from two steps. One, overinvesting in rate base, because as you know, under our regulatory formula your return for a profit utility is rate base times rate of return.
>
> So clearly there's what's called the average Johnson effect by economists where a utility given no control will overinvest gold plate and rate base to raise its profit. And the second charge against investors on utilities is they will push for sales. They will push for higher revenues, which given the current rate base, will also – higher revenues than what was in the rate making, in the billing. Determinant – they will push for higher sales in order to maximize revenues to increase higher profit. And in the testimony of my esteemed colleagues sitting behind me, most of them pointed out that this propensity to increase profits requires regulation, and the notion – the problem, of course, is that neither PREPA nor – PREPA can't do incentive rate making because PREPA doesn't have profit maximization as its goal.
>
> I looked in the statutes establishing PREPA; I looked through the language. Nowhere is – the goal is low-cost electric service, reliable service, it is not maximizing profit. Now, it could maximize profit, and the nice thing there is that profit would go to the citizens of Puerto Rico. But PREPA is not maximizing profit and so there is no concern that PREPA would maximize profit; therefore, incentive rate making doesn't work. PREPA also does not have the – because it doesn't have the profit maximization, it also is not pushing for higher sales because of not having a profit doesn't mean higher sales, it wants the sales that customers need. So incentive rate making does not work for PREPA. For LUMA, the traditional

> performance-based rate making, incentive rate making doesn't work because LUMA doesn't own assets. And LUMA does not make a higher profit if PREPA's asset base increases. There is no tie-in with the size of PREPA were to double its asset base, there's no indicator that increases the profit to PREPA. Secondly, if there are increased sales by themselves, even if more revenue is gotten, that revenue goes to the citizens of Puerto Rico.

See Evidentiary Hearing Transcript, Vol. 1 February 7, 2023 (English Portion), p. 135, lines 11-25, pp. 136-138, lines 1-2; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [1:54:02].

This Energy Bureau should reject Mr. Alameda's proposed rewards-penalty scheme for several reasons identified by Dr. Lara in his pre-filed testimony: (1) Mr. Alameda presents only illustrative examples of possible reward-penalty schemes but does not provide any specific guidance to the Regulator on the subject; (2) Mr. Alameda does not answer the question of what is an appropriate incentives scheme for Puerto Rico's electric utility;(3) Mr. Alameda does not provide guidance or evidence to help the Regulator determine the magnitudes required in the calibration of a specific reward-penalty scheme for LUMA's regulation; (4) Mr. Alameda cites literature that does not apply to Puerto Rico's regulatory regime and fails to establish its relevance to PREPA and LUMA; (5) Mr. Alameda uses theoretical concepts in economics, such as consumers surplus and the Coase Theorem that are not relevant to the subject matter in these proceedings, and witness Alameda fails to establish their relevancy; and (6) Mr. Alameda does not address important questions regarding the subject matter in the proceedings, such as the benefit-cost balance of possible reward-penalty schemes in addition to or in place of existing incentives in the T&D OMA. *See* Exhibit 6 of the Evidentiary Hearing, lines 40-60.

As Dr. Lara explained during the Evidentiary Hearing, "my key finding is that [Mr. Alameda] doesn't really make a case for what he's advocating. He doesn't do it with the literature and he doesn't do it with the economic theory, either." *See* Evidentiary Hearing Transcript, Vol. 1

February 7, 2023 (English Portion), p. 151, lines 8-13; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [2:14:56]. During the Evidentiary Hearing, Dr. Lara further testified that Mr. Alameda says there is a need for a system that includes both rewards and penalties and that he proposes a couple of formulas he essentially derives from one of the pieces of literature he consulted. Also, Mr. Alameda appeals to concepts in economics that are not properly applied here. However, Mr. Alameda never really makes the connection between those concepts and what he is proposing. Dr. Lara explained that when you look at the overall analysis, he is essentially proposing an idea for the regulators to consider without any real foundation either in data or analysis, or economic theory. *See* Evidentiary Hearing Transcript, Vol. 1 February 7, 2023 (English Portion), p. 152, lines 4-17; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [2:15:01].

Moreover, the weight of the evidence in the administrative record refutes Mr. Alameda's assumption that penalties encourage better performance. Both in his pre-filed testimony and during the Evidentiary Hearing, Dr. Lara explained that in proposing a Reward-Penalty Scheme, Mr. Alameda "provides no basis, theoretical or empirical, for the unqualified claim that "both rewards and penalties will encourage a better performance…". In fact, witness Alameda does not acknowledge warnings in some of the literature he cites in his testimony that penalties may have perverse effects and are certainly not guaranteed to encourage better performance. Both in theory and practice, it is quite possible for penalties to encourage undesirable behavior, such as excessive risk-avoidance or disproportionate attention to some metrics to the neglect of others." *See* Exhibit 6 of the Evidentiary Hearing, p. 6, lines 98-107 (citation omitted); *see also* Evidentiary Hearing Transcript, Vol. 1 February 7, 2023 (English Portion), p. 223, lines 18-25; p. 224, lines 1-18; AP-2020-0025 Evidentiary-20230207_Meeting Recording 2 [4:55:00]. Dr. Lara further established

that in proposing a rewards-penalty scheme, Mr. Alameda "does not provide a sound theoretical basis to support his claim that a scheme involving both rewards and penalties is needed to ensure that LUMA performs in the manner desired by the Regulator in the context of Puerto Rico's public policy for the energy sector." *See* Exhibit 6 of the Evidentiary Hearing, lines 34-39. These statements were not contested by any intervenors or opposing witnesses.

Given that both Mr. Irizarry and Mr. Alameda ground their recommendations for this Energy Bureau to adopt a rewards-penalty scheme on inapplicable authorities and frameworks and also lack a theoretical or empirical basis for their proposals, this Energy Bureau should reject their testimonies and the rewards-penalties schemes that they put forth.

3. This Energy Bureau should adopt the T&D OMA's incentives scheme.

The testimonies of LUMA's experts, Mr. Terzic and Dr. Lara, establish that despite Mr. Irizarry and Mr. Alameda's recommendations to impose a penalty scheme, the T&D OMA actually already includes an incentive scheme with penalties. Both the testimonies of LUMA's experts, Mr. Hall and Mr. Hurtado, warrant the conclusion that there is no basis for rejecting or amending the incentive mechanism adopted in the T&D OMA.

Mr. Terzic testified that "any independent observer would recognize that adding additional or different penalties after a contract has been negotiated and signed and by two independent government agencies and approved by the independent regulator, the PREB, adds additional risk which was not considered by the parties in the original negotiations. Bilateral contracts, which include rewards and penalties, are negotiated by parties both cognizant of the balance each needs to lead to signing. After negotiating an acceptable contract, LUMA has no way of accommodating this additional risk if penalties are added or changed retrospectively without other contract adjustments. There is also the possibility that the addition of certain new penalties may implicate

budget changes so that adequate resources are available to meet the new evaluation criteria." *Id.,* lines 349-358.

Furthermore, as Dr. Lara established, Mr. Alameda errs in failing to acknowledge, mention, or evaluate the penalties and incentives in the T&D OMA. Yet, Mr. Alameda assumes that these are somehow inappropriate. *See* Exhibit 6 of the Evidentiary Hearing, lines 42-43. Dr. Lara elaborated on this opinion during the evidentiary hearing, stating that Mr. Alameda:

> assumes that the agreement between LUMA and PREPA and the Puerto Rico P3 Authority is faulty because it doesn't – it doesn't take care of the necessary incentives to get the regulated entity to behave in a way that is required or needed by the government of Puerto Rico and the people of Puerto Rico. And he just assumes that. He doesn't talk at all about what the incentives are in that agreement. And he doesn't say anything based on either economic theory or economic analysis of why he assumes that the contract doesn't provide adequate incentives for the purposes of the regulator and PREPA and the people of Puerto Rico. So he just assumes that.

See Evidentiary Hearing Transcript Vol. 1, February 7, 2023 (English Portion), p. 151, lines 14-25, p. 152, lines 1-3; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [2:10:46].

The T&D OMA already includes a clause that results in the cancellation of the contract for non-performance of Key Performance Metrics. Under Section 14.1(k) of the T&D OMA, it shall constitute a default by LUMA the failure to meet "the Minimum Performance Threshold for any three (3) Key Performance Metrics during three (3) or more consecutive Contract Years and no such failure shall have been excused by a Force Majeure Event, an Outage Event or Owner Fault". The Key Performance Metrics under the T&D OMA are: OSHA Fatalities (number of work-related fatalities), OSHA Severe Injuries (number of total work-related injury cases with severity days), SAIFI (measures average outage frequency), SAIDI (measures average outage duration), Operating Budget, Capital Budget – Federally Funded, and Capital Budget – Non-Federally

Funded (the last three measure the ability to stay within budget). *See* Exhibit 2, lines 207-216. Therefore, the T&D OMA has envisioned a mechanism in which a failure by LUMA to meet the minimum standard on specific Performance Metrics for consecutive years will allow for the cancellation of the contract. *Id.,* lines 217-219.

This Energy Bureau should adopt Mr. Terzic's recommendation that "the penalties in the existing OMA, which include the possibility of cancellation of the OMA, are reasonable now given the unique circumstances in PREPA," *id*., lines 372-374, and find that there is no demonstration by Professor Irizarry that the addition of new or different penalties will necessarily improve management performance. *Id.*, lines 375-376.

D. LUMA Requests the Energy Bureau to Approve the Proposed Performance Metrics

1. Customer Satisfaction Performance Metrics

The Performance Metrics included in the Customer Satisfaction category aim to achieve a high level of customer satisfaction across all customer classes. *See* Exhibit 11, p. 9. There are six Performance Metrics under the Customer Satisfaction category, as discussed in detail below.

a. JD Power Customer Satisfaction Surveys (Residential and Business)

The J.D. Power Customer Satisfaction Surveys are a third-party measure of customer satisfaction for residential and business customers that seek to incentivize sufficient customer service. *See* Exhibit 11 of the Evidentiary Hearing, p. 6 and p. 21. The metrics examine six factors: power quality and reliability, price, billing and payment, corporate citizenship, communications, and customer service. *Id*. For the residential survey, the following three sub-factors are examined within the customer service category: phone, digital, and in-person. *See* Exhibit 41 of the Evidentiary Hearing, Direct Testimony of Jessica Laird (August 3, 2021), lines 76-77. Customer Satisfaction will be measured by following up with surveys in four phases per year for residential

customers and surveys in two phases per year for business customers. *See* Exhibit 11 of the Evidentiary Hearing, p. 21.

Ms. Jessica Laird, Vice President of Customer Experience for LUMA, submitted a pre-filed direct testimony in support of the JD Power Customer Satisfaction Surveys (Residential and Business) Performance Metrics. She indicated that customer satisfaction rankings had become a standard method for energy regulators to measure utility performance within the utility market over the last ten years. J.D. Power performs standardized customer satisfaction surveys for many electric utilities in North America. *See* Exhibit 41 of the Evidentiary Hearing, lines 101-104. The J.D. Power Electric Utility Customer Satisfaction Study provides the electric industry with important insights into the evolving needs and demands of residential and business electric utility customers using a standard methodology. *Id*., lines 65-67.

As explained by Ms. Laird, since PREPA had never measured customer satisfaction, a baseline had to be set during the Front-End Transition period. J.D. Power was able to complete two-quarters of residential customers' survey results and one-half of business customers' survey results during the Front-End Transition period. Since the surveys gathered a strong response, LUMA was able to use the results to set the proposed baseline. *See* Exhibit 41 of the Evidentiary Hearing, lines 93-97. The customer information was taken from PREPA's Oracle Customer Care & Billing (CC&B) system and was used by J.D. Power to survey a statistically significant sample size via email. *Id*., lines 68-69. Mrs. Laird further indicated that compared with other utilities participating in the J.D. Power Electric Utility Customer Satisfaction Survey, PREPA was ranked by its customers as the worst-performing utility. Operational indicators showed that PREPA was not performing at the same level as comparable utilities; therefore, the poor customer satisfaction

results were indicative of performance. For those reasons, Ms. Laird recommended that the results gathered during the Front-End Transition period be used to set the baseline. *Id*., lines 104-110.

The Targets for the J.D. Power Customer Satisfaction Surveys (Residential and Business) Performance Metrics were developed by reviewing the LIPA agreement, which showed that after the agreement was implemented, the scores of the J.D. Power Survey demonstrated a slow improvement over time. However, Ms. Laird noted in her testimony that the LIPA utility was in significantly better condition than PREPA. *See* Exhibit 41 of the Evidentiary Hearing, lines 111-115. Moreover, the scores for the two categories in the surveys of Price and Quality & Reliability were the two lowest scores, both of which will take time to create significant improvements. *Id*., lines 110-118. The proposed Targets for the J.D. Power Customer Satisfaction Surveys (Residential and Business) Performance Metrics are illustrated below:

Table 2-4. J.D. Power Customer Satisfaction Survey (Residential Customers)

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	N/A						
Baseline	398						
Year 1	427	398	450	439	427	415	405
Year 2	455	427	480	468	455	440	430
Year 3	484	455	500	492	484	470	460

See Exhibit 11 of the Evidentiary Hearing, p. 21.

Table 2-5. J.D. Power Customer Satisfaction Survey (Business Customers)

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	N/A						
Baseline	345						
Year 1	380	345	415	400	380	370	355
Year 2	414	380	450	432	414	400	390
Year 3	449	414	475	462	449	435	425

See Exhibit 11 of the Evidentiary Hearing, p. 22.

Attorney Beatriz González, witness on behalf of the ICPO, presented a pre-filed direct testimony in which she opposed the JD Power Customer Satisfaction Surveys (Residential and Business) Performance Metrics. She stated that using e-mail as the exclusive contact method to perform the survey excludes a significant number of customers that do not use electronic means of communication. *See* Exhibit 45 of the Evidentiary Hearing, Direct Testimony of Beatriz González (November 17, 2021), p. 12, lines 202-218. Instead, Attorney González indicated that interviewing customers at the commercial offices was a more trustworthy and representative method than an e-mail survey. *Id*.

Another expert witness for LECO, Mr. Agustín Irizarry, submitted a pre-filed direct testimony in which he proposed to strike the JD Power Customer Satisfaction Surveys (Residential and Business) Performance Metrics until a more thorough set of data is available using methods of survey-taking that are more inclusive than an e-mail survey. *See* Exhibit 7 of the Evidentiary Hearing, Direct Testimony of Agustín Alexi Irizarry-Rivera (November 17, 2021), p. 46, lines 8-19.

In response to the testimonies of the intervenors' witnesses, Ms. Laird submitted a pre-filed rebuttal testimony addressing the arguments posed by Attorney González and Mr. Irizarry. First, she noted that Attorney González's statement was not supported by any data that had been offered in the proceedings. E-mail is the survey method that J.D. Power uses for its Electric Utility Syndicated Studies across North America. According to Ms. Laird's experience, digital channels (mobile device, laptop, P.C.) are the most widely used and cost-effective means to conduct these studies. *See* Exhibit 42 of the Evidentiary Hearing, Rebuttal Testimony of Jessica Laird (February 17, 2022), p. 14, lines 273-277.

Ms. Laird indicated that as of December 31, 2021, 609,982 customers had registered an electronic MiLUMA account, and the MiLUMA app has been downloaded 451,127 times. *See* Exhibit 42 of the Evidentiary Hearing, p. 15, lines 295-297. At that time, LUMA had almost half of the customer base signed up on MiLUMA – which means that almost half of the customer base had active e-mail. That is sufficient data to represent a customer base. *Id*., p. 21, lines 419-421. LUMA shares information from its customer database for those customers that have authorized LUMA and PREPA to share their e-mail addresses. *Id*., p. 12, lines 255-256. For the surveys conducted from the fourth quarter of 2020 until the fourth quarter of 2021, LUMA shared 543,682 email addresses with J.D. Power. J.D. Power then runs the email addresses through a set of queries to achieve a unique sample size. *Id*., lines 232-234. Customers are dynamic in how they interact with their utility company, and the demographics of the customers should not be assumed based on the method and media they use to communicate with LUMA. *Id*., p. 21, lines 419-421. J.D. Power conducts e-mail surveys due to the high response rates received through this type of survey.

As further evidence against Attorney González and Mr. Irizarry's concern over the use of e-mail surveys as a survey method, Ms. Laird stated that the so-called in-person surveys (in which potential respondents are intercepted, screened, and interviewed in person) can be both time-consuming and expensive. Additionally, another concern is that the in-person interviewers may influence the responses. Further, they can potentially suffer from geographic and demographic limitations on who can be interviewed. *See* Exhibit 42 of the Evidentiary Hearing, p. 17, lines 332-336. In Ms. Laird's experience, surveying in person can be challenging due to the time it takes to complete the survey and people's limited time when visiting a commercial office. Also, an in-person survey would require a pre-screening selection process to be conducted on-site before a

customer is selected to respond to an in-person survey in a LUMA commercial office. *Id*., p. 18, lines 346-350.

Per Ms. Laird's rebuttal testimony, J.D. Power did complete three-quarters of data on customer satisfaction while PREPA was still operating. Therefore, LUMA set the baselines with such data. While PREPA has not conducted this type of survey historically, the ability to perform three (3) surveys during the Front-End Transition period granted LUMA the opportunity to have a statistically significant baseline for customer satisfaction. *See* Exhibit 42 of the Evidentiary Hearing, p. 21, lines 411-415.

Ms. Laird further explained that statistically, customers sampled via e-mail are standard across all utilities. Usability for the survey is higher via e-mail because customers can complete the survey at their convenience. There is no technology gap issue with LUMA's customers. *See* Exhibit 42 of the Evidentiary Hearing, p. 21, lines 416-419. Further, the survey itself asks customers about all aspects of LUMA's customer interactions, therefore, pulling in data regarding online, in-person, and telephone customer service. *Id*., p. 21, lines 421-423.

Moreover, in Puerto Rico, using a customer satisfaction survey by a qualified professional survey firm is a contractual requirement under the T&D OMA. The contractual requirement is shown in Annex I (Scope of Services), Annex IX (Performance Metrics), and Annex X (Calculation of Incentive Fee) of the T&D OMA. The condition in the T&D OMA regarding the use of a qualified professional survey firm was put into the contract directly by the P3 Authority. *See* Exhibit 42 of the Evidentiary Hearing, p. 8, lines 141-147. J.D. Power was explicitly listed as the vendor in the T&D OMA. *Id*., line 152; *see also* Evidentiary Hearing Transcript, February 9, 2023 (English Portion), p. 627, lines 1-3; AP-2020-0025 Evidentiary-20230209_Meeting Recording 1 [2:37:24].

During the Evidentiary Hearing, Ms. Laird testified that the majority of customers have emails, and the survey is used to get a sample representation of all customers. Additionally, there are within the survey responses for customers that do receive customer service within the customer service center. *See* Evidentiary Hearing Transcript, February 9, 2023 (English Portion), p. 580, lines 19-24; AP-2020-0025 Evidentiary-20230209_Meeting Recording 1 [1:21:28]. LUMA sends over to J.D. Power all the email addresses of customers that are registered with LUMA. Currently, there are over 750,000 customers signed with LUMA. However, this number changes daily. *Id*., p. 622, lines 9-15; AP-2020-0025 Evidentiary-20230209_Meeting Recording 1 [2:31:58].

Ms. Laird explained that J.D. Power, on an annual basis, sends out 100,000 surveys using a sample selected at random. Each quarter J.D. Power sends 25,000 randomly selected customers, who were not previously selected. The number of customers that respond to those 25,000 becomes your sample size. On average, there have been over a thousand customers that respond each quarter. *See* Evidentiary Hearing Transcript, February 9, 2023 (English Portion), p. 624, lines 10-19; AP-2020-0025 Evidentiary-20230209_Meeting Recording 1 [2:34:45].

On cross-examination at the Evidentiary Hearing, Attorney González stated that she was not an expert in the subject matter, admitting to not having experience designing, conducting, or analyzing customer satisfaction surveys, including experience in the methodology used in customer satisfaction surveys. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 3, lines 2-3; AP-2020-0025 Evidentiary-20230209_Meeting Recording 1 [2:21:15] and p. 25, lines 12-25; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [1:11:21]. Attorney González admitted as well to not having analyzed metrics used by electric utilities in the United States to measure customer satisfaction. *Id*., p. 26, lines 1-4; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [1:11:50].

Attorney González testified that Ms. Laird indicated that there were 750,000 email addresses and there are 1.4 million customers approximately. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 2, lines 12-15; AP-2020-0025 Evidentiary-20230209_Meeting Recording 1 [2:19:18]. However, she later testified to not remembering the fact that Ms. Laird had indicated there were 750,000 email addresses of customers. *Id*., p. 33, line 25; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [1:19:32]. When questioned on her proposition that surveying customers who visited a commercial office is more representative than surveying customers via email, Attorney González also admitted that 543,682 email addresses were numerically more than the 41,389 customers who visited a commercial office in one month. *Id*., p. 38, line 5-6; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [1:23:30].

As did Attorney González, Mr. Irizarry testified at the Evidentiary Hearing to not having experience designing, conducting, or analyzing customer satisfaction surveys. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 41, lines 2-16, and p. 42, lines 18-22; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [1:26:56-1:27:18 & 1:28:03-1:28:29]. He also admitted that Ms. Laird provided the PREPA data in her direct testimony, despite stating in his pre-filed direct testimony that the metric should be stricken due to not being sufficient data for thorough analysis because no PREPA data on customer satisfaction was available. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 47, lines 22-25, and p. 48, lines 1-3; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [1:36:33-1:36:51].

It is evident that the intervenors' witnesses did not offer a substantive challenge to the JD Power Customer Satisfaction Surveys (Residential and Business) Performance Metrics. The witnesses have no experience in the subject matter, offering unsubstantiated opinions and statements. Considering that the JD Power Customer Satisfaction Surveys (Residential and

Business) Performance Metrics were not effectively challenged, LUMA requests the Energy Bureau to adopt them as proposed in this instant proceeding.

b. Average Speed of Answer

The Average Speed of Answer Performance Metric measures the average wait time from the moment the customer enters the Automated Call Distribution ("ACD") queue to the time the call is answered by an agent. *See* Exhibit 11 of the Evidentiary Hearing, p. 6. An ACD is a telephony system that automatically distributes incoming phone calls to available agents based on data entered by the caller into an Interactive Voice Response ("IVR") and skills-based routing, using skills associated with agents. *Id*., p. 22. The calculation of the Average Speed of Answer Performance Metric is the total ACD wait seconds divided between the total answered calls. *Id*. The objective of this proposed Performance Metric is to incentivize efficient call center service. *Id*.

In order to develop the Average Speed of Answer Performance Metric, Ms. Laird stated that the data from three separate contact center platforms (PREPA, Insight, and Telecontacto) was reviewed. Daily, weekly, and monthly data were reviewed. *See* Exhibit 41 of the Evidentiary Hearing, lines 124-127. Upon analyzing the data, it was discovered that the third-party vendors were not reporting the total time in queue, as calls were routed to sit in the PREPA contact center for ten minutes prior to rolling over into the third-party contact center queues. The time reported by the third parties included only the amount of time spent in their queue. *Id*., lines 128-132.LUMA also discovered that PREPA's call center provided a limited number of 500 trunks for calls received at the call center. *Id*., lines 137-139. Nowadays, LUMA has transitioned to a cloud-based call center platform which has removed the existing limitation, drastically increasing the number of calls received daily. *Id*., lines 142-144.

The baseline was calculated using data from Fiscal Year 2019 to March 2020. LUMA determined that data from Fiscal Year 2020 would not support a reliable baseline due to the data being available for a period of six months only, the reported abandonment varies from month to month due to COVID-19 and the onboarding of new outsource vendors, and the lack of visibility into three separate call routing systems. *See* Exhibit 41 of the Evidentiary Hearing, lines 151-156.

For establishing the Targets for the Average Speed of Answer Performance Metric, LUMA calculated a reasonable year-to-year improvement that accounts for hiring, learning curve, training, ramp-up, turnover, process improvement, and other standard operational changes. *See* Exhibit 41 of the Evidentiary Hearing, lines 158-160. The proposed Targets are shown below:

Table 2-6. Average Speed of Answer (minutes)

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	8.3						
Baseline	10.0						
Year 1	9.0	9.7	4.5	6.8	9.0	9.3	9.6
Year 2	6.4	7.1	3.2	4.8	6.4	6.7	7.0
Year 3	5.8	6.4	2.9	4.4	5.8	6.1	6.3

See Exhibit 11 of the Evidentiary Hearing, p. 22.

Attorney González, fact witness on behalf of the ICPO, presented a pre-filed direct testimony in which she disagreed with the Average Speed of Answer Performance Metric because of LUMA's proposed ten minutes baseline. *See* Exhibit 45 of the Evidentiary Hearing, p. 13, lines 229-232. Also, she indicated that it was illogical to establish a metric that could already be accomplished based on the results of two months of performance. *Id*., lines 234-236. Finally, Attorney González counter proposed to adopt a baseline of 8:25 minutes, as established by the Energy Bureau in Case No. NEPR-MI-2019-0007. *Id*., p. 14, lines 243-245.

Ms. Laird rebutted the ICPO's objection to the Average Speed of Answer Performance Metric in a pre-filed rebuttal testimony. She noted that Attorney González's statement failed to consider that the baseline proposed by LUMA is based on data from PREPA that was available when the baseline was submitted to the Energy Bureau in February 2021. *See* Exhibit 42 of the Evidentiary Hearing, p. 18, lines 360-361, and p. 19, lines 362. Further, Ms. Laird explained that Attorney González failed to consider that those are monthly figures. LUMA is measured on an annual average, not on a monthly average. Occurrences such as hurricanes and the hurricane season increase activity if there are outages and many outages. LUMA looks at a yearly average because of the varying call volumes throughout the year. An annual metric enables LUMA to balance cost efficiency, resourcing, and customer demand over a more extended period. *See* Exhibit 42 of the Evidentiary Hearing, p. 20, lines 372-377. The metrics reported to the Energy Bureau in Case No. NEPR-MI-2019-0007 are all monthly figures. Monthly metrics cannot be compared to annual metrics – two to three months of a metric do not equate to a trend. Therefore, one cannot extrapolate the numbers reached in two different months to represent the year. *Id*., p. 387-390.

Finally, Ms. Laird stated that Attorney González's proposal was based on the wrong premise. The baseline established by the Energy Bureau in Case No. NEPR-MI-2019-0007 was 8:30. Also, it is based on her understanding of LUMA's achievement of the proposed baseline in some months of 2021. However, as explained before, LUMA is measured on an annual average, not on a monthly average. *See* Exhibit 42 of the Evidentiary Hearing, p. 20, lines 397-401.

During the Evidentiary Hearing, Ms. Laird testified that although PREPA calculated the Average Speed of Answer Metric in the same way that LUMA proposes to calculate it for the Performance Metric in this hearing, PREPA had three separate contact centers with three separate systems and no way to combine the data to provide an accurate result. *See* Evidentiary Hearing

Transcript, February 9, 2023 (English Portion), p. 581, lines 12-16. However, LUMA does keep track of the Average Speed of Answer of all calls, including calls with an interactive voice responder. *Id*., p. 663, lines 8-13.

The ICPO's challenge to the proposed baseline was sufficiently rebutted by Ms. Laird's testimony. As Ms. Laird explained, the metrics reported to the Energy Bureau in Case No. NEPR-MI-2019-0007 are all monthly figures. Monthly metrics cannot be compared to annual metrics, as two to three months of a metric do not equate to a trend. As such, it is incorrect to extrapolate the numbers reached in two different months to represent what would be a year of performance. Attorney González's argument, solely based on the data pertaining to two months of performance, demonstrates a lack of understanding of how incentive Performance Metrics operate. In conclusion, LUMA contends that ICPO's objection to the proposed Average Speed of Answer Performance Metric is without basis and should be disregarded by the Energy Bureau.

c. Abandonment Rate

The Abandonment Rate Performance Metric measures the percentage of callers who hang up (abandon) while the call is still in the ACD queue in order to incentivize efficient call center service. *See* Exhibit 11 of the Evidentiary Hearing, p. 6 and p. 23. In her pre-filed direct testimony in support of LUMA's Abandonment Rate Performance Metric, Ms. Laird explained that the Abandonment Rate calculation is an industry-standard calculation. It equals calls offered minus calls answered, divided by call offered times 100. *See* Exhibit 41 of the Evidentiary Hearing, lines 171-172.

To develop the proposed baseline, Ms. Laird expounded that the data from three separate contact center platforms (PREPA, Insight, and Telecontacto) was reviewed. *See* Exhibit 41 of the Evidentiary Hearing, lines 175-176. The baseline was calculated using data from Fiscal Year 2019

to March 2020. LUMA determined that data from Fiscal Year 2020 would not support a reliable baseline, due to the data being available for a period of six months only, the reported abandonment varies from month to month due to COVID-19 and the onboarding of new outsource vendors, and the lack of visibility into three separate call routing systems *Id*., lines 178-183. As such, LUMA set the baseline using the PREPA contact center data based on subject matter experience and the under-industry standards results. As a result, LUMA reduced the abandonment rate by 2% to achieve an immediate improvement. *Id*., lines 187-189.

For establishing the Targets for the Abandonment Rate Performance Metric, LUMA calculated a reasonable year-to-year improvement that accounts for hiring, learning curve, training, ramp-up, turnover, process improvement, and other standard operational changes. *See* Exhibit 41 of the Evidentiary Hearing, lines 191-193. The proposed Targets are reflected below:

Table 2-8. Abandonment Rate

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	N/A						
Baseline	50.0%						
Year 1	40.0%	45.0%	20.0%	30.0%	40.0%	41.0%	42.0%
Year 2	32.0%	35.0%	16.0%	24.0%	32.0%	33.0%	34.0%
Year 3	29.0%	34.0%	14.5%	22.0%	29.0%	31.0%	33.0%

See Exhibit 11 of the Evidentiary Hearing, p. 24.

During the Evidentiary Hearing, Ms. Laird testified that LUMA did not consider removing the Abandonment Rate Performance Metrics because although it is related to the Average Speed of Answer Performance Metric, they are not so closely tied that there would be improvements that you could make to the average speed of answer that would not impact the abandonment rate. *See* Evidentiary Hearing Transcript, February 9, 2023 (English Portion), p. 547, lines 23-25, and p. 548, lines 1-2; AP-2020-0025 Evidentiary-20230209_Meeting Recording 1 [0:31:53].

The Abandonment Rate Performance Metric was not challenged by any of the testimonies submitted by the intervenors' witnesses. As such, without any filed objection, LUMA requests the Energy Bureau to adopt the Abandonment Rate Performance Metric as presented.

d. Customer Complaint Rate

As proposed by LUMA in the Revised Annex IX, the Customer Complaint Rate Performance Metric measures the total number of initial customer complaints registered with the Energy Bureau under an NEPR-QR docket. *See* Exhibit 11 of the Evidentiary Hearing, p. 22. The annual value for this metric is calculated by dividing the total number of initial complaints by the total utility customer population and multiplying by 100,000. *Id*., p. 23. The performance objective of the Customer Complaint Performance Metric is to incentivize effective customer service. *Id*., p. 22.

Melanie Jeppesen, Director of Billing Services for LUMA, submitted a pre-filed direct testimony supporting the Customer Complaint Rate performance metric. She noted that this metric measures the total number of initial customer complaints registered with the Energy Bureau. *See* Exhibit 43 of the Evidentiary Hearing, Revised Direct Testimony of Melanie Jeppesen (September 24, 2021), lines 61-62. To develop the Customer Complaint Rate performance metric, Ms. Jeppesen explained that LUMA looked at the number of complaints received by the Energy Bureau from 2017 to 2020. After reviewing data from March 2020 through February 2021, it was determined that this period was not a strong depiction of operations at PREPA compared to the historical data reviewed over the last four years. The time from May 2019 to February 2020 was selected as it represents the most normal period of operations since Hurricane Maria and prior to the onset of the pandemic. *Id*., lines 77-82.

As a result, Ms. Jeppesen explained that the proposed baseline was set considering the total number of complaints received by the Energy Bureau with the classification of NEPR-QR from May 2019 to February 2020 as it is the most normal period of operations for PREPA in the last four years. *See* Exhibit 43 of the Evidentiary Hearing, lines 89-92. This resulted in a baseline of resulting in a baseline of 10.5. *Id.*, lines 91-92. Ms. Jeppesen stated that the baseline represented the calculation of the metric using the data from May 2019 to February 2020, annualized for twelve months, with the baseline set at 146 complaints annually, or 10.5. *Id*., lines 85-87.

LUMA proposed a target threshold for the Customer Complaint Rate performance metric, as shown below:

Table 2-7. Customer Complaint Rate

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	841						
Baseline	10.5						
Year 1	10.2	11.0	9.7	10.0	10.2	10.5	10.7
Year 2	10.0	10.8	9.5	9.8	10.0	10.3	10.5
Year 3	9.5	10.3	9.0	9.3	9.5	9.8	10.0

Note that the Minimum Performance Level in the early years is worse than the baseline to account for the possible scenario of a temporary increase in customer complaints due to the strong possibility of bill consumption actually increasing as metering, meter data, and billing accuracy improves (meters typically under register when not working properly).

See Exhibit 11 of the Evidentiary Hearing, p. 23.

Ms. Jeppesen expounded that the Minimum Performance Level in the early years is worse than the baseline to account for the possible scenario of a temporary increase in customer complaints due to the strong possibility of bill consumption actually increasing as metering, meter data and billing accuracy improve (meters typically under register when not working properly). *See* Exhibit 43 of the Evidentiary Hearing, lines 137-141; *see also* Exhibit 11 of the Evidentiary Hearing, p. 23.

Attorney González, a witness for the ICPO, presented a pre-filed direct testimony in response to the proposed Customer Complaint Rate performance metric, in which she recommended that the Complaint Rate metric should consider all claims, informal and formal. *See* Exhibit 45 of the Evidentiary Hearing, p. 5, lines 59-62. Moreover, she concluded that the number of claims filed and the reasons for filing them is direct evidence of the quality of service provided by LUMA. *Id*., p. 6, lines 72-76. Attorney González also stated that only a minority of the claims presented before LUMA are resolved within the timeframe provided by Act 57-2014. *Id*., p. 8, lines 113-116. Meanwhile, Mr. Agustín Irizarry, an expert witness for LECO, recommended that the metric include both initial and formal complaints. *See* Exhibit 7 of the Evidentiary Hearing, p. 47, lines 9-11.

Ms. Jeppesen submitted a pre-filed rebuttal testimony to address the objections of the ICPO and LECO witnesses. As a threshold matter, she disagreed with the suggestion that the Customer Complaint Rate performance metric includes formal and informal complaints. *See* Exhibit 44 of the Evidentiary Hearing, Rebuttal Testimony of Melanie Jeppesen (February 17, 2022), p. 5, lines 74-75. Ms. Jeppesen explained that informal claims filed with the utility often include many inquiries or requests for redress on issues not typically in LUMA's control, such as a customer's high consumption. The majority of those informal complaints are because a customer has used more electricity than in previous periods or the customer did not consider the impacts of the changing costs of electricity that are built into rates through the FCA and PPCA riders or other tariff adjustments that are not set or controlled by LUMA. *Id*., lines 77-83. These claims are addressed by first analyzing the customer's account and consumption and then spending additional time communicating with a customer about their bill or consumption patterns. *Id*., lines 87-89.

In support, Ms. Jeppesen provided data for PREPA from 2017 to 2020, in which claims for high electricity consumption was the reason customers filed informal complaints for 58% of the claims. *Id*., lines 89-91. Moreover, she noted that consideration must be given to the fact that a customer who files an informal complaint can later file a formal complaint, creating two different complaints, and two counts towards the metric, based on the same set of facts or the same event. *Id*., p. 6, lines 105-108. This rebuttal testimony by Ms. Jeppesen is uncontested. Thus, LUMA respectfully proposes that the record does not support a proposal to include informal complaints in LUMA's proposed Customer Complaint Rate Metric.

Ms. Jeppesen also testified that Attorney González's remark on the "number of claims filed and the reasons for filing them is direct evidence of the quality of service provided by LUMA" is unfounded. The ICPO did not provide or suggest any methodology to sustain the statement linking the number of claims to the quality of service despite information requests where LUMA requested additional data references. *See* Exhibit 44 of the Evidentiary Hearing, p. 8, lines 139-141.

Although Attorney González stated that her opinion was based on her experience, she also clarified that it is not the ICPO's function to measure the quality of service of an electrical service company. *Id*., lines 141-144. Nor did Attorney González provide verifiable data for any given period or quantifiable methods that could support the statement or show a correlation between the number of customers seeking the ICPO's assistance and the total number of informal claims LUMA addresses and resolves. *Id*., p. 8, lines 157-158, and p. 9, lines 159-160. Attorney González did not disclose any information to sustain that the ICPO has a methodology to collect data on customer claims and the time in which they are resolved by the utility or that the ICPO does collect the data. *Id*., p. 9, lines 163-166. Thus, in considering LUMA's proposed Customer Complaint Rate Metric, this Energy Bureau should reject the ICPO's unsupported contention that the total

number of complaints that customers file before the Energy Bureau serves as direct evidence of the quality of the services that LUMA provides to customers.

During the Evidentiary Hearing, Ms. Jeppesen also responded to questions posed by Energy Bureau consultants, Associate Commissioner Mateo and Associate Commissioner Torres to explain why complaints classified as "NEPR-RV" by the Energy Bureau were excluded from the proposed Customer Complaint Rate Performance Metric. Associate Commissioner Mateo proposed that under the "NEPR-QR" and "NEPR-RV" nomenclatures, the Energy Bureau receives claims that had already gone through the utility process for which the utility reached a conclusion and provided a response to the customer. *See* Evidentiary Hearing Transcript, February 9, 2023 (English Portion), p. 576, lines 1-22, p. 559, lines 18-24; AP-2020-0025 Evidentiary-20230209_Meeting Recording 1 [1:15:15 & 0:50:07]. Ms. Jeppesen explained that the proposal to exclude complaints classified as "NEPR-RV" by the Energy Bureau was meant to ensure that the proposed metric actually measures how many times LUMA did not respond timely to the customer. *Id*., p. 559, lines 8-13, p. 604, lines 21-23; AP-2020-0025 Evidentiary-20230209_Meeting Recording 1 [0:49:42 & 1:55:29]. Ms. Jeppesen stated that although the proposal to include complaints classified as "NEPR-RV" by the Energy Bureau was not originally proposed by LUMA, it should be considered. *Id*., p. 603, lines 11-20; AP-2020-0025 Evidentiary-20230209_Meeting Recording 1 [1:53:50]. She explained that to do that, the proposed baseline would need to be reassessed. *Id*., p. 576, lines 20-25, p. 577, line 1; AP-2020-0025 Evidentiary-20230209_Meeting Recording 1 [1:16:48].

Furthermore, to questions posed by counsel for the ICPO, Ms. Jeppesen responded that she would like to make sure the information provided was accurate in relation to the "NEPR-QR" cases included in the worksheet submitted with her pre-filed direct testimony. *See* Evidentiary

Hearing Transcript, February 9, 2023 (English Portion), p. 653, lines 17-18; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [0:32:44].

As a result of the discussion that ensued in the Evidentiary Hearing on whether the Customer Complaint Rate Metric could include cases that the Energy Bureau classifies as "NEPR-RV" proceedings, LUMA now proposes to include both complaints classified as "NEPR-QR" and "NEPR-RV" in the calculation of the total number of complaints in the Customer Complaint Rate Performance Metric. This alternative calculation takes into consideration key concerns expressed by the Energy Bureau Commissioners during the Evidentiary Hearing on the desirability that the Customer Complaint Rate Performance Metric measures a comprehensive view of customer complaints, including those in which a customer may be appealing a decision or determination by the utility.

In support of this proposal, LUMA hereby includes, as Exhibit B to this Brief, a Sworn Statement executed by Ms. Jeppesen with an Excel workbook that has been marked as Exhibit C. As noted by Ms. Jeppesen in Exhibit B, the overall calculation methodology will remain the same. This is the total number of customer complaints divided by the total customer count (approximately 1,480,000 customers) multiplied by 100,000. The baseline will comprise the same time period originally proposed from May 2019 through February 2020 annualized. *See* Exhibit B, Sworn Statement of Melanie Jeppesen, ¶8.

To include "NEPR-RV" complaints in the calculation of the Revised Customer Complaint Rate Performance Metric, LUMA verified with the Energy Bureau staff the first complaint filed for the "NEPR-RV" category in May 2019. The first recorded complaint in May 2019 was NEPR-RV-2019-0094. The last recorded complaint in February 2020 was NEPR-RV-2020-0024. *See* Exhibit B, Sworn Statement of Melanie Jeppesen, ¶9. The Excel workbook accompanying Ms.

Jeppesen's Sworn Statement includes a worksheet labeled "NEPR-RV," which lists the complaints classified as "NEPR-RV" by the Energy Bureau in the period comprising May 2019 to February 2020, and that have been included in the baseline for the Revised Customer Complaint Rate Metric. *Id*., ¶11; Exhibit C attached to Ms. Jeppesen's Sworn Statement. Further, the Excel workbook includes a worksheet labeled "Combined QR and RV," which presents the calculation of the baseline for complaints classified as "NEPR-QR" and "NEPR-RV" by the Energy Bureau from May 2019 to February 2020. *Id*., ¶12.

In addition, LUMA thoroughly reviewed the information published on the Energy Bureau's website as the public source of data for "NEPR-QR" complaints. *See* Exhibit B, Sworn Statement of Melanie Jeppesen, ¶14. LUMA verified with the Energy Bureau staff the first complaint filed and opened by this Energy Bureau under the "NEPR-QR" category in May 2019. The first recorded complaint in May 2019 was NEPR-QR-2019-0070. The last recorded complaint in February 2020 was NEPR-QR-2020-0020. The baseline for the revised Customer Complaint Rate Performance Metric includes these cases filed in 2019 after NEPR-QR-2019-0070 and up to case NEPR-QR-2020-0020. *Id*., ¶15.

LUMA also identified that the baseline of the Customer Complaint Rate Performance Metric submitted with the Revised Annex IX originally included two cases that fall outside the baseline period. *See* Exhibit B, Sworn Statement of Melanie Jeppesen, ¶16. The reason for this is that the first document available to LUMA in the Energy Bureau docket was considered to determine to include each of these two cases in the baseline calculation, but it does not correspond to the month or year the complaint was initiated with the Energy Bureau. *Id*. It is now known that those cases were not initiated between May 2019 and February 2020 and, thus, have been

eliminated from the revised baseline calculation. *Id*. The cases subtracted from the baseline calculation are NEPR-QR-2019-0054 and NEPR-QR-2020-0063. *Id*.

LUMA also identified that four "NEPR-QR" complaints were incorrectly labeled as non-PREPA cases and, thus, were excluded from the baseline calculation submitted with the Revised Annex IX. *See* Exhibit B, Sworn Statement of Melanie Jeppesen, ¶17. These four cases were added to the calculation of the baseline for the revised Customer Complaint Rate Performance Metric. *Id*. The four cases are NEPR-QR-2019-0085, NEPR-QR-2019-0131, NEPR-QR-2019-0137, and NEPR-QR-2019-0179. *Id*., ¶18. The result of the correction increases the number of "NEPR-QR" cases in the original baseline calculation to four additional cases. *Id*.

The Excel workbook accompanying Ms. Jeppesen's Sworn Statement includes a worksheet labeled "NEPR-QR," which lists all complaints classified as "NEPR-QR" by the Energy Bureau in the period comprising May 2019 to February 2020 and that have been included in the revised baseline. *See* Exhibit B, Sworn Statement of Melanie Jeppesen, ¶19; Exhibit C attached to Ms. Jeppesen's Sworn Statement. Also included is a worksheet labeled "List of Correct QR from original," which identifies the four cases that were originally incorrectly labeled as non-PREPA and have now been excluded from the baseline calculation submitted with the Revised Annex IX. *Id*. The worksheet labeled "List of Correct QR from original" also identifies the two cases included in the baseline calculation submitted with the Revised Annex IX and are now excluded from the baseline calculation because they are outside the relevant baseline period. *Id*., Exhibit C attached to Ms. Jeppesen's Sworn Statement.

The revised calculation of the proposed Minimum Performance Level and Targets for Years 1, 2, and 3 of the Customer Complaint Rate Performance Metrics is proportional to the original values included in the Revised Annex IX. *See* Exhibit B, Sworn Statement of Melanie

Jeppesen, ¶20. The values increased proportionally as a result of the inclusion of the "NEPR-RV" complaints for May 2019 to February 2020 and the addition of the four new "NEPR-QR" complaints to the calculation of the baseline. *Id*. The targets follow the same proportion between percentages and years as the original proposal, that is, a straight-line trajectory, *Id*; *see also* Evidentiary Hearing Transcript, February 9, 2023 (English Portion), p. 567, lines 9-23; AP-2020-0025 Evidentiary-20230209_Meeting Recording 1 [1:01:07].

The proposed baseline, Minimum Performance Level, and Targets for the Revised Customer Complaint Rate Performance Metric are included in the Excel workbook accompanying Ms. Jeppesen's Sworn Statement, in a worksheet labeled "Table Metric." *See* Exhibit B, Sworn Statement of Melanie Jeppesen, ¶21; Exhibit C attached to Ms. Jeppesen's Sworn Statement. The worksheet labeled "Table Metric" includes a comparison between the previous values for the Customer Complaint Rate performance metric and the ones being proposed today. *Id*. For ease of reference, the table with the proposed baseline, Minimum Performance Level, and Targets for the Revised Customer Complaint Rate Performance Metric is shown below:

Proposed Revised Metric - May 2023; QR and RV							
	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
Baseline					23.51		
Year 1	23.51	24.73	22.36	23.05	23.51	24.21	24.67
Year 2	22.39	23.56	21.27	21.95	22.39	23.07	23.51
Year 3	21.27	23.44	20.15	20.83	21.27	21.95	22.39

See Exhibit B, Sworn Statement of Melanie Jeppesen, ¶21.

At the Evidentiary Hearing, Ms. Jeppesen expressed concern about revising the proposed targets with current data because LUMA was not currently disconnecting customers for nonpayment, which would potentially significantly impact the numbers. *See* Evidentiary Hearing Transcript, February 9, 2023 (English Portion), p. 573, lines 7-11; AP-2020-0025 Evidentiary-

20230209_Meeting Recording 1 [1:11:01]. Thus, customer complaints would be expected to increase when that process resumes. *Id*., p. 570, lines 23-25, and p. 571, line 1; AP-2020-0025 Evidentiary-20230209_Meeting Recording 1 [1:06:01]. As explained by Ms. Jeppesen in her Sworn Statement, even though LUMA is proposing to include both complaints classified as "NEPR-QR" and "NEPR-RV" in the calculation of the total number of complaints in the Customer Complaint Rate performance metric, LUMA still has concerns regarding the potential for fluctuations in the filing of those complaints due to external factors (fuel cost increases, natural disasters, rate changes, etc.). *See* Exhibit B, Sworn Statement of Melanie Jeppesen, ¶13. It is typical for these types of events to impact not just customer perception leading to complaints, but actual complaints due to a customer's individual experience resulting from these other factors. *Id*. That is why LUMA maintained the same baseline period between May 2019 and February 2022 and used the same methodology for the Minimum Performance Level and target thresholds.

LUMA respectfully requests the Energy Bureau approve the Customer Complaint Rate performance metric as proposed in this document and as supported by the evidence on the record and the Sworn Statement signed by Ms. Jeppesen with an Excel workbook, as Exhibits B and C to this Brief.

2. Safety Performance Metrics

As part of LUMA's proposal for Performance Metrics, various metrics related to safety in the workplace were included. The metrics are based on data reported to the Occupational Safety and Health Administration ("OSHA"). Those metrics are the following: OSHA Recordable Incident Rate; OSHA Fatalities; OSHA Severity Rate; and OSHA Days Away, Restricted, and Transfer Rate. *See* Exhibit 11 of the Evidentiary Hearing, p. 12. The objective of these Performance Metrics is to incentivize employee safety. *Id*., pp. 24-26.

Mr. Curtis Clark, Functional Lead of Emergency Preparedness for LUMA, offered testimony supporting the aforementioned safety metrics. In his pre-filed direct testimony, he further described the proposed Performance Metrics for safety as follows:

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

See Exhibit 19 of the Evidentiary Hearing, Direct Testimony of Curtis Clark (January 24, 2023), lines 65-79; *see also See* Evidentiary Hearing Transcript, February 8, 2023 (English Portion), p. 265, lines 4-25; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [0:44:58].

Mr. Clark explained that the proposed OSHA-related Performance Metrics methodology aligns with OSHA requirements. As part of those requirements, employers must report to OSHA

critical metrics that evidence their health and safety performance. *See* Exhibit 19 of the Evidentiary Hearing, lines 81-83. For the submitted proposed OSHA-related Performance Metrics, PREPA OSHA 300 and 301 Logs, and the PREPA Injury and Illness Data Reports, including a "Casi Casi" report, PREPA began recording at the end of 2019. The data includes GENCO, Administration, and Transmission & Distribution records. *Id.,* lines 99-103.

However, Mr. Clark noted that historical safety data compiled by PREPA contains inaccuracies. *See* Exhibit 19 of the Evidentiary Hearing, lines 142-143. Also, PREPA was historically using an erroneous formula for Severity Rate. *Id.,* line 150. Additionally, PREPA did not provide LUMA with the *Corporación del Fondo del Seguro del Estado* reports to determine if the recordable injury details match. As such, LUMA could not compare the data utilized by the Energy Bureau, as portrayed in the Resolution and Order of May 21, 2021, in Case No. NEPR-MI-2019-0007, with the reports of the *Corporación del Fondo del Seguro del Estado*. *Id.,* lines 154-158.

For those reasons, Mr. Clark explained that LUMA proposed different baselines than those established by the Energy Bureau in Case No. NEPR-MI-2019-0007, due to the data being inaccurate. Instead, LUMA used health and safety data compliant with OSHA standards. *See* Exhibit 19 of the Evidentiary Hearing, lines 165-168. As a result, LUMA requested the Energy Bureau to approve an adjustment to the baselines, which includes relevant incidents from the PREPA Casi Casi report. *Id.,* lines 174-176.

Moreover, during the Evidentiary Hearing, Mr. Clark testified that based on the assessment of the data in the programs that LUMA was proposing as part of the System Remediation Plan, it was determined that Targets for the Safety Performance Metrics could be set more aggressively. *See* Evidentiary Hearing Transcript, February 8, 2023 (English Portion), p. 273, lines 4-8; AP-

2020-0025 Evidentiary-20230208_Meeting Recording 1 [0:55:20]. For example, the Targets originally proposed for Year-5 in the T&D OMA were then proposed for Year-3 in LUMA's Revised Annex IX. *Id.,* lines 9-11. Mr. Clark indicated that it was determined that performance improvements could be achieved faster with the proposed increment program. In other words, a more accelerated course is being presented as part of LUMA's Revised Annex IX. *Id.,* lines 12-16; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [0:55:42].

As for the controversy on the necessity of incentives-based Performance Metrics, in the Evidentiary Hearing, Mr. Clark stated that OSHA has a series of regulations for the operation of electrical T&D Systems that outline specific safety rules for the hazards that workers are exposed to. *See* Evidentiary Hearing Transcript, February 8, 2023 (English Portion), p. 282, lines 4-8; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:07:49]. The principal mechanism is compliance enforcement of those specific regulations to maintain the public interest and reduce recordable injuries. *Id.,* lines 9-12; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:08:00]. They can inspect if there is evidence of non-compliance with an OSHA regulation. *Id.,* p. 282, lines 16-19; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:08:22]. Based on that inspection, they will evaluate the applicable regulations. If out of compliance with the regulations, they have administrative tools, including warnings or fines. *Id.,* lines 20-25; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:08:30].

Mr. Clark explained LUMA felt that treating the OSHA Recordable Incident Rate as a Performance Metric was critically important as this area needed significant improvement compared to the performance of PREPA and the industry averages. *Id.,* p. 280, lines 1-8; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:04:41].

LUMA's four proposed OSHA-related metrics are presented individually below:

a. OSHA Recordable Incident Rate

An OSHA recordable incident is defined as a work-related injury or illness that results in one or more of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, loss of consciousness, or a significant injury or illness diagnosed by a physician or other licensed healthcare professional. *See* Exhibit 11 of the Evidentiary Hearing, p. 25.

In the Evidentiary Hearing, Mr. Clark explained that the OSHA Recordable Incident Rate is an industry measure of every hundred employees that work in a given year and how many will become injured if they require medical treatment beyond the first day. *See* Evidentiary Hearing Transcript, February 8, 2023 (English Portion), p. 265, lines 4-10; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [0:44:58]. The formula is: (number of recordable injuries and illnesses X 200,000) / Employee hours worked]. *See* Exhibit 11 of the Evidentiary Hearing, p.25; Exhibit 19 of the Evidentiary Hearing, lines 89-91.

Per Mr. Clark, LUMA's proposed OSHA Recordable Incident Rate Target improvements were first compared to Edison Electric Institute ("EEI") industry standards, then by assessing feasibility from PREPA's current state related to health and safety matters. *See* Evidentiary Hearing Transcript, February 8, 2023 (English Portion), p. 274, lines 21-25; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [0:57:23]. The EEI is a collection of private transition industry distribution operators. Organizations voluntarily provide their occupational injury data using similar metrics to the ones proposed by LUMA. *Id.*, p. 275, lines 7-13; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [0:58:02]. To the best of Mr. Clark's knowledge, the industry average total reportable injury rate is approximately 2.5 for this given

year. *Id.*, lines 15-18. A strategy was developed to lead LUMA to an Incident Reduction near 50% from the baseline in Year 3, as shown below:

Table 2-9. OSHA Recordable Incident Rate

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	6.9						
Baseline	8.75						
Year 1	6.56	7.88	5.68	6.12	6.56	7.00	7.44
Year 2	5.25	7.25	3.99	4.59	5.25	5.95	6.69
Year 3	4.20	6.67	2.79	3.45	4.20	5.06	6.02

See Exhibit 19 of the Evidentiary Hearing, lines 188-189, and Exhibit 11 of the Evidentiary Hearing, p. 25.

b. OSHA Fatalities

This metric measures those employees that have been fatally injured at work. *See* Evidentiary Hearing Transcript, February 8, 2023 (English Portion), p. 265, lines 24-25; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [0:45:53]. This metric measures the number of OSHA-reportable fatalities (i.e., employee fatalities that occur on the job within OSHA jurisdictions). OSHA requires all work-related fatalities to be reported to OSHA within eight (8) hours, and the industry-standard Target is 0 fatalities. *See* Exhibit 11 of the Evidentiary Hearing, p. 25. A similar approach to the OSHA Recordable Incident Rate Performance Metric was adopted in the OSHA Fatalities Performance Metric to lead LUMA to an Incident Reduction near 50% from the baseline in Year 3, as shown below:

Table 2-10. OSHA Fatalities

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	0						
Baseline	0						
Year 1	0	0	N/A	N/A	0	N/A	N/A
Year 2	0	0	N/A	N/A	0	N/A	N/A
Year 3	0	0	N/A	N/A	0	N/A	N/A

See Exhibit 19 of the Evidentiary Hearing, lines 189-191, and Exhibit 11 of the Evidentiary Hearing, p. 25.

c. OSHA Severity Rate

The OSHA Severity Rate metric is commonly used to measure safety performance across the utility industry; specifically, it is used as a metric to measure the severity of workplace injuries. *See* Exhibit 11 of the Evidentiary Hearing, p. 26. The Severity Rate calculates the total sum of the days that are transferred, restricted, or away from work divided by the total hours worked and then multiplied by the metric for a hundred employees. *See* Evidentiary Hearing Transcript, February 8, 2023 (English Portion), p. 265, lines 19-23; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [0:45:36]. It is calculated on the basis of the OSHA Severe Injuries number of total work-related industry cases with severity days. The formula is: (Total number of lost workdays or restricted x 200,000)/ actual hours worked by all employees. *See* Exhibit 19 of the Evidentiary Hearing, lines 93-95.

The Severity Rate Targets have a high degree of fluctuation, depending on external factors. *See* Evidentiary Hearing Transcript, February 8, 2023 (English Portion), p. 285, lines 5-8; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:11:36]. LUMA has programs in the System Remediation Plan that have a large impact on the overall trend and improvement of Severity Rate Targets. *Id.*, lines 9-13; AP-2020-0025 Evidentiary-20230208_Meeting Recording

1 [1:11:36]. However, there will always be a higher degree of variability in how the Target is calculated. In any given year, one or two specific injuries can cause the Severity Rate to increase significantly. *Id.*, lines 14-19; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:11:36]. External factors cause a higher degree of variability, but it is still significantly within the limits of a utility's control to develop programs to improve the trend. *Id.*, lines 20-23; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:11:36]. The industry standard for OSHA Severity Rate tends to vary because of the nature of the calculation, but it is approximately 30 to 40. *Id.*, p. 275, lines 20-23 AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [0:59:02].

Since OSHA Severity Targets rely significantly on external factors outside LUMA's control, Targets were set to improve performance but provide flexibility to the extenuating circumstances that exist on a case-by-case basis. *See* Exhibit 19 of the Evidentiary Hearing, lines 192-194. LUMA's proposed Targets are reflected below:

Table 2-11. OSHA Severity Rate

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	31.00						
Baseline	58.03						
Year 1	49.32	53.38	43.52	46.42	49.32	52.23	53.38
Year 2	41.92	49.12	32.64	37.14	41.92	44.39	48.05
Year 3	35.64	45.19	24.48	29.71	35.64	37.74	43.25

See Exhibit 11 of the Evidentiary Hearing, p. 26.

d. OSHA DART Rate

The OSHA DART Rate measures how many employees become injured such that they require a job restriction, a job transfer, or days away from work. *See* Evidentiary Hearing Transcript, February 8, 2023 (English Portion), p. 265, lines 13-18; AP-2020-0025 Evidentiary-

20230208_Meeting Recording 1 [0:45:19]. The formula is: (# of work-loss or restricted cases x 200,000) /# of hours worked. *See* Exhibit 19 of the Evidentiary Hearing, lines 96-97. Per Mr. Clark, the industry average OSHA DART Rate is approximately between 1.6 and 1.8. *See* Evidentiary Hearing Transcript, February 8, 2023 (English Portion), p. 275, lines 19-20; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [0:58:42]. A similar approach to the OSHA Recordable Incident Rate Performance Metric was adopted in the OSHA DART Rate Performance Metric to lead LUMA to an Incident Reduction near 50% from the baseline in Year 3, as shown below:

Table 2-12. OSHA DART Rate

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	4.80						
Baseline	6.85						
Year 1	5.14	6.17	4.45	4.80	5.13	5.48	5.82
Year 2	4.11	5.67	3.12	3.60	4.11	4.66	5.24
Year 3	3.29	5.22	2.18	2.70	3.29	3.96	4.72

See Exhibit 11 of the Evidentiary Hearing, p. 26.

Only Mr. Agustín Irizarry-Rivera, an expert witness for LECO, presented objections to LUMA's proposed Performance Metrics for the Safety area. In his pre-filed direct testimony, Mr. Irizarry recommended that all labor safety metrics: OSHA Recordable Incident Rate, OSHA Fatalities, OSHA Severity Rate, and OSHA DART Rate, be used only to impose penalties if minimum standards are not met. *See* Exhibit 7 of the Evidentiary Hearing, Direct Testimony of Agustín Alexi Irizarry-Rivera (November 17, 2021), p. 8, lines 11-14.

Mr. Clark presented a pre-filed rebuttal to Mr. Irizarry's recommendation because, like all utilities and other employers, LUMA falls under OSHA regulations and is subject to penalties and fines for noncompliance. Imposing additional penalties will not promote incremental improvement

in performance and could instead amount to double or multiple penalties. *See* Exhibit 20 of the Evidentiary Hearing, Rebuttal Testimony of Curtis Clark (January 24, 2023), p. 5, lines 79-82. As explained above, the uncontested testimony of LUMA's expert witness Dr. Lara establishes that penalties may have perverse effects and are not guaranteed to encourage better performance. *See* Exhibit 6 of the Evidentiary Hearing, p. 6, lines 98-107. Second, LUMA's proposed safety metrics serve purposes different from those served by penalties, such as the ones OSHA has the authority to impose. Incentives for safety metrics encourage the utility to improve safety metrics beyond the minimum threshold, whereas penalties are only useful for deterring poor performance in this area. *Id*., lines 82-86. LUMA's proposed metrics, baselines, and targets will allow LUMA and the Energy Bureau to assess LUMA's safety performance compared to PREPA's prior performance and compare LUMA's performance with utilities.

Further, Mr. Clark stated that OSHA does not set minimum performance standards, baselines, or targets to impose penalties. OSHA is not in the business of setting specified percentages in the reduction of recordable incidents or fatalities that a utility must meet. *See* Exhibit 20 of the Evidentiary Hearing, p. 6, line 115, and p. 7, lines 116-117. OSHA sets standards that must be met, and on a case-by-case basis, OSHA investigates recordable incidents and imposes penalties if it determines that the employer incurred violations. *Id*., p. 7, lines 117-119. Also, OSHA does not impose penalties for all recordable incidents, nor does OSHA impose penalties for failure to meet minimum performance standards. Lastly, OSHA standards in Puerto Rico are consistent with other OSHA jurisdictions. *Id*., lines 119-122.

During the Evidentiary Hearing, Mr. Irizarry merely restated that OSHA-related Performance Metrics should be utilized to impose penalties, not incentives. *See* Evidentiary Hearing Transcript, February 8, 2023 (Spanish Portion), p. 11, lines 21-25, and p. 12, line 1; AP-

2020-0025 Evidentiary-20230208_Meeting Recording 2 [2:22:00]. He recognized that even though having a safe work environment is an indispensable business requirement, what OSHA establishes are minimums. *Id.*, p. 12, lines 17-20; AP-2020-0025 Evidentiary-20230208_Meeting Recording 2 [2:23:00]. Mr. Irizarry also mentioned that Puerto Rico should be compared to other jurisdictions with similar systems and climate and vegetation conditions, which is relevant regarding OSHA-related Performance Metrics. *Id.*, p. 15, lines 22-25; AP-2020-0025 Evidentiary-20230208_Meeting Recording 2 [2:28:14].

Although Mr. Irizarry voiced a recommendation for the OSHA-related Performance Metrics, he omitted to explain why incentives should not be allowed for those metrics, when he recognizes that OSHA only establishes minimums for compliance. Mr. Irizarry does not counter Mr. Clark's point that incentives help to stimulate performance beyond the required safety standards. For example, imposing only penalties by the Energy Bureau for non-compliance with some set standards could replicate OSHA's established framework for violations, potentially implicating double fines but not necessarily would stimulate to perform beyond what is required under regulations. Nor did Mr. Irizarry provide the Energy Bureau with OSHA-related performance data from those jurisdictions, which he understands are comparable to Puerto Rico. He did not present a complete analysis of how LUMA could be compared with those jurisdictions, especially regarding the state of the assets of the electric system. In sum, Mr. Irizarry did not offer a substantive basis to challenge LUMA's proposal.

3. Reliability Performance Metrics

LUMA's proposed technical metrics include several metrics that track reliability performance: System Average Interruption Frequency Index ("SAIFI") and System Average Interruption Duration Index ("SAIDI"). *See* Exhibit 11, pp. 17-18. Currently, LUMA has proposed

to defer two reliability metrics: Customers Experiencing Multiple Interruptions ("$CEMI_N$"), Momentary Average Interruption Frequency Index ("MAIFI"), and Reduction in Network Line Losses. *See* id., p. 7. Finally, LUMA proposed to eliminate one reliability metric: Customer Average Interruption Duration Index ("CAIDI"). *See id.*

a. Deferrals of $CEMI_N$ MAIFI and Reduction in Network Line Losses and elimination of CAIDI

The record supports the deferral of $CEMI_N$, MAIFI, and Reduction in Network Line Losses Performance Metrics. The reason is that data and/or related Information Technology Systems ("IT Systems") need significant improvement before meaningful values can be determined with any accuracy for these metrics. In addition, LUMA proposes to eliminate the CAIDI Performance Metric due to its industry-acknowledged limited value. *See* Exhibit 10 of the Evidentiary Hearing (direct testimony of Mr. Don. Cortez, August 18, 2021), lines 159-163. Mr. Gerardo Cosme agreed that it is fair for LUMA to defer these metrics. *See* Exhibit 31 of the Evidentiary Hearing, lines 117-118.

The $CEMI_N$ Performance Metric indicates the ratio of individual customers experiencing N or more sustained interruptions to the total number of customers served. *See id.,* lines 165-166. As Mr. Cortez, former Vice President of Utility Transformation for LUMA, an engineer with approximately 40 years of experience in the utility industry and who joined LUMA in 2020, *see* Exhibit 24 of the Evidentiary Hearing (rebuttal testimony, Don Cortez, February 17, 2022), lines 19-35, testified there are two basic reasons to defer this Performance Metric. First, the electrical map is not accurate. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 292, lines 16-18, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 1 [1:18:09]. There are a lot of missing elements, and LUMA is unsure where some customers are connected to what transformer or what circuit. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 292, lines 20-21, AP-2020-

0025 Evidentiary Hearing-20230209_Meeting Recording 1 [1:19:15]. Therefore, when trying to find the customer, it is difficult to identify the number of outages a specific customer has had, and the Outage Management System (OMS) is not able to produce accurate results. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 292, lines 21-25, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 1 [1:19:15]. As Mr. Cortez explained during the evidentiary hearings in response to questions by Associate Commissioner Sylvia Ugarte, LUMA could consider $CEMI_N$ as a metric as soon as the maps are in order and the OMS is working correctly to be able to set a baseline. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 319, lines 21-24 AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 1 [2:00:23].

Setting a meaningful $CEMI_N$ metric is highly dependent on accurate customer information and sufficient customer connectivity in the OMS. *See* Exhibit 10 of the Evidentiary Hearing*,* lines 168-169. Due to data quality issues, including a lack of accurate customer information and a lack of customer connectivity in the OMS, LUMA proposes to defer $CEMI_N$. *Id.,* lines 170-172. LUMA proposes deferring the determination of targets for the $CEMI_N$ metric until after the information can be corrected and a baseline determined. *Id.,* lines 175-176.

The MAIFI Performance Metric Indicates the average frequency of momentary interruptions. *See* Exhibit 10 of the Evidentiary Hearing, lines 184-186. Determining a meaningful MAIFI metric is highly dependent on extensive high-quality monitoring infrastructure (due to the short duration of a momentary interruption specific technology including Supervisory Control and Data Acquisition (SCADA), Advanced Metering Infrastructure (AMI)), and information systems are required). *Id.,* lines 188-191. The current Energy Management System, known as the EMS, which is essentially the brain of the utility that ties and controls substations and the breakers, is outdated and unable to produce records to allow the calculation of MAIFI. *See* Evidentiary

Hearing, Vol. 2 (English Portion), p. 294, lines 23-25 and p. 295, lines 1-3, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 1 [1:21:59-1:22:17]. As Mr. Cortez explained during the evidentiary hearings in response to questions by Associate Commissioner Sylvia Ugarte, "as soon as [LUMA] ha[s] the capabilities, the new EMS in place, and start[s] tracking MAIFI, that would give...[LUMA] the ability to set a baseline for MAIFI, . . . [to] render it a viable Target at that point. *See* Evidentiary Hearing, Vol. 2 (English), p. 319, lines 16-20 AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 1 [2:00:04]. Since the aforementioned IT systems are not yet in place in PREPA, *see* Exhibit 10 of the Evidentiary Hearing, line 191, the record supports LUMA's proposal to defer the determination of Targets for the MAIFI metric until it can be accurately measured. *Id.,* lines 193-194. As Mr. Cortez established and is uncontested, the ability to measure MAIFI requires replacing the Energy Management System, which is currently targeted for years four to five of LUMA operation of the T&D System. *Id.,* lines 194-195.

The Reduction in Network Line Losses Performance Metric measures the ability to reduce electric line losses, which occur due to resistance along the electric lines. *See* Exhibit 10 of the Evidentiary Hearing, lines 197-198. As Mr. D. Cortez testified during the Evidentiary Hearing, line losses measure the energy lost in the wires of the company, all the way from the meters to the transmission lines, the substations, and transformers. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 296, lines 12-15, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 1 [1:24:01-1:24:17]. However, to measure those losses, you need the correct electrical diagram, which is not currently available. To be truly accurate, you also need to measure the energy coming into the system, but currently, PREPA does not have interconnection meters, and LUMA does not know exactly how much energy is coming in from the PREPA generation. *See* Evidentiary

Hearing, Vol. 2 (English Portion), p. 296, lines 13-25, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 1 [1:24:01-1:24:48]. That energy is estimated. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 296, line 25, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 1 [1:24:46]. Furthermore, the current meters are not modern smart meters, and thus, there is only one reading a month. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 297, lines 2-3, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 1 [1:24:53]. An additional complication is that now there are 68,000 net meters that are only measuring one reading a month that possibly can provide energy to the system. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 297, lines 4-8, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 1 [1:24:53]. As Mr. Cortez established and is uncontested, there is more work to do before LUMA has all the information needed for this metric. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 297, lines 9-12, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 1 [1:25:24].

The record also shows that PREPA did not allocate losses to the components of the T&D System, such as lines. *See* Exhibit 10 of the Evidentiary Hearing, lines 198-199. Such allocation requires the development of an appropriate model, as well as additional metering and other measures. *Id.,* lines 200-202. Because PREPA did not allocate losses to the components of the system, this metric is highly limited in accuracy and usefulness. *Id.*, lines 205-206.

Furthermore, LUMA proposes that the CAIDI metric is not an appropriate performance incentive metric. *Id.,* lines 229-232. As Mr. Cortez testified during the Evidentiary Hearing, the revised IEEE Standard 1366 of 2022, also cautions against using CAIDI as a metric. *See* Evidentiary Hearing, Vol. 2 (English), p. 298, lines 21-24, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 1 [1:27:09]; *see also See* Evidentiary Hearing, Vol. 2 (Spanish

Portion), p. 33, line 25, p. 34, lines 1-4; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [1:19:32]. This Energy Bureau should decline to follow the recommendations of Mr. Agustín Irizarry, an expert witness for LECO, to add CAIDI. Mr. Irizarry has not operated Puerto Rico's T&D System nor been a PREPA employee, *see* Evidentiary Hearing, Vol. 1 (Spanish), p. 71, lines 11-14, p. 72, lines 9-10 AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 2 [3:03:55], and thus lacks the experience and knowledge of the System that LUMA's personnel and Mr. Cortez have and are necessary to assess the applicability and usefulness of this metric. As established by Mr.Cortez, Dr. Irizarry did not consider in his testimony the need for the grid to be transformed regarding CAIDI. *See* Exhibit 24, lines 493-494.

LUMA respectfully submits that the record supports its proposal that at this time, the Energy Bureau should defer the $CEMI_N$, MAIFI, and Reduction in Network Line Performance metric, as the utility lacks the capabilities and required systems to allow LUMA to collect necessary data to track these Performance Metrics. Regarding CAIDI, LUMA respectfully posits that its proposal to eliminate this Performance Metric is not only supported by the evidence but also in alignment with industry recommendations in the form of the IEEE Standard 1366, revised in 2022.

b. SAIDI and SAIFI

It is respectfully submitted that the record supports the adoption of the SAIDI and SAIFI Performance Metrics Targets, which follow the baselines that this Energy Bureau adopted in Case NEPR-MI-2019-0007. *See* Exhibit 11 of the Evidentiary Hearing, pp. 17-19; *see also* Exhibit 10 of the Evidentiary Hearing, lines 97-143. LUMA's proposed Targets are uncontested on the record as no alternate proposal on Targets was filed by the parties nor presented for consideration by this Energy Bureau.

Regarding these reliability metrics, the testimony of Mr. Cortez in support of this metric is uncontested. The purpose of these metrics is to incentivize system reliability. *See* Exhibit 11 of the Evidentiary Hearing, p. 27. SAIFI indicates how often the average customer experiences a sustained interruption[5] over a predefined period of time and is calculated by dividing the total number of customers interrupted by the total number of customers served. Each sustained interruption experienced by a specific customer, counts towards the total in the numerator in accordance with IEEE Standard 1366. *Id.* In turn, SAIDI indicates the total duration of interruption for the average customer during a predefined period of time. *Id.* It is calculated by summing the product of the length of each interruption and the number of customers affected by that interruption for all sustained interruptions during the measurement period, then dividing by the total number of customers served, all in accordance with IEE Standard 1366. *Id.*

The proposed baselines, Minimum Performance Levels, and Targets are:

Table 2-13. System Average Interruption Frequency Index (SAIFI)

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	10.6						
Baseline	10.6						
Year 1	9.8	10.4	8.2	8.9	9.8	10.0	10.2
Year 2	8.5	10.1	6.8	7.5	8.5	8.9	9.5
Year 3	7.4	9.8	5.8	6.6	7.4	8.2	9.0

[5] "Any interruption not classified as a part of a momentary event. That is, any interruption that lasts more than five minutes." *See* Exhibit 11 of the Evidentiary Hearing, p. 24, n. 11.

Table 2-14. System Average Interruption Duration Index (SAIDI)

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	1,243						
Baseline	1,243						
Year 1	1,119	1,212	870	994	1,119	1,150	1,181
Year 2	932	1,155	684	808	932	1,007	1,081
Year 3	746	1,118	497	622	746	870	994

See id.

LUMA's proposed Targets, as supported and explained by Mr. Cortez for both SAIFI and SAIDI, are uncontested. Regarding the Targets for SAIFI, Mr. Cortez testified that since no reliable historical data exists that indicates what degree of T&D reliability improvement can generally be expected from a specific level of funds invested in Puerto Rico, LUMA relied upon my many years of experience in T&D at various utilities and the LUMA current and forecasted annual budgets to estimate an aggressive but attainable annual percent improvement from the baselines to establish future annual Targets for LUMA's first three years of operation. *See* Exhibit 10 of the Evidentiary Hearing, lines 342-347. Regarding SAIFI, the resulting values are the Target thresholds (100% goal) with an improvement of 7.5% by the end of Year 1, a cumulative annual improvement of 20% by the end of Year 2, and a cumulative annual improvement of 30% by the end of Year 3. *See Id.,* lines 347-350. The estimated expected annual percent improvement is then reasonably varied to establish values for the minimum, 150%, 125%, 50%, and 25% performance goals. *Id.*, lines 350-352,

Similarly, regarding SAIDI, Mr. Cortez testified that since no reliable historical data exists that indicates what degree of T&D reliability improvement can generally be expected from a specific level of funds invested in Puerto Rico, LUMA relied upon my many years of experience

in T&D at various utilities and the LUMA current and forecasted annual budgets to estimate an aggressive but attainable annual percent improvement from the baselines to establish future annual Targets for LUMA's first three years of operation. *Id.*, lunes 358-363. The resulting values are the Target thresholds (100% goal) for this Performance Metric with an improvement of 10% by the end of Year 1, a cumulative annual improvement of 25% by the end of Year 2, and a cumulative annual improvement of 40% by the end of Year 3. *Id.,* lines 363-366. The estimated expected annual percent improvement is then reasonably varied to establish values for the minimum, 150%, 125%, 50%, and 25% performance goals. *Id.*, lines 366-368.

In setting the 25% Target, LUMA examined pursuant to its experience, what would be the worst-case scenario for its ability to improve; that is, if LUMA had more problems on the grid than anticipated, what would be the minimum performance and the minimum achievable Target. See Evidentiary Hearing, Vol. 2 (English Portion), p. 315, lines 3-25, p. 316, lines 1-2; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [1:54:16-1:55:42].

During the Evidentiary Hearing, Mr. Cortez explained that to set the Targets, LUMA considered the unknowns, the fact that the health of the T&D System was not documented by PREPA, which led LUMA to do some visual assessments to then use its judgment to determine that the rest of the T&D System was in similar or worse condition. See Evidentiary Hearing, Vol. 2 (English Portion) p. 304, lines 24-25, p. 305, lines 1-8; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [1:35:14-1:35:55]. LUMA also looked at the budget constraints and, using its experience and reliability improvement and systems, determined that it could achieve a 30 percent improvement by year 3 in SAIFI, and a 40 percent improvement in SAIDI by year 3 and then LUMA used its experience to adjust how much improvement could be achieved per year.

See Evidentiary Hearing, Vol. 2 (English Portion), p. 305, lines 9-17; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [1:35:55-1:36:24].

As Mr. Cortez explained, an examination of the SAIFI and SAIDI FY2019, FY2020, and FY2021 results clearly shows that the performance of the T&D System was not stable but had been and continued to degrade year after year. *See* Exhibit 10 of the Evidentiary Hearing, lines 374-375. The testimony of Mr. Cortez during the evidentiary hearing illustrates that the electromechanical grid was deteriorating at an accelerated rate, not a linear rate. That is, things were failing on an exponential curve because of a lack of maintenance work over a decade. The system was no longer failing linearly or flat, but it was failing exponentially. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 307, lines 7-125, p. 308, lines 1; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [1:38:29-1:34:41].

Also uncontested is that to meet the proposed performance Targets, LUMA must make performance improvements on top of reversing this continually degrading performance. This will require aggressive action and stretch capabilities and budgets. *See* Exhibit 10 of the Evidentiary Hearing, lines 377-380. The record also establishes the significant challenges faced by LUMA in meeting the proposed Targets. For example, a number of T&D assets were out of service and did not work prior to June 1, 2021. Work was done to place them back in service. *See* Exhibit 10 of the Evidentiary Hearing, lines 382-384. The number of T&D assets that were out of service and the fact that no work was performed prior to June 1st, 2020, causes further constraints to the electrical system, thus contributing to an accelerated rate of degradation to the metrics. *Id.,* lines 384-385. In some cases, the placement of assets back into service will require the procurement of long-lead high-voltage equipment items that can take up to a year to receive, followed by an additional year for the installation and commissioning of this equipment. *Id.,* lines 385-388.

Another challenge that was taken into consideration is the lengthy process and work associated with documentation for FEMA reimbursement eligibility. *Id.,* lines 389-390. Asset reliability will improve after the completion of the larger projects. It is then that reliability will start to improve significantly. *Id.*, lines 390-395. It will take months to complete the larger project. *Id.,* lines 394-395.

This Energy Bureau should not accept the objection of LECO's expert, Mr. Irizarry, regarding the proposed SAIDI Targets and his suggestion that this Energy Bureau should consider using U.S. SAIDI average values, *see* Exhibit 7 of the Evidentiary Hearing, p. 31, lines 17-25. First, prior to offering testimony in this proceeding, he had not prepared a proposal on Performance Metrics to be applied to a utility nor offered such a proposal to the Energy Bureau, *see* Evidentiary Hearing, Vol. 1 (Spanish Portion), p. 77, lines 15-20, p. 79, lines 1-7; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:13:09 & 3:14:55]. That lack of experience regarding the design of proposed frameworks for Performance Metrics Targets is reflected in Mr. Irizarry's confusion on p. 31 of his pre-filed testimony, where he conflates benchmarks with LUMA's proposed Targets for SAIDI, as Mr. Cortez pointed out in its rebuttal testimony of February 17, 2022, Exhibit 24 of the Evidentiary Hearing, p. 5, lines 515-520. In any event, Mr. Irizarry's proposal for this Energy Bureau to reject LUMA's proposed Targets for SAIDI is not accompanied by a comprehensive proposal for consideration nor supporting analysis of the conditions and state of the T&D System. As Mr. D. Cortez established in his rebuttal testimony, Mr. Irizarry does not consider that PREPA's performance is well below industry benchmarks and is subject to different characteristics and circumstances than many US utilities, including geography, recent storm and earthquake damage and years of deferred maintenance. *See* Exhibit of the Evidentiary Hearing 24, p. 25, lines 521-524. The deteriorated conditions of the T&D grid, as is memorialized in Puerto Rico Laws 120

and 17, make it meaningless to compare to other utilities unless a similarly situated utility is identified, and Mr. Irizarry has not identified such a comparable utility. *Id.,* lines 525-528. As Mr. Cortez establishes, per his knowledge and experience, no mainland utility has allowed its assets to become as deteriorated as PREPA or allowed its vegetation management to get this far out of control. *Id.,* lines 529-531.

As the testimony of Mr. Cortez during the Evidentiary Hearing shows, the current conditions of the T&D System are such that it is increasingly difficult to improve SAIFI, and SAIDI continues to be a challenge as there are many more aspects of the grid that fail such as for example, an underground cable and that affects SAIDI. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 311, lines 21-25, p. 312, lines 1-2; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [1:45:30]. Thus, the proposed Targets for these metrics remain aggressive and should be adopted by this Energy Bureau at this time.

It is respectfully submitted that the weight of the administrative record supports LUMA's proposed Performance Metrics Targets for SAIFI and SAIDI, as well as LUMA's efforts and proposed actions to improve reliability performance, which is a difficult and complex task. The proposed Performance Metrics Targets are aligned with public policy to attain important objectives such as providing reliable electric power service, *see* Act 17-2019, Art. 15(10)(a).

4. Vegetation Maintenance Miles Completed Metric

In compliance with the December 22nd Resolution and Order and the August 1st Order, on October 28, 2022, LUMA submitted for consideration a Revised Annex IX to the T&D OMA that included a metric on Vegetation Maintenance Miles Completed (230kV, 115kV, 38kV, and primary distribution) within the category of Technical, Safety and Regulatory Performance Metrics. *See* Exhibit 11 of the Evidentiary Hearing, p. 18. The proposed Performance Metric

monitors the number of vegetation maintenance miles completed each fiscal year along transmission (230kV, 115kV, and 38kV) and primary Distribution lines. *See* Exhibit 29 of the Evidentiary Hearing (Direct Testimony, Diane Watkins, January 24, 2023), p. 5, lines 70-71.

The objective of the proposed Performance Metric is to reduce the impact of vegetation near electric utility infrastructure in order to improve the safety and reliability of the T&D system. *See id.,* lines 86-87. The Performance Metric will allow LUMA to track progress on the Vegetation Management Plan ("VMP") and incentivize improved system safety and reliability by promoting vegetation maintenance along transmission and distribution lines, as vegetation can often cause electrical outages in Puerto Rico. *See id.,* lines 86-90. Because vegetation can often cause electrical outages in Puerto Rico, the Performance Metric on Vegetation Maintenance Miles Completed will result in improvements in the safety & reliability of the T&D System. *Id.,* lines 100-101. Increasing the Vegetation Maintenance Miles Completed will assist in reducing interruptions of electrical service in tandem with LUMA's other efforts to improve reliability and provide safe and reliable service to LUMA's customers. *Id.,* lines 100-103.

Vegetation maintenance activities are classified into three categories: reactive, which is work that cannot be planned or scheduled but requires immediate attention and is typically related to service interruptions and outages; corrective, which is work that is difficult to plan for, but once identified can be efficiently scheduled and is generated by customer requests, LUMA operations and/or LUMA staff; and preventative, which is work that can be specifically planned for and prioritized, scheduled, and managed on a project basis and represents the largest portion of Vegetation Management in the O&M budget. *Id.,* lines 74-83.

The proposed baselines, Minimum Performance Level, and Targets are:

Table 2-15. Vegetation Maintenance Miles Completed (230kV, 115kV, 38kV, primary Distribution)

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	N/A						
Baseline	N/A						
Year 1	1,600	160	2,000	1,800	1,600	800	600
Year 2	1,800	180	2,200	2,000	1,800	900	700
Year 3	2,000	200	2,400	2,200	2,000	1,000	800

See Exhibit 11 of the Evidentiary Hearing, p. 28

The Performance Metric Target considers projections of vegetation maintenance miles possible to complete given the availability of resources, budgets, vegetation conditions, and required day-to-day operational support. *Id.,* lines 106-109. Secondary Distribution lines that include street light service lines and pole-to-house service drops, among others, are not included as these types of lines have a small overall impact on the reliability of the system, and the maintenance miles data associated with secondary Distribution lines is difficult to identify and track. *Id.,* lines 109-113. This does not mean that the vegetation in secondary lines will not be addressed. Evidentiary Hearing, Vol. 2 (English Portion), p. 347, lines 21-24; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:41:21-2:41:30]. LUMA has other measures in place to ensure that that work is done. Exhibit lines 119-122. Evidentiary Hearing, Vol. 2 (English Portion), p. 347, lines 12-15; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:40:53-2:41:00]. Secondary lines do not have to be included in the metrics for LUMA to perform that work. Evidentiary Hearing, Vol. 2 (English Portion), p. 347, lines 13-15; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:41:00-2:41:05]. Many of the secondary lines are underbuilt on the primary lines, meaning that the primary line is on top and the secondary is below in the same right-of-way. Thus, if LUMA maintains the

primary, the secondary is also there. Evidentiary Hearing, Vol. 2 (English Portion), p. 343, lines 16-20; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:34:56-2:35:12].

Ms. Diane Watkins ("Ms. Watkins"), Vice President, Vegetation and Work Management for LUMA, provided uncontested testimony in support of this Vegetation Maintenance Metric. Ms. Watkins is an electrical engineer with over 20 years of professional experience in the utility industry, including experience in vegetation management practices and a Senior Member of the Institute of Electrical and Electronics Engineers ("IEEE")_ and the current Vice Chair of the IEEE Power and Energy Society (PES) Technical Council. *See* Exhibit 29 of the Evidentiary Hearing, lines 3-4, 14-39. Ms. Watkins explained to this Energy Bureau that to set the proposed Performance Metrics Targets and the baseline, LUMA used a combination of numerical and subjective analysis. LUMA used its working knowledge of the T&D System and existing vegetation conditions, as well as industry vegetation management best practices, to project forward a reasonable Target for future performance. *Id.,* lines 116-118.

LUMA considered the actual recent historical number of Vegetation Maintenance Miles Completed by looking at the historical data that was available for a full year, Fiscal Year 2022. *See Id.,* lines 115-122. In Fiscal Year 2022, LUMA completed over 900 miles of total reactive, corrective, and preventive vegetation maintenance. Evidentiary Hearing, Vol. 2 (English Portion), p. 343, lines 17-25; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:34:56-2:35:27]. LUMA determined that it was reasonable for the Target to be set greater than the 900-plus miles that were completed in Fiscal Year 2022 in order to represent an increase over the previous year's performance. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 344, lines 1-5; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:35:28-2:35:45].

To determine how much to increase the Target from Fiscal Year 2022, LUMA considered more subjective criteria. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 344, lines 6-8; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:35:45-2:35:58]. LUMA looked at the percentage of work completed that was preventive compared to the percentage of reactive and corrective work completed. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 344, lines 8-10; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:35:58-2:36:07]; Exhibit 29, lines 122-125. The reason that this is pertinent because preventive work is less costly per mile than reactive and corrective work, *see* Evidentiary Hearing, Vol. 2 (English Portion), p. 344, lines 11-13; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:36:07-2:36:21], and takes less time, *see* Exhibit 29, lines 132-133. With a set budget to perform vegetation maintenance work, LUMA would have to do more preventive work to increase the total mileage number. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 344, lines 13-17; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:36:21-2:36:36]. Further, in Fiscal Year 2022, over 80 percent of the miles that were completed were reactive and corrective. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 344, lines 18-20; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:36:36-2:36:52]; *see also* Exhibit 29 of the Evidentiary Hearing, lines 122-125.

The Targets also consider that in quarters three and four of Fiscal Year 2022, LUMA initiated and transitioned to more planned vegetation maintenance and reclamation as an increasing amount of reactive and corrective work was resolved. *See* Exhibit 29 of the Evidentiary Hearing, lines 125-128. LUMA considered the ongoing transition from reactive and corrective work during Fiscal Year 2023 as the portion of preventative planned work to the total vegetation maintenance work completed is increasing. *Id.* lines 128-131.

The goal is to increase the percentage of miles that are preventive, which would increase the total number of miles LUMA can complete. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 344, lines 21-24; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:36:52-2:37-:10]. Therefore, in future years as reactive work is decreased year over year, LUMA will be able to increase its yearly Vegetation Maintenance Miles Cleared Target as reflected in the Revised Annex IX filing. *See* Exhibit 29 of the Evidentiary Hearing, lines 133-135. Thus, aggressively setting the first-year Target at 1600, represents a significant increase over the 900 from the previous year. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 344, line 25, p. 345, lines 1-3; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:37:10-2:37:24]. But it should be attainable based on shifting the type of work that to more preventive work. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 344, lines 3-5; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:37:10-2:37:24].

LUMA then looked forward to Years 2 and 3 to determine how much of an increase we could make. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 345, lines 6-7; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:37:36-2:37:44]. There is a limit to how much improvement we can get year over year. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 345, lines 8-9; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:37:44-2:37:55]. Thus, LUMA considered percentage-wise compared to the 1,600, subjectively, that 200 additional miles, were achievable with the same budget and then 200 per year after that. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 345, lines 10-13; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:37:55-2:38:14].

To meet the proposed Targets, LUMA has and will implement a work plan whereby LUMA assigns projects to the crews and staff who are qualified. Evidentiary Hearing, Vol. 2 (English

Portion), p. 523, lines 20-25; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 2 [5:27:31-5:28:00]. LUMA's personnel maintain maps of the projects that are underway, record progress on maps, and then document progress by mileage in a central report where LUMA keeps information to know the total of mileage, for example. Evidentiary Hearing, Vol. 2 (English Portion), p. 524, lines 3-8; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 2 [5:28:08-5:28:34]. As work is completed, the sections of the line are marked off, and mileage is recorded until 100 percent of the line is complete, and 100 percent of that mileage is recorded. Evidentiary Hearing, Vol. 2 (English Portion), p. 524, lines 9-13; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 2 [5:28:34-5:28:50]. LUMA also tracks the reliability performance of a line after it is cleared to capture data on how the line performs after it is cleared. Evidentiary Hearing, Vol. 2 (English Portion), p. 526, lines 7-10; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 2 [5:28:00-5:29:02].

LUMA's position that vegetation management metrics are included in the SAIDI and SAIFI Performance Metrics is still accurate, as outages caused by vegetation would be represented in the reliability metrics. Evidentiary Hearing, Vol. 2 (English Portion), p. 350, lines 23-25, p. 351, lines 1-4; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:45:52--2:46:29]. Thus, it is not necessary to separately track vegetation miles because it is work that has to be done to result in good reliability and reduce outages. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 351, lines 1-4; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:46:00-2:46:29]. Notwithstanding, LUMA requests that if the Energy Bureau determines that a vegetation management metric is to be included in the Revised Annex IX to the T&D OMA, the Energy Bureau should adopt the Vegetation Maintenance Miles Completed metric as proposed by LUMA.

LUMA opposes a proposed metric such as the one suggested by LECO through the testimony of Mr. Irizarry, which focuses on a specific detail, such as trees trimmed, because the goal of vegetation management is to clear the right-of-way to reduce outages. *See* Evidentiary Hearing, Vol. 2 (English), p. 351, lines 15-19; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:47:00-2:47:26]. Mr. Irizarry's proposal to measure electric miles lines annually subjected to tree trimming, *see* Exhibit 7 of the Evidentiary Hearing, p. 25 lines 16-18, tries to address a complex issue in a very simplistic way and fails to consider other equally important factors. *See* Exhibit 27 of the Evidentiary Hearing (Rebuttal Testimony Diane Watkins, January 24, 2023), p. 5, lines 97-98. Meaningful aspects of a vegetation management program include safety, customers, outage events and frequency, tree density, schedules, and specific vegetation types, among other areas. *See* Exhibit 27 of the Evidentiary Hearing, p. 6, lines 98-100. Tracking one unit or metric will not directly correlate to the success of a whole vegetation management program. *Id.*, lines 100-101.

LUMA respectfully requests that this Energy Bureau reject the proposal by Mr. Cosme of the ICPO that the ratio between reactive and corrective vs. preventative work should be included in the vegetation management metric to measure progress on the reduction of related Vegetation Management backlog, *see* Exhibit 31 of the Evidentiary Hearing p. 3, lines 114-122. While LUMA expects the amount of reactive and corrective work compared to preventive work to decrease, the ratio of reactive and corrective work to preventive work is not an accurate measure of Vegetation Maintenance Miles Completed, and tracking this ratio will not result in the completion of more vegetation maintenance work. *See* Exhibit 30 of the Evidentiary Hearing (Rebuttal Testimony, Diane Watkins, January 24, 2023), p. 4, lines 67-70, p. 5, line 70. A ratio measures the relationship between two things. *Id.*, lines 70-71. In this case, the ratio suggested by Mr. Cosme would measure

the relationship between the sum of the reactive and corrective work compared to the preventive work. *Id.,* lines 71-73. Such a ratio would not provide any information about the total amount of work actually completed. *Id.,* lines 73-74. As an example, if LUMA completes 800 miles of reactive/corrective work and 800 miles of preventive work, the ratio would be one (800/800=1). *Id.,* lines 74-76. If LUMA completes 200 miles of reactive/corrective work and 200 miles of Preventive work, the ratio would also be one (200/200=1). *Id.,* lines 76-77. Thus, the ratio does not provide any indication of the amount of Vegetation Maintenance Miles Completed and will not drive the completion of more vegetation maintenance miles. *Id.,* lines 77-79. The metric proposed by LUMA measures all Vegetation Maintenance Miles Completed and therefore tracks the total amount of work completed regardless of the specific category of the work. Tracking all the work completed is a better measure of overall work completion than tracking the ratio of specific classifications of the work. *Id.,* lines 79-83.

Second, it is unclear what Mr. Cosme means when he refers to a "related Vegetation Management backlog." *Id.,* lines 84-85. LUMA has not proposed the tracking of a backlog as part of the metric of Vegetation Maintenance Miles Completed. *Id.,* lines 87-88. If Mr. Cosme's intent is to use the word "backlog" to refer to vegetation maintenance work that has been planned, but not yet completed, the proposed ratio will not measure such work. *Id.*, lines 88-92. Reactive and corrective work is work that cannot be easily planned for, while Preventive work can be planned, prioritized, and scheduled. *Id.,* lines 91-92. As an example, assume LUMA plans to complete 1200 miles of preventive work over a 12-month period. *Id.,* lines 92- 93. Half-way through this example year, assume LUMA has completed 700 miles of Preventive work and 100 miles of reactive/corrective work (recall that Reactive/Corrective work is unplanned and therefore LUMA would not know at the beginning of the year how much Reactive/Corrective work would be

completed). *Id.,* lines 93-97. In this example, the ratio of Reactive/Corrective work to Preventive work would be 100/700 or 1/7. *Id.,* lines 97-98. This number provides no indication of the total Vegetation Maintenance Miles Completed and no insight into the remaining "backlog" of planned Preventive work. *Id.,* lines 98-100. LUMA may track the percentage of total work that is reactive, corrective, and preventive, but using the ratio of these classifications as a Performance Metric is not reasonable for the purposes of setting Targets, and doing so will not result in the completion of more vegetation maintenance miles. *Id.,* lines 101-104.

Furthermore, this Energy Bureau should reject Mr. Irizarry's proposal in his additional testimony of March 22, 2022, p. 13, lines 11-17 and lines 19-24, *see* Exhibit 9 of the Evidentiary Hearing, and his testimony in the evidentiary hearing, *See* Evidentiary Hearing, Vol. 2 (Spanish), p. 6, lines 18-20 AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 2 [2:12:32], that an incentive for vegetation management should only be awarded in connection with hard-to-reach targets. Vegetation management aims to ensure safe and reliable service to all customers regardless of access; limitations, or perceived ease of access to vegetation work. *See* Exhibit 28 of the Evidentiary Hearing, p. 5, lines 74-76. Contrary to Mr. Irizarry's proposal, there are many "hard-to-reach targets" along roadside transmission and distribution infrastructure or within short distances of roads. *Id.,* lines 76-78. Examples include vegetation located in back yards, and in urban areas where the only access points are through or over a home or building. *Id.,* lines 78-79. Thus, equipment and debris must pass over or through the domicile to address the tree-risk electrical conductors; or where vegetation is located roadside and where the conditions warrant multiple days of work to remediate risk to the overhead conductor. *Id.,* lines 79-82. The Puerto Rico T&D System is fragile, and the vegetation conditions are poor across the entire island. *Id.,* lines 82-84. Whether vegetation work is easily accessible or "hard-to-reach," LUMA is committed

to finding the best way to complete the necessary vegetation work regardless of if the Targets are "hard-to-reach" or considered roadside. *Id.*, lines 86. The work location is entirely subjective and should not be the only factor in setting goals. *Id.,* lines 86-87.

Similarly, this Energy Bureau should reject Mr. Irizarry's contention that the Energy Bureau requires LUMA to identify the relative difficulty for vegetation maintenance for each line or region, *see* Exhibit 9 of the Evidentiary Hearing, p. 13, lines 26, and p. 14, lines 1-2. Mr. Irizarry's recommendation is impractical. *See* Exhibit 28 of the Evidentiary, p. 6, line 94. The "relative difficulty" concept he proposes is entirely subjective. *Id.,* lines 94-95. Moreover, Irizarry does not provide a basis for this "concept." *Id.,* lines 95-96. There are no industry standards, definitions, or criteria for "relative difficulty" in vegetation management. *Id.*, lines 96-97. Additionally, the configuration of most electrical feeders or circuits will have a combination of roadside, backyard, and cross-country sections of line within the same feeder or circuit. *Id.*, lines 97-99. Vegetation management on a day-to-day basis is not as categorically encapsulated as Mr. Irizarry tries to portray in his testimony. *Id.*, lines 99-100. Mr. Irizarry's concerns that LUMA would only complete easily accessible work is incorrect as it is uncontested on the record that LUMA intends to address vegetation management work across the system regardless of the challenges, including access to specific work sites. *Id.,* lines 100-103.

LUMA's proposed metric on vegetation maintenance will allow LUMA to track progress on the VMP and incentivize improved system safety and reliability by promoting vegetation maintenance along transmission and distribution lines. This Performance Metric will further public policy mandates on safe and reliable electric power services, Act 17-2019, Art. 1.5(10)(a), 22 LPRA § 1141d, and in connection with required vegetation management plans, *id.,* Art. 1.6(5) and Art. 1.16. It also furthers this Energy Bureau's authority to supervise the implementation of

vegetation management plans for PREPA's T&D System, Act 57-2014, Article 6.3(ww), as amended, 22 LPRA § 1054b (2022). The metric is uncontested on the record, and no other comprehensive proposal mature for adoption and implementation was filed for the record nor considered in this proceeding. Thus, if a vegetation maintenance Performance Metrics is adopted, LUMA requests that the Energy Bureau adopt LUMA's proposed Performance Metrics and Targets.

5. Inspections and Targeted Corrections

LUMA's Revised Annex IX includes a category of technical metrics, with a set of three metrics on Inspections and Targets Corrections of assets of the T&D System: Distribution Line Inspections and Targeted Corrections, Transmission Line Inspections and Targeted Corrections, and Distribution Line Inspections and T&D Substation Inspections Targeted Corrections (jointly, "Inspections Metrics"). *See* Exhibit 11 of the Evidentiary Hearing, pp. 28-30.

LUMA discussed the Inspections Metrics with representatives of the P3A. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 300, lines 2-14, Evidentiary Hearing-20230208_Meeting Recording 1 [1:28:50-1:29:24]. These inspections are standard practices for utilities; s*ee* Evidentiary Hearing, Vol. 2 (English Portion), p. 300, lines 24-25, p. 301, lines 1-2, Evidentiary Hearing-20230208_Meeting Recording 1 [1:29:48-1:30:01], but PREPA did not perform them. When LUMA took over operations, it felt that given all that was unknown from the T&D System, the assessments of the assets were a proper way to start. *Id.* p. 301, lines 7-10, Evidentiary Hearing-20230208_Meeting Recording 1 [1:30;16-1:30:31].

The uncontested record establishes the importance of these inspections for a prudent utility and for LUMA to meet its obligations under the T&D OMA and provide safe, reliable, and efficient electric power services in Puerto Rico. Mr. Cortez testified that the main objective of these metrics

is for LUMA to have a good grasp of the health of the grid, and with that grasp, LUMA can develop a good asset management tool to plan what investments and replacements, and maintenance are needed year after year after year. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 322, lines 21-25, p. 323, line 1, AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:04:47-2:05:12]. Otherwise, you're operating the grid blind. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 323, line 1, AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:05:12]. Lacking a good grasp on the health of the grid, LUMA "can't plan our investments, cannot tell the Energy Bureau what the state of the grid is, what are the holes that need to be replaced or here are the lines that need to be replaced and cannot give a good answer on the health of their system. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 323, lines 2-8, AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:05:12-2:05:31].

To operate the grid more effectively, LUMA needs to have the health of the grid in totality. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 323, lines 10-12, AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:05:32-2:05:47]. The Inspections Metrics will allow LUMA to operate the grid more effectively, and having a formal inspection allows LUMA to carry out corrections of systems that pose serious injury in a more organized fashion. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 325, lines 21-25, lines 4-8; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:09:03 & 2:09:38].

The primary results of the planned inspections are to prioritize and sequence repairs and other work to reduce the risk of failure and to lower the safety risk to electrical workers and the public. *See* Exhibit 24 of the Evidentiary Hearing, p. 38, lines 808-810. Achieving the inspections will also enable targeted construction programs and allow for more effective deployment of capital funds, including federal funds. *Id*., p. 38, line 810, p. 39, line 811. LUMA's implementation of the

capital programs that target the equipment inspected and that equipment, should lead to a lower risk of failure and therefore cause less outages. *Id.* p. 39, lines 811-813. As Mr. Cortez established for the record and is uncontested, the assessments are an essential first step required to improve reliability, and they also support other requirements, such as addressing public and employee safety, improving physical security, and creating a resilient grid. *Id.,* lines 814-816.

For each of the Inspections Metrics, data collected will be used to categorize assets according to their health condition, based on estimates of condition (likelihood of failure) and criticality (consequence of failure). *See* Exhibit 10 of the Evidentiary Hearing, lines 258-260. The overall health asset score will be based on 0 being the worst to 4 being the best. Asset scores of 0 and 1 will be the highest risk assets and will be given the highest priority to repair and/or replace. *Id.,* lines 260-262. These will be assets (Asset Score of 0 and 1) that exhibit a high risk of failure, or have already failed and are likely to cause: a safety impact to LUMA employees and contractors and members of the public, a violation of regulatory or legal requirements, including Act 17 which includes requirements related to safe (based on applicable safety standards) and prudent utility practices, or an outage that will be widespread, long duration and could affect critical customers. *Id.*, lines 262-269.

The uncontested evidence on the record supports a finding that these inspections are critical to establishing the initial baseline for asset condition to develop the immediate short-term plan. In the case of Puerto Rico, it is even more critical due to the state of disrepair experienced on the system, including multiple large-scale failure events and system outages. *See* Exhibit 10 of the Evidentiary Hearing, lines 456- 459. Having data on the condition of all assets is the best approach to optimize the cost to improve the condition of the T&D assets. *Id.*, lines 817-818. This is particularly important because PREPA does not have a record of the asset's health condition, and

as such, it is appropriate to incentivize this performance category. *Id.,* lines 818-820. The information captured will provide the visibility and understanding necessary to make decisions concerning immediate actions required and prioritization. *Id.*, lines 459-461.

The inspections are a pivotal activity and an essential first step required to improve reliability. *Id.,* lines 490- 491. Inspections establish the initial baseline and asset condition rating. *Id.,* line 492. Inspections are required to identify the most important and immediate corrective actions required from a public safety and imminent failure standpoint (Immediate Short-Term Plan). *Id.,* lines 493-494. Furthermore, the data collected is necessary to formulate the long-term Operations and Maintenance and Capital Plan, validate the Reliability Plan and direct and prioritize the activities of Vegetation Management and Asset Repair/Replacement plan, which impacts the top root causes that contribute to Customer Minutes Interrupted (wire Down, Vegetation, Bad Weather). *Id.,* lines 495-500.

a. Distribution Line Inspections and Targeted Corrections

The Performance Objective of the Distribution Line Inspections and Targeted Corrections Metric is to incentivize system safety and provide data to make decisions on effective reliability improvements, predictive maintenance, circuit hosting capacity, and resiliency upgrades. *See* Exhibit 11 of the Evidentiary Hearing, p. 28; Exhibit 10 of the Evidentiary Hearing, lines 241-243. The Distribution Line Inspections and Targeted Corrections metric will assess the physical integrity of the poles, structures, components, and equipment, providing data to develop an overall health rating to identify serious safety issues to either the public or workers that will result in high-priority attention by LUMA. *See* Exhibit 11 of the Evidentiary Hearing, p. 28, Exhibit 10 of the Evidentiary Hearing, lines 246-49. The metric is calculated considering the number of distribution lines (circuits) inspected with results recorded in a database, and Category 0 and Category 1 finding

shall be incorporated in a plan within 60 days of identification to address. *See* Exhibit 11 of the Evidentiary Hearing, p. 28, Exhibit 10 of the Evidentiary Hearing, lines 252-256. The Minimum Performance Level and Targets are:

Table 2-166 Distribution Line Inspections & Targeted Corrections[1]

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	N/A						
Baseline	N/A						
Year 1	106	16	159	133	106	53	27
Year 2	370	56	555	463	370	185	93
Year 3	687	103	1,031	859	687	344	172

[1] The numbers shown are cumulative from year to year.

See Exhibit 11 of the Evidentiary Hearing, p. 29, Exhibit 10 of the Evidentiary Hearing (Exhibit B).

Since no reliable historical data exists that indicates what degree of T&D reliability improvement can generally be expected from a specific level of funds invested in Puerto Rico, to set the Targets, LUMA relied upon my many years of experience in T&D at various utilities and the LUMA current and forecasted annual budgets to estimate an aggressive but attainable annual percent improvement from the baselines to establish future annual Targets for LUMA's first three years of operation. *See* Exhibit 10 of the Evidentiary Hearing, lines 398-402. The resulting values are the Target thresholds (100% goal) for this Performance Metrics with an improvement of 10% by the end of Year 1, with a cumulative annual improvement of 35% by the end of Year 2, and a cumulative annual improvement of 65% by the end of Year 3. The estimated expected annual percent improvement is then reasonably varied to establish values for the minimum, 150%, 125%, 50%, and 25% performance goals. *See* Exhibit 10 of the Evidentiary Hearing, lines 405-411.

b. Transmission Line Inspections and Targeted Corrections

The Performance Objective of the Transmission Line Inspections and Targeted Corrections Metric is to incentivize system safety and provide data to make decisions on effective reliability improvements, predictive maintenance, circuit hosting capacity, and resiliency upgrades. *See* Exhibit 11 of the Evidentiary Hearing, p. 29, Exhibit 10 of the Evidentiary Hearing, lines 296-298. This Metric will assess the physical integrity of the poles, structures, components, and equipment, providing data to develop an overall health rating to identify serious safety issues to either the public or workers that will result in high-priority attention by LUMA. *See* Exhibit 11 of the Evidentiary Hearing, p. 29, Exhibit 10, lines 301-305. This Metric is calculated on the basis of the number of transmission lines inspected with results recorded in a database, and Category 0 and Category 1 findings shall be incorporated in a plan within 60 days of identification to address. *See* Exhibit 11 of the Evidentiary Hearing, p. 29, Exhibit 10 of the Evidentiary Hearing, lines 307-311. The Minimum Performance Level and Targets are:

Table 2-17 Transmission Line Inspections & TargetedCorrections[1]

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	N/A						
Baseline	N/A						
Year 1	26	4	39	33	26	13	7
Year 2	91	14	137	114	91	46	23
Year 3	169	25	254	211	169	85	43

[1] The numbers shown are cumulative from year to year.

See Exhibit 11, p. 29, Exhibit 10 (Exhibit B).

Since there is no information available from which to determine a baseline to set the Targets, LUMA relied upon my many years of experience in T&D at various utilities to estimate

an aggressive but attainable annual percent of total circuits that will be inspected over a four-year period that will result in all of the 260 transmission lines being inspected. *See* Exhibit 10 of the Evidentiary Hearing, lines 418-421. The inspections will prioritize the worst-performing feeders (based on Customer Interruptions and Customer Minutes Interrupted) and critical customers as defined by LUMA's Emergency Response Plan (e.g., hospitals, police stations, water treatment plants, etc.). *See id.,* lines 421-425. The resulting values are the Target thresholds (100% goal) for this Performance Metric with 10% of the total number of circuits inspected by the end of Year 1, with a cumulative annual percent of 35% of the total number of circuits inspected by the end of Year 2, and a cumulative annual percent of 65% of the total number of circuits inspected by the end of Year 3. *See Id.,* lines 425- 429. The estimated expected cumulative annual percent of the total number of circuits inspected is then reasonably varied to establish values for the minimum, 150%, 125%, 50%, and 25% performance goals. *See id.,* lines 429-431.

c. T&D Substation Inspections & Targeted Corrections

The Performance Objective of the T&D Substation Inspections & Targeted Corrections Metric is to incentivize system safety and provide data to make decisions on effective reliability improvements, predictive maintenance, circuit hosting capacity, and resiliency upgrades. *See* Exhibit 11, p. 29, Exhibit 11, lines 319-321. This Metric will assess the physical integrity of the structures, components, and equipment, providing data to develop an overall health rating to identify serious safety issues to either the public or workers that will result in high-priority attention by LUMA. *See* Exhibit 11 of the Evidentiary Hearing p. 29, Exhibit 10 of the Evidentiary Hearing, lines 324-327. The Metric is calculated based on the number of T&D substations inspected with results recorded in a database, and Category 0 and Category 1 findings shall be

incorporated in a plan within 60 days of identification to address. *See* Exhibit 11 of the Evidentiary Hearing, p. 30, Exhibit 10, lines 330-334. The Minimum Performance Level and Targets are:

Table 2-178. T&D Substation Inspections & Targeted Corrections[1]

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	N/A						
Baseline	N/A						
Year 1	39	6	59	49	39	20	10
Year 2	137	21	206	171	137	69	34
Year 3	255	38	383	319	255	128	64

[1] The numbers shown are cumulative from year to year.

See Exhibit 11 of the Evidentiary Hearing, p. 30, Exhibit 10 of the Evidentiary Hearing (Exhibit B).

Since there is no information available from which to determine a baseline to set the Targets, LUMA relied upon my many years of experience in T&D at various utilities to estimate an aggressive but attainable annual percent of total T&D substations that will be inspected over a four-year period that will result in all of the 392 T&D substations being inspected. *See* Exhibit 10 of the Evidentiary Hearing, lines 437-440. The substation inspections started with the critical substations and will be completed by region. *Id.,* lines 441-442. The resulting values are the Target thresholds (100% goal) for this Performance Metric with 10% of the total number of circuits inspected by the end of Year 1, with a cumulative annual percent of 35% of the total number of circuits inspected by the end of Year 2, and a cumulative annual percent of 65% of the total number of circuits inspected by the end of Year 3. *See Id.,* lines 442-446. The estimated expected cumulative annual percent of the total number of circuits inspected is then reasonably varied to establish values for the minimum, 150%, 125%, 50%, and 25% performance goals. *See id.,* lines 446-448.

Mr. Cosme submitted pre-filed testimony stating in a conclusory fashion that the Inspections Metrics without actions by a developed plan will not lead to any outcome. The record of the proceeding, and the testimony of Mr. Cortez, amply establish that the Inspections Metrics are accompanied by a plan on how the inspections will be conducted and that these metrics will lead to measurable and important outcomes, such as that the outcome of the inspections will be used to identify equipment that is damaged and can be replaced and to correct and update the T&D System model used by OMS, which has a direct impact on data used in calculating SAIDI and SAIFI. *Id.,* lines 828-833 and lines 834-837. Furthermore, Mr. Cosme himself agreed that the Inspections Metrics "will indeed help at the end of the process," Exhibit 31 of the Evidentiary Hearing, line 147. Thus, his testimony supports the Inspections Metrics and should be construed as stating a proposal that LUMA, as LUMA has established it will, is able to track its performance and measurable outcomes of the Inspections Metrics. As the afore-cited testimony of Mr. Cortez and the explanations of the proposed Inspections Metrics show, LUMA will be able to not only track the progress of its assessments but also prepare an inventory of the health of the grid that, in turn, will help track LUMA's efforts to prioritize repairs of the assets.

In conclusion, the Inspection Metrics should be approved as part of the Performance Metrics Targets to apply to LUMA's ability to earn the Incentive Fee set forth in the T&D OMA. They align with public policy in as much as LUMA will be better equipped to provide reliable, safe, stable, and excellent electric power service, *see* Act 17-2019, Art. 1.5(10)(a), 22 LPRA § 1141d (2022), transform the Electric Power System into one that satisfies the current energy needs of Puerto Rico and to guarantee the availability and supply thereof at an affordable, just, and reasonable cost. *See id.,* Act 17-2019, Art. 1.5(2)(a) and (b). Inspecting the primary lines, will enable LUMA to find those situations that may be a danger to the public and better equip LUMA

to fix them and are fundamental for the utility to perform more effectively, including identifying and fixing outages. *See* Evidentiary Hearing, Vol. 2 (English Portion), p. 320, lines 11-25, p. 321, lines 1-19, AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:01:21-2:03:15:00]. This, in furtherance of public policy requirements in Act 17-2019, Article 1.5(9)(c) to "plan the Electrical System while addressing the interdependency between the electric power system and other essential service facilities to counteract the effects of power outages," and Article 1.5(9)(d),to "conduct the appropriate planning studies on the operating voltages of the transmission and distribution system in order to ensure the reliable operation thereof; specify and keep an inventory of the Electrical System components that meet the standards in effect of the continental United States electric power industry. . . ." 22 LPRA §1141(d).

6. Net Energy Metering ("NEM") Project Activation Duration

The NEM Project Activation Duration Performance Metric measures the average duration (days) for activating NEM projects. *See* Exhibit 11 of the Evidentiary Hearing, p. 8. This metric tracks the average duration (days) for completing all activities (within the utility's control) required to activate the NEM tariff on the customer's bill. For a project to be activated, LUMA must validate that the application is complete, install a new bi-directional meter, and change the tariff assigned to the customer's account in the billing system. Once NEM tariff activation is complete, the customer will see the benefits of NEM on their next bill. *Id*., p. 30. The metric is calculated as the average duration (days) between the submission of a complete application and NEM tariff activation on the customer's account, across all expedited projects activated during the year. *Id*. The objective of this metric is to incentivize improvements in NEM processes that will result in reduced NEM tariff activation time for expedited projects. *Id*.

Mr. Lee Wood, former Director of Business Transformation for LUMA, submitted a pre-filed direct testimony in support of the NEM Project Activation Duration Performance Metric. He indicated that the metric was proposed because it directly measures LUMA's performance related to NEM service activation. *See* Exhibit 23 of the Evidentiary Hearing, Direct Testimony of Lee Wood (October 28, 2022), p. 7, lines 179-180. The most effective way that LUMA can currently support customer adoption of DG is to activate the NEM tariff as expeditiously as possible, ensuring each application meets regulatory and technical requirements. *Id.*, p. 8, lines 187-189.

Mr. Wood explained that LUMA proposed 30 days as the Minimum Performance Level to align with the statutory requirements stated in Act 114-2007. He noted that during the first quarter of Fiscal Year 2023, the average duration for activation was approximately 33 days. *See* Exhibit 23 of the Evidentiary Hearing, p. 7, lines 167-169. LUMA proposed a Target of 28 days, which is more aggressive than the current performance (33 days) and the Minimum Performance Level (30 days) while facilitating a reasonably achievable rate of improvement with the resources and IT systems available. *Id.*, lines 172-175.

LUMA's witness further stated that over the past several years, there had been a steadily increasing number of new NEM applications submitted to the utility each month, which makes it difficult to predict and control program performance. *See* Exhibit 23 of the Evidentiary Hearing, p. 8, lines 195-197. Also, the expedited project application process is still very manual and labor-intensive. *Id.*, line 216. Those factors were considered to meet the proposed Targets for the NEM Project Activation Duration Performance Metric, as shown below:

Table 2-19. NEM Project Activation Duration

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	N/A						
Baseline	N/A						
Year 1	28	30	26	27	28	29	30
Year 2	28	30	26	27	28	29	30
Year 3	28	30	26	27	28	29	30

See Exhibit 11 of the Evidentiary Hearing, p. 30.

Mr. Cosme, a witness on behalf of the ICPO, submitted testimony in relation to the proposed NEM Project Activation Duration Performance Metric. He opined that the Target threshold of (28) days for the Interconnection Performance Metric was not that much of an improvement from the (30) days, that it should be set to a number that will reflect an outstanding performance by the utility, and that the Target could be (15) days. *See* Exhibit 32 of the Evidentiary Hearing, Direct Testimony of Gerardo Cosme (December 8, 2022), p. 2, lines 75-80. However, it is respectfully submitted that Mr. Cosme did not provide support for his proposal of a target of 15 days. Also, Mr. Cosme proposed that a Performance Metric should be considered for the completion of Interconnection Projects, including the Average Duration for Interconnection Process Completion (and not only the Average Duration for Net Metering Tariff Activation) and that this Target threshold should be 60 days. *Id.*, lines 82-94.

In response to Mr. Cosme's testimony, Mr. Cortez submitted a rebuttal testimony. Mr. Cortez explained that LUMA's proposed Target threshold is considered aggressive, considering that circumstances beyond LUMA's control influence the average number of days to activate NEM projects. For example, the number of NEM cases is increasing on a monthly basis, and that increase is dictated by the customers and other reasons that LUMA does not control. *See* Exhibit 26 of the Evidentiary Hearing, Direct Testimony of Don Cortez (January 23, 2023), p. 5, lines 89-92, and p.

6, line 93. Also, Mr. Cosme's proposal to set the Target at 15 days is not feasible. NEM cases that arrived and were completed in Fiscal Year 2022 had an average of 12 days for the validation of the customer's NEM application due to information still being required by the client. *Id.*, lines 106-108.

Moreover, the "regular" (i.e., non-expedited) projects with generating capacity greater than 25 kW should not be added to LUMA's proposed Performance Metrics Targets. These types of DG Interconnection Projects are more technically complex and individualized. Therefore, these projects require a more iterative process with greater input from customers and developers, which is more challenging to measure and track. Furthermore, there is no penalty for developers' delayed responses to LUMA's inquiries, so projects mostly depend on the developer's interest in completing the case. Additionally, these non-expedited cases comprise less than 1% of the overall NEM project application volume. *See* Exhibit 26 of the Evidentiary Hearing, p. 7, lines 122-130. Setting any target for the completion of the process for Interconnections Projects, whether it is 60 days or some other Target time, is not feasible. *Id.*, p. 9, lines 166-169.

In light of the above, LUMA contends that the proposal for a NEM Project Activation Duration Performance Metric remains unchallenged. Mr. Cosme's counterproposal does not consider circumstances beyond LUMA's control that are expected in an operation such as this one. Those circumstances account, in some cases, for a considerable amount of time that renders it unfeasible to track in days completion. Thus, the Energy Bureau should approve the NEM Project Activation Duration Performance Metric as proposed.

7. Energy Efficiency and Demand Response

a. Energy Savings as Percent of Total Energy Sales

The Energy Savings as Percent of Total Energy Sales Performance Metric measures the annual energy savings achieved by LUMA's Demand Side Management ("DSM") Programs, pilots, and initiatives. *See* Exhibit 11 of the Evidentiary Hearing, p. 30. The metric is calculated as the total gross annual energy savings achieved (MWh) during the year, divided by the total forecasted energy sales (MWh) for the year. *Id*., p. 31. The performance objective of this metric is to incentivize the utility to achieve energy reduction Targets. *Id.*, p. 30.

The Final Regulation for Energy Efficiency established planning targets for annual energy savings to be acquired during each year of the Transition Period Plan: 0.1 percent in the first year and 0.25 percent in the second. As per industry convention, these energy savings Targets are presented as a percentage of annual energy sales. The annual Targets are designed to facilitate a reasonable ramp-up of program performance during the early years of program delivery. It should be noted that these Targets cannot be achieved until the programs are fully funded through a cost-recovery mechanism such as the Energy Efficiency ("EE") Rider. *See* Exhibit 11 of the Evidentiary Hearing, pp. 30-31.

Mr. Wood, a witness for LUMA, submitted a pre-filed direct testimony in support of the Energy Savings as Percent of Total Energy Sales Performance Metric. He explained that the proposed metric is the industry standard metric for tracking savings performance from traditional ratepayer-funded DSM programs. *See* Exhibit 23 of the Evidentiary Hearing, p. 9, lines 246-247. The metric was selected to minimize program administration changes, recognizing that this metric will be adopted after the Transition Period. *Id*., p. 10, lines 253-255. The methodologies and resources needed to confidently estimate energy savings resulting from DSM programs (e.g.,

Technical Reference Manual, EM&V protocols) are widely available and well-developed. Since the utility has never delivered DSM programs, the baseline is currently 0%. *Id*., lines 257-259.

Mr. Wood indicated that the proposed Targets are based on forecasted energy sales. This is because the programs and budgets needed to achieve these Targets are determined prior to the beginning of each year. The actual energy sales may vary from the forecast; however, the programs and their budgets will not be able to fluctuate up or down mid-year to align with fluctuations in actual sales during the year. *See* Exhibit 23 of the Evidentiary Hearing, p. 9, lines 240-244. The first and second-year Targets for this metric (0.1% and 0.25%) were set at a level aligned with the Regulation for Energy Efficiency and are designed to facilitate a reasonable ramp-up of program performance during the early years of program delivery. *Id*., p. 10, lines 271-273.

Table 2-20. Energy Savings as Percent of Total Energy Sales

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
Baseline	N/A						
Year 1	0.10% Savings	N/A	0.15%	0.13%	0.10%	0.05%	0.03%
Year 2	0.25% Savings	N/A	0.38%	0.31%	0.25%	0.13%	0.06%
Year 3	0.40% Savings	N/A	0.60%	0.50%	0.40%	0.20%	0.10%

See Exhibit 11 of the Evidentiary Hearing, p. 31.

b. Peak Demand Savings as a Percent of Total Peak Demand

The Peak Demand Savings as a Percent of Total Peak Demand Performance Metric measures the annual peak demand savings achieved by LUMA's DSM Programs, pilots, and initiatives. *See* Exhibit 11 of the Evidentiary Hearing, p. 31. The metric is calculated as the total gross annual peak demand savings achieved (MW) during the year, divided by the total forecasted peak demand (MW) for the year. *Id.* The objective of this Performance Metric is to incentivize the utility to achieve peak demand reduction Targets. *Id.*

As per industry convention, these demand savings Targets are presented as a percentage of annual peak demand. The annual Targets are designed to facilitate a reasonable ramp-up of program performance during the early years of program delivery. It should be noted that these Targets cannot be achieved until the programs are fully funded through a cost-recovery mechanism such as the EE Rider. *See* Exhibit 11 of the Evidentiary Hearing, p. 31.

Mr. Wood expounded that the proposed Peak Demand Savings as a Percent of Total Peak Demand Performance Metric is the industry standard metric for tracking the performance of peak demand savings from traditional ratepayer-funded DSM programs. *See* Exhibit 23 of the Evidentiary Hearing, p. 11, lines 300-301. Although the baseline for this metric should reflect the level of peak demand savings historically achieved by DSM programs administered by the utility but given that the utility has never delivered DSM programs, the baseline is currently 0%. *Id.,* 304-306

The proposed Targets are based on forecasted peak demand. This is because the programs and budgets needed to achieve these Targets must be determined prior to the beginning of each year. The actual peak demand may vary from the forecast; however, the programs and their budgets will not be able to fluctuate up or down mid-year to align with fluctuations in the actual peak demand during the year. *See* Exhibit 23 of the Evidentiary Hearing, p. 11, lines 293-297.

Table 2-21. Peak Demand Savings as a Percent of Total Peak Demand

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
Baseline	N/A						
Year 1	0.05% Savings	N/A	0.08%	0.06%	0.05%	0.03%	0.01%
Year 2	0.10% Savings	N/A	0.15%	0.13%	0.10%	0.05%	0.03%
Year 3	0.20% Savings	N/A	0.30%	0.25%	0.20%	0.10%	0.05%

See Exhibit 11 of the Evidentiary Hearing, p. 31.

Mr. Cosme presented a pre-filed direct testimony in which he suggested that the Energy Efficiency and Demand Response ("EE&DR") metrics should be segmented by each consumer class impacted by the EE&DR program. *See* Exhibit 32 of the Evidentiary Hearing, p. 3, lines 99-103. Also, Mr. Cosme recommended the EE&DR metric be recorded as soon as the Transition Period of the EE&DR program commences in Puerto Rico, but its effectiveness be deferred during the Transition Period. *Id*., p. 3, lines 106-109.

Mr. Cortez, a witness for LUMA, submitted a pre-filed rebuttal testimony to Mr. Cosme's first recommendation. He expounded that since PREPA has never implemented EE&DR programs, a baseline metric by customer class does not exist. As a result, there is a high degree of uncertainty about the market readiness for these types of programs. LUMA has no data on how the customers from Puerto Rico as a whole or in the different consumer classes will react to energy efficiency offers, rebate price points, or the price of energy-efficient goods. The Transition Period Program ("TPP") for Energy Efficiency and Demand Side Response programs is meant to understand market readiness. *See* Exhibit 26 of the Evidentiary Hearing, p. 10, lines 183-189. The TPP quick-start programs will provide a greater understanding of the Puerto Rico market, customer needs, and preferences, and how best to address barriers to adoption across LUMA's customer classes. *Id*., lines 193-195.

LUMA agrees with Mr. Cosme that the EE&DR metrics, as incentive Performance Metrics, should be deferred during the transition period and not be effective until after the TPP program ends. *See* Exhibit 26 of the Evidentiary Hearing, p. 10, lines 203-204, and p. 11, line 205. In addition, the program, as outlined, cannot be fully deployed until a funding mechanism, such as an EE rider, is approved and implemented. *Id*., p. 11, lines 209-211.

From the aforementioned discussion, it is clear that there is no controversy that the proposed Performance Metrics for Energy Savings as Percent of Total Energy Sales and Peak Demand Savings as a Percent of Total Peak Demand should be deferred until the TPP program ends. Moreover, this Energy Bureau should consider that the TPP program cannot be fully implemented until there is a funding mechanism, which is not in place at present and is expected to be implemented in July 2023. Therefore, LUMA requests the Energy Bureau to approve these proposed Performance Metrics as presented but defers their implementation until the TPP program concludes.

8. Financial Performance

a. Operating Budget, Capital Budgets and Overtime Metrics

LUMA respectfully requests that this Energy Bureau approves, as filed, the four (4) binary financial metrics proposed by LUMA and that were adopted by the parties to the T&D OMA. The metrics are: Operating Budget; Capital Budget: Federally Funded; Capital Budget: Non-Federally Funded; and Overtime. *See* Exhibit 11 of the Evidentiary Hearing, pp. 32-35 and 37-38.

The performance objective of the Operating Budget Performance Metric is to incentivize effective cost management. *See Id.,* p. 32, Exhibit 59 of the Evidentiary Hearing (Direct Testimony, Mr. Kalen Kostyk of August 17, 2021), line 70. It measures the ability to stay within budget. *See* Exhibit 11 of the Evidentiary Hearing, p. 32, Exhibit 59 of the Evidentiary Hearing, line 71. The metric will be evaluated as actual operating expenses for a given Fiscal Year divided by the approved T&D operating budget for the same Fiscal Year as incurred, plus 2% excess expenditures that are included in the budgets. *See* Exhibit 11 of the Evidentiary Hearing, p. 32, Exhibit 59, lines 72-74. Budget amendments, as defined in (i) through (iv) in Section 7.4 and 14.5(e) of the T&D OMA, shall be deemed to be included in the initially approved Budgets

(denominator) for the purposes of this calculation. *See* Exhibit 11, p. 32, Exhibit 59, lines 77-79. Further, any funds drawn from the Outage Event Reserve Account and the Contingency Reserve Account, as they have specific requirements, do not contribute to this metric. *See* Exhibit 11 of the Evidentiary Hearing, p. 32, Exhibit 59 of the Evidentiary Hearing, lines 77-79. Any approved budget amendment for items outside LUMA's control also adjusts the budget metric denominator by the same amount. *See* Exhibit 59 of the Evidentiary Hearing, lines 80-81. Also, any financial adjustments or corrections made to PREPA's pre-fiscal year 2022 historical books and records be excluded from the calculation. *Id.,* lines 82-83.

The baseline, Minimum Performance Level, and Targets for the Operating Budget Performance Metric are:

Table 2-20. Operating Budget

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	80.4%						
Baseline	100% of Operating Budget						
Year 1	100% of T&D Approved Operating Budget	100% of T&D Approved Operating Budget	N/A	N/A	Less than or Equal to 100%	N/A	N/A
Year 2	100% of T&D Approved Operating Budget	100% of T&D Approved Operating Budget	N/A	N/A	Less than or Equal to 100%	N/A	N/A
Year 3	100% of T&D Approved Operating Budget	100% of T&D Approved Operating Budget	N/A	N/A	Less than or Equal to 100%	N/A	N/A

See Exhibit 11 of the Evidentiary Hearing. p 32.

The Capital Budget: Federally Funded Performance Metric, incentivizes effective cost management of federally funded projects. *See* Exhibit 11 of the Evidentiary Hearing, p. 32, Exhibit 59 of the Evidentiary Hearing, lines 87-88. It measures the ability to stay within budget. *See* Exhibit 11 of the Evidentiary Hearing, p. 32, Exhibit 59 of the Evidentiary Hearing, line 89. This metric will be evaluated as actual Federally Funded Capital expenses for a Fiscal Year, as incurred,

divided by approved Capital Budget: Federally Funded for the same Fiscal Year, plus 2% excess expenditures that are included in the budgets. *See* Exhibit 11 of the Evidentiary Hearing, p. 32, Exhibit 59, lines 90-92. Budget amendments, as defined in (i) through (iv) in Section 7.4 and 14.5(e) of the T&D OMA, shall be deemed to be included in the initially approved Budgets (denominator) for the purposes of this calculation. *See* Exhibit 11 of the Evidentiary Hearing, p. 33, Exhibit 59 of the Evidentiary Hearing, lines 93-96. Further, any funds drawn from the Outage Event Reserve Account and the Contingency Reserve Account, as they have specific requirements, do not contribute to this metric. *See* Exhibit 11 of the Evidentiary Hearing, p. 33, Exhibit 59 of the Evidentiary Hearing, lines 96-98.

The baseline, Minimum Performance Level, and Targets for the Capital Budget Federally Funded Performance Metric are:

Table 2-21. Capital Budget: Federally Funded[1]

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	N/A						
Baseline	N/A						
Year 1	100% of FY22 Approved Capital Spend	100% of FY22 Approved Capital Spend	N/A	N/A	Less than or Equal to 100%	N/A	N/A
Year 2	100% of FY23 Approved Capital Spend	100% of FY23 Approved Capital Spend	N/A	N/A	Less than or Equal to 100%	N/A	N/A
Year 3	100% of FY24 Approved Capital Spend	100% of FY24 Approved Capital Spend	N/A	N/A	Less than or Equal to 100%	N/A	N/A

See Exhibit 11 of the Evidentiary Hearing. p 34.

The Capital Budget: Non-Federally Funded Performance Metric also incentivizes effective cost management of Non-Federally Funded Capital. *See* Exhibit 11 of the Evidentiary Hearing, p. 34, Exhibit 59 of the Evidentiary Hearing, lines 101-102. It measures the ability to stay within budget. *See* Exhibit 11 of the Evidentiary Hearing, p. 34, Exhibit 59 of the Evidentiary Hearing,

line 103. This metric will be evaluated as actual Federally Non-Funded Capital expenses for a Fiscal Year, as incurred, divided by approved Capital Budget: Non-Federally Funded for the same Fiscal Year, plus 2% excess expenditures that are included in the budgets. *See* Exhibit 11 of the Evidentiary Hearing, p. 34, Exhibit 59 of the Evidentiary Hearing, lines 104-107. Budget amendments, as defined in (i) through (iv) in Section 7.4 and 14.5(e) of the T&D OMA, shall be deemed to be included in the initially approved Budgets (denominator) for purposes of this calculation, and any funds drawn from the Outage Event Reserve Account and the Contingency Reserve Account, as they have specific requirements, do not contribute to this metric. *See* Exhibit 11 of the Evidentiary Hearing, p. 34, Exhibit 59 of the Evidentiary Hearing, lines 107-112.

The baseline, Minimum Performance Level, and Targets for the Capital Budget Non-Federally Funded Performance Metric are:

Table 2-22. Capital Budget: Non-Federally Funded[1]

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	6.6%						
Baseline	100% of Capital Budget: Non-Federally Funded Approved for Fiscal 2022						
Year 1	<100% of FY22 Approved Capital Spend	100% of FY22 Approved Capital Spend	N/A	N/A	Less than or Equal to 100%	N/A	N/A
Year 2	<100% of FY23 Approved Capital Spend	100% of FY23 Approved Capital Spend	N/A	N/A	Less than or Equal to 100%	N/A	N/A
Year 3	<100% of FY24 Approved Capital Spend	100% of FY24 Approved Capital Spend	N/A	N/A	Less than or Equal to 100%	N/A	N/A

See Exhibit 11 of the Evidentiary Hearing. p 35.

The Operating Budget, the Capital Budget Federally Funded, and the Capital Budget Non-Federally Funded Performance Metrics and measurement were established in the T&D OMA. *See* Exhibit 59 of the Evidentiary Hearing, lines 123-124. These Performance Metrics measure LUMA's ability to stay within budget. LUMA's proposal is to stay consistent with the T&D OMA

language, except for the added language to exclude outage events, which are outside of LUMA's control. *Id.,* lines 125-127. The uncontested record shows that LUMA's Targets for the Operating Budget, Capital Budget – Non-Federally Funded, and Capital Budget- Federally Funded were set with the intention to effectively manage and strengthen the resiliency of the T&D System. *Id.,* lines 165-167. LUMA intends to spend all of its budgeted amounts to assist in stabilization efforts. *Id.*, lines 167-168.

The Overtime Performance Metric incentivizes efficient payroll expense. *See* Exhibit 11 of the Evidentiary Hearing, p. 37, Exhibit 59 of the Evidentiary Hearing, line 116. This metric measures the utility's ability to manage labor expenses. *See* Exhibit 11 of the Evidentiary Hearing, p. 37, Exhibit 59, line 117. The metric is calculated by dividing the amount of overtime expenses by the amount of total non-exempt base compensation expenses, expressed as a percentage. *See* Exhibit 11 of the Evidentiary Hearing, p. 37, Exhibit 59 of the Evidentiary Hearing, lines 118-119. The Overtime Performance Metric was calculated by using PREPA's Fiscal Year 2021 Certified Budget to determine a baseline overtime amount. *Id.*, lines 128-129; *See* Evidentiary Hearing, Vol. 3 (English Portion), p. 718, lines 15-19, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 2 [2:27:41-2:27:52:00]. LUMA requested data on historical overtime, but no information was provided. Exhibit 59 of the Evidentiary Hearing, lines 129-130. Thus, LUMA utilized the FY2021 Certified Budget as the best proxy of current overtime expectations, which was the best data available to establish a baseline. *Id.*, lines 134-136; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [1:51:34-1:55:33]. LUMA utilized this publicly available data to derive an overtime percentage and used this data to establish a baseline percentage. *Id.,* lines 136-138. LUMA used the most recent FOMB Certified Budget to establish the baseline amount of 23%. *Id.*, lines 130-132 and lines 160-161.

The baseline, Minimum Performance Level, and Targets for the Overtime Metric are:

Table2-25. Overtime

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	N/A						
Baseline	23% of Total Non-Exempt Base Compensation						
Year 1	20% of Total Non-Exempt Base Compensation	23% of Total Non-Exempt Base Compensation	Less than or Equal to 18%	19%	20%	21%	22%
Year 2	19% of Total Non-Exempt Base Compensation	22% of Total Non-Exempt Base Compensation	Less than or Equal to 17%	18%	19%	20%	21%
Year 3	18% of Total Non-Exempt Base Compensation	21% of Total Non-Exempt Base Compensation	Less than or Equal to 16%	17%	18%	19%	20%

See Exhibit 11 of the Evidentiary Hearing, p. 38.

The Targets for the Overtime Metric were set with the intention of recognizing root causes in labor and wage expectations and improving performance over time. *Id.*, lines 173-174. LUMA took the baseline from the Fiscal Year 2022 certified budget to be the best representation of the data we reviewed for the baseline, and we established Targets, stronger Targets for the first three years of LUMA's operation to come up with what type of awards we should get good under various circumstances. *See* Evidentiary Hearing, Vol. 3 (English Portion), p. 719, lines 10-16 AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 2 [2:28:37-2:28:56]. LUMA wanted to show improvements year over year and used PREPA's budget number for their fiscal year with the purpose of showing continual improvement. *See* Evidentiary Hearing, Vol. 3 (English Portion), p. 720 line 25, p. 721, lines 1-18, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 2 [2:31:19-2:32:02]. LUMA did not have sufficient data to set Targets in a scientific or linear fashion, as it had not started operations. *See* Evidentiary Hearing, Vol. 3 (English Portion), p. 721, lines 20-24, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 2 [2:32:07-2:32:18].

Regarding the baseline for the Operating Budget Performance Metric, the record of this proceeding shows that the baseline of 80.4% that this Energy Bureau set in Case No. NEPR-MI-2019-0007, which provides for underspending, is not appropriate. *See* Exhibit 59 of the Evidentiary Hearing, lines 142-144. LUMA reviewed the baseline and understood that PREPA's historical underrunning of the approved budgets was not due to efficient efforts or the betterment of the system. *Id.* LUMA considers that there was an inability by PREPA to deliver on the annual plans to properly manage and operate the system. *Id.,* lines 144-145. LUMA's budgets are based on bottom-up buildups by functional groups to deliver on plans for the approved fiscal year, and LUMA is requesting to be measured to deliver services in alignment with the PREB-approved budget. *Id.,* lines 146-148.

The proposal to set the baseline at 80.4% for the Operating Budget that Mr. Irizarry suggests should be adopted, *see* Exhibit 7 of the Evidentiary Hearing, p. 48, lines 14-20, and p. 49, lines 1-2, is not supported by the record. It is important to note that LECO did not offer Mr. Irizarry to provide testimony in the evidentiary hearing on the financial metrics. Thus, the Energy Bureau should deem that LECO withdrew the testimony of Mr. Irizarry on this topic. In any event, the evidence on the record amply supports LUMA's proposed baselines as consistent with the T&D OMA and the interests of the public.

The 80.4% baseline set by this Energy Bureau for the Operating Expenses metric derives from data submitted by PREPA. *See* Exhibit 59 of the Evidentiary Hearing, lines 141-143. PREPA underspent its budget while collecting associated revenues and delivering below-standard service. *Id.*, lines 143-144. While the Fiscal Year 2020 data PREPA submitted shows an 80.4% baseline, LUMA's Target is to spend 100% of the budget. *Id.*, lines 144-145. LUMA's goal is to use the funds appropriately to build a more robust, resilient utility to provide customer benefits and meet

its obligations under the T&D OMA and energy public policy. *See* Exhibit 60 of the Evidentiary Hearing, lines 145-148. The cumulative impacts of the performance categories drive the desired behavior to deliver improved service using the funds budgeted by LUMA and approved by PREB. *Id.,* lines 148-150. If LUMA is expected to spend approximately 20% below budget, LUMA would be unable to improve the system to the extent it has planned and based on the PREB-approved budget and Improvement Programs. *Id.*, lines 150-152.

It is not reasonable to set a minimum threshold. *See Evidentiary* Hearing, Vol. 3 (English Portion), p. 707, lines 11-15, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 2 [2:13:10-2:3:24].With regards to the Operating Budget, the baselines of 80.4% spending of the Operating Budget would equate to not spending more than $100 million on needed operations and maintenance of the electrical grid. *See* Exhibit 60 of the Evidentiary Hearing, lines 152-154. Consequently, an incentive to underrun the budget affects the implementation of improvement programs, delays plans, and affects the other Performance Metrics outlined in this proceeding, impacting LUMA's ability to perform and earn what was negotiated in the T&D OMA. *Id.*, lines 152-157.

The proposal to incentivize underspending fails to consider that the budgets take into account the activities and programs approved by the Energy Bureau and implemented by LUMA to improve the reliability and performance of the electrical grid. One example is Vegetation Management. *Id.*, lines 158-161. In compliance with Act 17, LUMA sets and manages a budget for vegetation management activities. *Id.*, lines 161-163. If LUMA were to underspend on Vegetation Management, while LUMA may temporarily achieve budget savings, broad system impacts would not benefit LUMA in other areas. *Id.*, lines 165-167. Excess vegetation could lead to outages, impacting other Performance Metrics like SAIDI and SAIFI. *Id.*, lines 167- 168.

Reducing costs in one area could negatively impact other areas, and, consequently, LUMA's performance and goals to improve the utility's overall state. *Id.*, lines 168-170.

The record also establishes that the baseline set by this Energy Bureau in case NEPR-MI-2019-007 for the Capital Budget – Non-Federally Funded of 6.6% is not proper. *See* Exhibit 59 of the Evidentiary Hearing, lines 150-152. LUMA reviewed the baseline and considered that PREPA's historical underrunning of the approved budgets was not due to efficient efforts or the betterment of the system. *Id.* LUMA considers that there was an inability by PREPA to deliver on the annual plans to properly manage and operate the system. *Id.,* lines 152-153. LUMA's budgets are based on bottom-up buildups by functional groups to deliver on plans for the approved fiscal year, and LUMA is requesting to be measured to deliver on our services in alignment with the PREB-approved budget. *Id.,* lines 154-156.

Similarly, the evidence on the record requires that this Energy Bureau reject the proposal to keep T&D capital expenses under 9.9% of the Operating Budget as proposed by LECO, *see* Exhibit 7 of the Evidentiary Hearing, p. 49, lines 4-10. *See* Exhibit 59 of the Evidentiary Hearing, lines 178-197. The T&D System requires a significant number of programs and initiatives to remediate its state and improve reliability across the island, and those programs and initiatives have been presented to the Energy Bureau and approved in Case No. NEPR-MI-2020-0019, on LUMA's SRP, and Case NEPR-MI-2021-0004 on LUMA's Initial Budgets. *See* Exhibit 59, lines 178-183. In its budgets, LUMA has allocated specific amounts to implement the programs and achieve the performance goals, and this Energy Bureau approved the budgets and the related programs and goals. *Id.*, lines 181-184. As previously mentioned, the budget metrics do not operate alone in a vacuum but are interconnected with various other levers in the organization. *Id.*, lines 184-185. Maintaining the transmission and distribution capital expenses to a set percentage of

9.9% of approved spending would artificially limit the Puerto Rico electric system's much-needed improvement. *Id.*, lines 185-188. As LUMA's witness and Manager for Accounting, Mr. Kalen Kostyk, established in his testimony, which is uncontested on the record, no utility would premise a spend on such a metric. *Id.,* line 188. Because system planning and capital spend profiles for utilities change over time, depending on the need for capital investment, the proposal to cap capital expenditures at a percentage of operating expenditures is not practical and not in line with restoring and transforming the T&D System. *Id.,* lines 189-192. As it has done since Fiscal Year 2022, LUMA will file its plans to revitalize and operate the system within the fiscal framework of the system but should not be bound to budget capital as a percentage of the operating budget (9.9%), *see Id.*, lines 192-194. The interaction with this Energy Bureau, which will then assess LUMA's proposed budget and approve, modify, or reject the filing, will guide the appropriate mix of capital and operating expenditures to ensure the system is revitalized, and operated efficiently. *Id.*, lines 194-197.

LUMA respectfully posits that this Energy Bureau should decline to adopt the recommendations of Mr. Cosme. As Mr. Cosme stated in cross-examination, he is not an expert in the area of finance or operational budgets. *See* Evidentiary Hearing, Vol. 3 (Spanish Portion), p. 152, lines 18-20, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 2 [5:37:07]. Furthermore, Mr. Cosme does not have experience in implementing Performance Metrics, including financial metrics for electric power service companies. *See* Evidentiary Hearing, Vol. 3 (Spanish Portion), p. 152, lines 21-25, p. 153, lines 1-15 AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 2 [5:37:22-5:38:05].

Particularly, this Energy Bureau should decline to accept Mr. Cosme's proposal that the financial metrics are incomplete, *see* Exhibit 31 of the Evidentiary Hearing, p. 4, lines 166-170.

The evidence on the record contradicts that statement. LUMA's spending equates to the total of the Operating, Capital Non-Federally, and Capital Federal Funded budgets, and thus, the totality of LUMA's spending is included and complete. *See* Exhibit 59 of the Evidentiary Hearing, lines 71-76. Moreover, as Mr. Cosme admitted during the evidentiary hearing, the Energy Bureau has complete involvement and oversight in approving the operational and capital budgets and supervises LUMA's spending through LUMA's quarterly reports on spending, including federal funding activity, and thus, it is incorrect to suggest that binary metrics are too incomplete or provide too much flexibility. Evidentiary Hearing, Vol. 3 (Spanish Portion), p. 156, lines 18-25, p. 157, lines 9-15, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 2 [5:41:23 & 5:41:58].

LUMA also respectfully submits that the evidence on the record refutes Mr. Cosme's contention on pp. 4-5, lines 174-183 of his pre-filed testimony, Exhibit 31 of the Evidentiary Hearing, that the financial Performance Metrics should include an alignment with specific investments or actions proposed or tied to the particular budget. To wit, the Financial Performance Metrics do not need to include an alignment with specific investments or actions proposed or tied to the particular budget for the customers to benefit from a positive outcome. Moreover, this Energy Bureau evaluates and approves the programs or initiatives in proceedings that include Case No. NEPR-MI-2020-0019 on LUMA's System Remediation Plan ("SRP") and Case No. NEPR-MI-2021-0004 were LUMA's annual budgets, and improvement programs are approved and whereby this Energy Bureau tracks the implementation and progress of LUMA's SRP and Improvement Programs, initiatives, and budgets. Furthermore, budgets are made at a particular point in time based on the information available and are adjusted as conditions and circumstances change during operations. *See* Exhibit 60, lines 97-98. Thus, measuring LUMA solely on progress

towards certain specific investments ignores the natural variability that occurs over time and does not allow LUMA to be agile and responsive to the conditions as they present themselves while delivering services within budget. *Id.,* lines 99-102.

This Energy Bureau should also decline to adopt the proposal by Mr. Cosme on p. 5, lines 191-194, of his pre-filed testimony, Exhibit 31 of the Evidentiary Hearing, that the Operating Budget incentive metrics be contingent on the premise that no event-related directly to Transmission & Distribution had occurred, which had a direct impact on the rider's costs, *see* Exhibit 31 of the Evidentiary Hearing. This suggestion runs counter to PREB Regulation 9137 on Performance Incentive Mechanisms, which states that a "Performance Incentive Mechanism shall be clearly defined, easily interpreted, and easily verified." *See* Exhibit 2 of the Evidentiary Hearing (Rebuttal Testimony, Mario Hurtado, March 3, 2022, hereinafter), p. 17, lines 358-359. A chain of casualty between a specific transmission outage and a specific impact on generation would have to be established conclusively to begin to define something like what Mr. Cosme suggested. *Id.*, lines 359-362. Engineers spend many hours collecting and interpreting data to make such judgements, which are often ambiguous and equivocal. *Id.*, lines 362-363. The cost, complication, and time inherent in such a task, if it were really possible in a preponderance of occurrences, would be extremely high. *Id.*, lines 363-364. The interpretation of such outages would not be easy, and verification would also be difficult. In addition, establishing a trigger from a physical transmission outage that allegedly causes higher fuel costs to the operating budget would try to link two areas that cannot be clearly linked. *Id.*, lines 365-368. Having a single outage eliminate the incentive to stay within budget would be against the good practice of utility Performance Metrics. *Id.*, lines 368-369. Furthermore, it bears noting that this Energy Bureau exercises its authority to investigate specific outages or system events. *Id.,* lines 370-372. Moreover, although the Energy Bureau asked

Mr. Cosme to explain how his proposal could be translated to a quantifiable metric, Mr. Cosme was not able to provide a framework, *see* Evidentiary Hearing, Vol. 3 (Spanish Portion), p. 136 lines 3-9, p. 159, lines 10-14 AP-2020- Evidentiary Hearing-20230209_Meeting Recording 2 [4:36:32 & 5:44:04], and admitted that his concerns that T&D spending may affect the fuel rider or fuel costs are hypothetical, *see* Evidentiary Hearing, Vol. 3 (Spanish Portion), p. 136 lines 3-9, p. 154, lines 22-25, p. 155, lines 1-14 AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 2 [4:36:32 & 5:39-:44-5:40:14].

This Energy Bureau should also reject the proposal by Mr. Irizarry for LECO that the Energy Bureau remove any incentive payment to LUMA for staying within its budgets, as set forth on p. 8, lines 6-7, and p. 64, lines 15-16 of Exhibit 7 of the Evidentiary Hearing. The record refutes the soundness of that contention. Part of sound management is the efficient allocation and administration of funds, considering current operating conditions in order to achieve key objectives. *See* Exhibit 59 of the Evidentiary Hearing, lines 108-109. Staying within budget is an important parameter for any business operation, and thus, removing this incentive would be contrary to basic management principles and would ignore this aspect of the Operator's performance. *Id.*, lines 109-112.

Similarly, this Energy Bureau should reject Mr. Irizarry's proposal that a failure to stay within budget should reduce or eliminate LUMA's ability to achieve incentives in other categories, as stated on p. 8, lines 7-9, and p. 64, lines 16-18 of Exhibit 7 of the Evidentiary Hearing. As already stated, the record shows that such a penalty is not a part of the cost-benefit equation of the T&D OMA. Furthermore, it is unsound and unreasonable. LUMA's performance categories (Customer Satisfaction, Technical, Safety and Regulatory, and Financial Performance) will be measured cumulatively to determine the incentive fee earned. *See* Exhibit 60 of the Evidentiary

Hearing, lines 119-121. Reducing or eliminating LUMA's ability to achieve incentives in other categories would mean that the financial Performance Metrics will have complete precedence over other important metrics and is inconsistent with basic principles of utility Performance Metrics. *Id.*, lines 121-126. First, not meeting a threshold in the budget metric would eliminate an incentive related to safety, reliability, or customer service and would create overlapping incentives. *Id.*, lines 125-127. Mr. Irizarry's recommendation would effectively "double-count" by using LUMA's performance in one metric to reduce the incentive to perform in another metric. *Id.*, lines 127-129. Second, eliminating incentives for improvements in other categories because of a shortfall in a financial metric would be contrary to customer benefits. *Id.*, lines 129-130. It is possible that an operator could spend over an allotted budget and still perform well in other metrics. *Id.*, lines 130-132. The customer would be receiving the benefits of this performance in other metrics, so it would be unfair to penalize LUMA twice: once for exceeding the budget and then again by eliminating incentives for other metrics. *Id.*, lines 130-134.

This Energy Bureau should also reject Mr. Irizarry's proposal that all budget metrics: Operating Budget, Capital Budget: Federally Funded, Capital Budget: Non-Federally Funded, and Capital expenses vs. Budget – Transmission & Distribution be used only to impose penalties if minimum standards are not met, as stated on p. 49, lines 12-17 of Exhibit 7 of the Evidentiary Hearing. The proposed financial metrics reward cost control and guide LUMA's behavior to deliver services within the approved budget. *See* Exhibit 60 of the Evidentiary Hearing, lines 205-206. This, pursuant to the terms of the T&D OMA, is to incentivize LUMA to achieve the desired behavior, and the punishment for not achieving the metric is a failure to earn the incentive. *Id.,* lines 206-208. Mr. Irizarry fails to recognize that the T&D OMA already has a strong penalty for not operating within its budget constraints. *Id.*, lines 208-210. If LUMA exceeds its Operating

Budget for 3 consecutive years, the T&D OMA can be terminated. *Id.,* lines 210-211. Thus, with respect to meeting or exceeding the Operating Budget, the T&D OMA then has both rewards and penalties, but Mr. Irizarry's position does not consider this aspect of the T&D OMA as it relates to budget control. *Id.,* lines 211-214.

In conclusion, LUMA respectfully submits that its proposed financial metrics are supported by the uncontested weight of the administrative record. The record also shows that the financial metrics are designed to incentivize desirable behavior by LUMA to enable LUMA to transform the T&D System as required by Act 57-2014, Act 120-2018, and Act 170 2019. As LUMA's expert witness, Mr. Terzic established in his uncontested testimony, "one of management's must difficult tasks is to stay within preapproved budgets. Firstly, because budgets are set prospectively based on estimates and assumption on what will happen in the future. The assumptions include those concerning weather, economic conditions, inflation, fuel prices, financial markets, labor issues and other issues. These are the anticipated areas of concern, but we now live in a period experiencing an unanticipated event – the COVID pandemic. Sometimes budgets have to change in real time to reflect real developments. Staying within a budget given all the real time realities is a management skill and is not an automatic outcome of just being in management." *See* Exhibit 5 of the Evidentiary Hearing, lines 387-396. Thus, the proposed financial metrics that measure LUMA's ability to stay within the approved budgets, not only measure key operational aspects of a utility but also involve difficult tasks that are the proper subject matter of Performance Metrics.

b. Day Sales Outstanding: General Customers and Day Sales Outstanding: Government Customers

The Day Sales Outstanding ("DSO"): General Customers and DSO: Government Customers' Performance Metrics measure the ability to collect bills from general customers and government customers, respectively. *See* Exhibit 11 of the Evidentiary Hearing, p. 14. The

performance objective of both metrics is to incentivize effective credit and collections efforts. *Id*., p. 35.

Mr. Juan Fonseca, Manager, Revenue Department for LUMA, submitted a pre-filed direct testimony in support of the two proposed DSO metrics. He explained that due to a significant variance in the DSO calculation for General and Government Customers, LUMA considered these customers separately in two different metrics, as allowed by the Energy Bureau in its Resolution and Order dated April 8, 2021, in Case No. NEPR-MI-2019-0007. *See* Exhibit 58 of the Evidentiary Hearing, Direct Testimony of Juan Fonseca (August 17, 2021), lines 63-66. Mr. Fonseca defined the proposed DSO metrics as follows:

a. DSO: General Customers, which measures the ability to collect payment for general clients' customer billings and is calculated by dividing the year-end amount of general customers' receivables by the total year-end value of general customers' credit sales and multiplying the result by the number of days in that year.

b. DSO: Government Customers, which is calculated by dividing the year-end amount of Government accounts receivable by the total year-end value of government credit sales and multiplying the result by the number of days in that year. It is a Performance Metric that will reflect the impact of government collections, including critical service installations as defined in the Puerto Rico Energy Transformation and RELIEF Act, Act 57-2014, as amended by the Puerto Rico Energy Public Policy Act, Act 17-2019, and Contribution in Lieu of Taxes ("CILT").

See Exhibit 58 of the Evidentiary Hearing, lines 47-58.

Mr. Fonseca expounded that the data used to calculate the baseline was the common industry standard DSO calculation for Sales, Receivables, and days of analysis. *See* Exhibit 58 of

the Evidentiary Hearing, lines 75-76. After analyzing four (4) years of data, LUMA is using Fiscal Year 2019 data from the Monthly Report to the Governing Board ("MOR") to calculate the baseline, as it represents a standard period for customer collection data. *Id*., lines 79-80. After analyzing the data, LUMA discovered that PREPA did not perform any disconnections after Hurricane María until May 2019. *Id*., lines 80-82. With these considerations, the most stable period for baseline calculations (normal period of operation) for DSO: General Customers Performance Metric was from May 2019 to March 2020. *Id*., lines 84-86.

As part of his pre-filed direct testimony, Mr. Fonseca explained that LUMA's proposed Targets were determined after analyzing the baseline data and other external factors, such as the economic situation and the state of PREPA's arrears. *See* Exhibit 58 of the Evidentiary Hearing, lines 127-129. Those Targets were then set using LUMA's expertise on the impact of improvements after starting an effective dunning process. *Id.*, lines 132-134. The proposed Targets are illustrated below:

Table 2-23 Days Sales Outstanding: General Customers

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	132						
Baseline[1]	131						
Year 1	128	148	119	122	128	135	138
Year 2	126	145	116	120	126	132	135
Year 3	123	142	114	117	123	129	132

[1] LUMA's Baseline was calculated using PREPA's Financial Report (M-8) using FY 2019.

Table 2-24. Days Sales Outstanding: Government Customers

	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
PREB Order	619						
Baseline[1]	754						
Year 1	739	850	684	702	739	776	794
Year 2	724	833	670	688	724	760	778
Year 3	709	815	656	674	709	745	762

[1] LUMA's Baseline was calculated using PREPA's Financial Report (M-8) using FY 2019.

See Exhibit 11 of the Evidentiary Hearing, pp. 36-37.

To achieve those Targets, Mr. Fonseca indicated LUMA is prioritizing establishing strong processes in their Revenue Protection team, including developing a fulsome dunning process, where Customer Service would methodically communicate with customers to ensure the collection of accounts receivable, and enhancing the Oracle Customer Care & Billing platform to produce accurate reporting consequently improving the accuracy of the DSO calculations. *See* Exhibit 58 of the Evidentiary Hearing, lines 137-142.

However, Mr. Fonseca stated that consideration should be given to the fact that the dunning process is limited by Law 57-2014 and Law 17-2019, which establish limitations to start the dunning process earlier than thirty (30) days after a bill is sent for general clients and earlier than forty-five (45) days for Government accounts. *See* Exhibit 58 of the Evidentiary Hearing, lines 107-110. Given that Government orders for disconnections moratoriums negatively impact LUMA's ability to execute normal collections processes and manage DSO, LUMA should be relieved of the DSO Performance Metrics during government-imposed moratorium periods and for 3-6 months after the moratorium has been lifted as it is a trailing indicator. *Id.*, lines 110-113.

Also, as Mr. Fonseca testified that it is proper to compare the Puerto Rico economy and poverty lines with Latin American countries that have similar poverty lines percentages, and

political and cultural structures. *See* Exhibit 58 of the Evidentiary Hearing, lines 117-119. The latest census data establishes the poverty line at 43.5% in Puerto Rico, versus the 13.1% for the U.S. average or the 19.7% in Mississippi, which is the worst poverty line in the U.S. *Id.*, lines 119-121.

For those reasons, Mr. Fonseca testified during the Evidentiary Hearing that LUMA established a minimum Target of 148 days for the DSO: General Customers Performance Metric. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 69, lines 6-7; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:01:52]. The number was obtained by comparing similar electric utilities to PREPA. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 69, lines 11-14; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:02:05]. That same number is the Minimum Performance Level of two companies located in Brazil. The companies had the same level of clients and the same level of poverty. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 69, lines 23-25; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:02:46].

Mr. Fonseca further explained to questions by Commissioner Antonio Torres that Puerto Rico has a 40% poverty level. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 81, lines 20-21; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:17:59]. There are other economic indicators that are not comparable to the United States in terms of economics and the ability of customers to pay for the service. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 81, lines 21-25, and p. 82, lines 1-2; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:18:03]. Mr. Fonseca testified that the proposed minimum level of 148 days responds to the number of the comparable Brazilian company. Such a number was comparable to PREPA's number when it operated. *See* Evidentiary

Hearing Transcript, February 9, 2023 (Spanish Portion), p. 83, line 25, and p. 84, lines 1-8; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:20:21].

As for the DSO: Government Customers Performance Metric, Mr. Fonseca explained that since PREPA did not provide the necessary information for the process of evaluation of government accounts, LUMA examined the data for the period from March 2020 to July 2020. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 71, lines 12-25; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:03:55]. The Minimum Performance Level for the DSO: Government Customers' Performance Metric of 850 days was obtained considering PREPA's historical data due to the specific peculiarities of the government in Puerto Rico. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 85, lines 24-25, and p. 86, lines 1-24.

During the Evidentiary Hearing, Mr. Fonseca also clarified to a question by Commissioner Sylvia Ugarte that even though LUMA had already developed a "write-off" because PREPA did not have one in place, it was necessary to wait until PREPA's exit from the bankruptcy proceeding to execute such process. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 75, lines 4-24, and p. 76, lines 1-15; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:10:04].

At some point during the testimony of Mr. Fonseca, the Energy Bureau requested LUMA to research and present findings for Louisiana, Arkansas, and Mississippi on the existing low-income subsidies or other assistance available to customers of the electric utilities in these jurisdictions. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 95, line 25, and p. 96, lines 1-9; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:35:15]. Further, the Energy Bureau instructed LUMA to clarify in writing the request included in its

proposed Annex IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement, pp. 35 through 37, on the relief from the "Day Sales Outstanding" Performance Metrics for three (3) to six (6) months after a moratorium period has been lifted. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 145, lines 9-23, and p. 146, lines 3-19; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [5:30:01-5:30:42].

On February 21, 2023, LUMA filed a *Motion in Compliance with Bench Orders Issued During the Evidentiary Hearing.* LUMA submitted its findings on the existing low-income subsidies or other assistance available to customers of the electric utilities in Louisiana, Arkansas, and Mississippi, as well as supporting information on its proposal for relief from the "Day Sales Outstanding" Performance Metrics for three (3) to six (6) months after a moratorium period has been lifted. *See Motion in Compliance with Bench Orders Issued During the Evidentiary Hearing* dated February 21, 2023.

As for the existing low-income subsidies or other assistance available to customers of the electric utilities in Louisiana, Arkansas, and Mississippi, LUMA found that for private energy providers, the Low-Income Home Energy Assistance Program ("LIHEAP"), a program of the Department of Health and Human Services, is available in all three states. Eligibility requirements for LIHEAP vary by state based on median income levels. Also, discount rates for low-income customers are not uniformly available. *See Motion in Compliance with Bench Orders Issued During the Evidentiary Hearing* dated February 21, 2023, Exhibit 1, p. 2. Moreover, LUMA researched municipal utilities (utilities that are not private) and electric co-operatives in Louisiana, Arkansas, and Mississippi. Of the random sample of municipal utilities and electric co-operatives surveyed in these three states, there was no clear evidence of any special rates or rate discounts for low-income customers. *Id*.

In terms of the proposal for relief from the "Day Sales Outstanding" Performance Metrics for three (3) to six (6) months after a moratorium period has been lifted, LUMA explained that it does not affect the metric other than allowing for LUMA's performance to be assessed during a normal period of operations that accurately represents performance that LUMA can control. LUMA proposes relief from these non-payment moratoriums mandated periods because they are government-mandated, and LUMA can no longer carry out the complete dunning process that includes disconnections. Said dunning process is an integral part of the internal efforts to improve DSO. The effective weight of the metric is not impacted by the relief due to a non-payment moratorium unless the non-payment moratorium period lasts the entire Contract Year, in which case the metric would be excluded for the Contract Year. The effective weight would be re-distributed among the other metrics within the Financial Performance category (in line with the base points assigned to each of the other metrics within this category. *See Motion in Compliance with Bench Orders Issued During the Evidentiary Hearing* dated February 21, 2023, Exhibit 1, p. 1.

LUMA's proposal for the DSO General and Government Customers metrics remains uncontested as no intervenor challenged the proposed metrics. Nor did any of the intervenors submit substantive commentaries or objections to the information submitted by LUMA in the *Motion in Compliance with Bench Orders Issued During the Evidentiary Hearing* dated February 21, 2023. In light of the above, without any filed objection, LUMA requests the Energy Bureau to adopt them as submitted.

9. Major Outage Events Metrics

Exhibit 11, LUMA's Revised Annex IX to the T&D OMA, outlines in Section 2.8, pp. 40-45, LUMA's proposed MOE Metrics. Mr. Mario Hurtado, Mr. Terry Tonsi, and Mr. Abner Gómez

presented pre-filed and live testimonies in support of these metrics. "The MOE metrics serve important public policy and safety purposes. The MOE metrics guide LUMA on the phases of emergency Mitigation, Preparedness, Response, and Recovery. These metrics will support LUMA's emergency response efforts and increase communications both internally and externally, in addition to ensuring that resources are in place throughout the event. The MOE metrics are incorporated within LUMA's [Emergency Response Plan] ERP Restoration Annex to ensure the steps are followed." Exhibit 64 of the Evidentiary Hearing, Rebuttal Testimony, Terry Tonsi February 1, 2022, p. 9, lines 159-165. "Tracking these metrics are part of prudent management of outages. . . . Metrics like these incentivize utilities to be better prepared and have an optimal response during major events as disasters become more frequent across the world. . . Tracking, monitoring and measuring these metrics is essential as they act as a road map to provide LUMA with valuable tracking mechanisms throughout a major event and enables LUMA to prioritize key objectives." *Id.,* lines 149-156.

The MOE Metrics depend on atmospheric phenomena, on the specific characteristics of each emergency or disaster. Emergencies and disasters are never the same, there are tropical depressions that can leave floods with catastrophic results and hurricanes of minor categories that simply leave slight damage to infrastructure. However, the MOE Metrics provide a measurable basis for self-assessing the response to an emergency or disaster. Exhibit 65 of the Evidentiary Hearing, Direct Testimony Abner Gómez, lines 200-205.

As stated in Sections 1.3.4 and Section 2.8 of LUMA's Revised Annex IX to the T&D OMA, the MOE Metrics apply during Major Outage Events defined as:

> an event as a result of which (i) at least two hundred and five thousand (205,000) T&D Customers are interrupted for more than 15 minutes or (ii) at any point in time during the event, there are one thousand five hundred or more (≥1,500) active outage events for the T&D System, which are tracked in the Outage Management

> System (OMS). The major outage event is deemed ongoing so long as the interruptions/outages continue to remain above the stated cumulative amounts, in each case for a period of twenty-four hours or longer (≥24) and are caused by an act of God. If such an act of God is a storm, the storm must be designated as a named storm by the U.S. National Weather Service or a State of Emergency declared by the Government of Puerto Rico. The major outage event shall be deemed to have ended when the cumulative number of T&D customers remaining interrupted falls below ten thousand (10,000) for a continuous period of eight (8) hours.

As Mr. T. Tonsi testified during the evidentiary hearing, "It's a major -- it's something major that happens to the system. And the way it's defined is there are 205,000 customers that are interrupted, which signifies a very significant event for a utility, for more than 15 minutes, and then it has more than 1,500 outage jobs that are tracking through the whole mess. And within that, it has to be an act of God. So to be classified as a Major Outage Event it has to be an act of God. So it can't be something that's a failure that's from lack of ·maintenance or an error or a third-party interference. It has to be an act of God." *See* Evidentiary Hearing, Vol. 4 (T. Tonsi English), p. 809, lines 24-25 and p. 810, lines 1-13; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [0:53:50].

The T&D OMA outlines technical metrics to establish Targets for acceptable performance in providing reliable electric service during normal conditions. *See* Exhibit 1 of the Evidentiary Hearing, lines 149-150. These metrics expressly characterize major outage events as abnormal and exclude utility performance during these major outage events. *Id.*, lines 15-152. As such, the Performance Metrics are not intended to, cannot, and do not provide any quantitative measurement of utility performance during a major outage event. *Id.,* lines 152-154. In addition, following industry standards, some metrics explicitly exclude data from time periods characterized as abnormal, extraordinary, or emergencies. *Id.*, lines 154-155. The T&D OMA also includes the MOE Metrics and a Major Outage Event Scorecard (MOE Scorecard) that will be used as a tool to specifically measure utility performance during each Major Outage Event. *Id.,* lines 156-158.

The use of the MOE Scorecard is consistent with the T&D OMA's intent to provide transparency on the utility's performance during emergencies and to assist in learning from emergency events and improving emergency preparation and response. *Id.,* lines 158-161.

The MOE Scorecard assigns metrics and points into three categories: Preparation, Operational Response, and Communications. *Id.*, lines 162-163. The three categories are intended to capture the key activities associated with a Major Outage Event. *Id.,* lines 163-164. The Preparation metrics focus on utility activities in anticipation of a significant outage event. *Id.,* lines 165-166. The second category, Operational Response, evaluates the utility's performance during the response to a Major Outage Event, and the third category, Communications, assesses the utility's performance by disseminating information about the MOE and the response. *Id.*, lines 166-169.

As Mr. Hurtado explained during the evidentiary hearing, "these Major Outage Events metrics exist, to be able to gauge performance, and as Mr. Tonsi said, to learn from that and to be able to present that and provide transparency on how the company has prepared for an emergency, how the company acts during an emergency on some very specific things such as estimated time of restoration, very important things in terms of safety, and then generally in terms of communications with regulators, stakeholders, the ·public and customers." *See* Evidentiary Hearing, Vol. 4 (M. Hurtado English Portion), p. 836, lines 4-17; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:27:04].

Regarding the purposes and benefits of the MOE Metrics, Mr. Hurtado explained:

> [t]raditionally utilities are . . . not measured on their performance during emergencies. And so this is a way to hold utilities accountable -- in this specific case, hold LUMA accountable for performance during an emergency. In the absence of having this, then, because they are extraordinary events for most of the metrics, they just wouldn't count during an emergency. And so, this is an opportunity for something that is very important, obviously, and ·critical to the

> Puerto Rican people, which is how does the utility react during an emergency, for that to be measured and for there to be key information on that[.]
>
> And from the utilit[y's] standpoint or from the operator standpoint, as Mr. Tonsi was saying, [f]or us to learn and keep track of some very important aspects of how we react to an emergency. So I think it's a good addition for customers.· It's good for us as an operator because it makes us more accountable and it makes sense in the context of this particular contract because it's looking at performance, not excluding the performance during an emergency, which would otherwise be
> . . .
>
> So I think it's a really important field set for us to -- for the utility to be measured against, because reaction to emergencies is very important to customers and it's very important for us to have a stronger and more resilient system.

See Evidentiary Hearing, Vol. 4 (M. Hurtado English Portion), p. 843, lines 8-25 and p. 844, lines 1-20; *See* AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:36:49].

"The Major Outage Event metrics are triggered when there's a Major Outage Event. And during that period of time in which there is a Major Outage Event metric, ·that's when they would apply during that time. The Major Outage Event is when there's a very large number of customers that are interrupted for -- . . . what we've seen is when it's triggered when here's a large number of customers, more than 205,000 customers out of the total of 1.4 million so it's significant. And then it continues under the definition until 10,000 customers -- less than 10,000 customers have their service restored for more than eight hours. That's just for the [Major Outage] for that period of time, for the application of those Major Outage Event metrics. *See* Evidentiary Hearing, Vol. 4 (M. Hurtado English Portion) p. 832, lines 24-25 and p. 833, lines 1-25; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:22:58].

During the evidentiary hearing, Mr. Hurtado explained when and under which circumstances: "The simplest application of what we put in the proposal is that the fee, the total possible fee for the incentive, you know, would be broken out pro rata based on how long the Major Outage Event metric was. And so that's the portion of the fee that would be . . . that would

be -- that you would apply to the scores from the Major Outage Event metrics scorecard." *See* Evidentiary Hearing, Vol. 4, (M. Hurtado English Portion) p. 841 lines 9-19; *See* AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:34:21]. For example, if the Major Outage Event occupies 10% of the year, that portion of the year would not be ruled by the regular Performance Metrics. If the fee was $10.0 million, LUMA would earn $1.0 million if it met the MOE Metrics. Evidentiary Hearing, Vol. 4 (Spanish Portion), p. 29, lines 4-19; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [2;19:07]. As Mr. Hurtado testified during the hearing, the proposal is meant to be practical and equitable: to apply the MOE in lieu of the regular metrics, for the duration of the MOE and considering the nature and extent of the MOE. *See* Evidentiary Hearing, Vol. 4, (M. Hurtado Spanish Portion) p. 29, lines 12-19; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [2;19:07]. As Mr. Hurtado testified, "that during a Major Outage Event . . . the Major Outage Event metrics apply. When you are not in a Major Outage Event, they don't apply. And that's a simple line that can be drawn because you know when the event happened and you know when it ends." *See* Evidentiary Hearing, Vol. 4 (M. Hurtado English Portion), p. 854, lines 18-25, p. 855, lines 1-8 AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:50:55].

It is important to note that the MOE Metrics do not provide an additional incentive, but instead, "in the overall incentive that exists, if there's a Major Outage Event, these metrics -- or these specific types of events would be applied that would be included in the report that would go to the Energy Bureau, and the Energy Bureau would have the opportunity to gauge the performance of the utility during the event as well as during regular operations." *See* Evidentiary Hearing, Vol. 4, p. 839, lines 24-27 (M. Hurtado English Portion); AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:32:11].

As Mr. Tonsi explained during the Evidentiary Hearing, the list of metrics "was . . . something that was presented to [LUMA] and given to [LUMA] by the P3A and I believe the FTI consultants. And it comes from the New York Power Commission scorecard. . . . To be honest with you, we weren't sure what to use when we developed the metrics or the scorecard. But we looked at it, and to be honest with you, it's very forthcoming, it's what most utilities should do, but, unfortunately, as we're well aware across North America, it's something very, very new, measuring a utility's performance." Evidentiary Hearing, Vol. 4, (T. Tonsi English Portion) p. 813, lines 1-15; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [0:57:37]. "The MOE scorecard came from the New York Public Service Commission and was included in the [T&D] OMA from the start. [I]t was part of the work that was done during the front-end transition by the committee. So it was set up to review all of the Performance Metrics. And then, . . . there was a proposal and there were specific discussions about how to best have a scorecard that made sense for Puerto Rico, using the New York scorecard as a guide." Evidentiary Hearing, Vol. 4 (English Portion) p. 845, lines 8-21; *see also Id.* p. 118 lines 20-25, p. 119, lines 1-24; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:23:27]. The "experience of members of the team in terms of their experience with emergencies and general knowledge about how other utilities -- how other utilities carried out restoration and carried out emergency operations. That was certainly brought to bear. But in terms of a structure and metrics, it was focused on the New York scorecard." Evidentiary Hearing, Vol. 4 (English Portion), p. 846, lines 1-7; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:24:06].

The MOE metrics are binary. *See* Exhibit 1, Direct Testimony Mr. Hurtado, lines 180-81; Evidentiary Hearing, Vol. 4 (English Portion), p. 850, line 11; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:45:53]. This means that "You don't set a number and you say:

h, I'm going to attain 50. And if I'm 25 percent below, then I'm at 20.·If I'm 150 percent above, then I'm at -- it's:· Did you do this or not and then there's a score and there has to be an evaluation of whether you did those things fully to earn that score or not." Evidentiary Hearing, Vol. 4 (English Portion), p. 850, lines 13-18; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:45:58]. As Mr. Hurtado explained during the evidentiary hearing:

> every emergency is different. And part of the nature of an emergency is that you don't really know how it's going to develop. And so very strict, quantified metrics of the kind that you have during regular operations that rely on many years of history, rely on experience of many utilities with very similar operations, you don't have the benefit of that to create a metric or metrics that are that precise and can be tracked that carefully and can be benchmarked that carefully. You don't have the benefit of that when you're talking about emergencies. So the scorecard is more -- it's more procedural in terms of: These are the things that are very important for you to carry out during an emergency. These are the steps that should be taken. And so several of the metrics are: Did you take these steps? For example, did you check the inventory that was available for an emergency before the emergency occurred? Did the utility employees and workers have the proper training beforehand for the those aren't things that are susceptible to an easy metric, but they are very important to the preparation phase of an emergency.

Evidentiary Hearing, Vol. 4 (English Portion), p. 847, lines 2-25, p. 848, lines 1-4; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:41:53].

The uncontested record also establishes that it is extremely difficult to pre-set a priori numerical Targets for the important activities that have been established in the MOE Performance Metrics without any baseline data. *See* Exhibit 1, lines 184-186. Nevertheless, the proposed MOE metrics establish specific time frames based on event categorization for Downed Wires and Damage Assessment, and time frames are established for Crewing, ETR reporting, Mutual Assistance, and Outgoing Message. *Id.,* lines 186-189.

For the MOE Metrics, the effective weight looks at what is more important in an emergency, and that is how the weight for each metric is assigned. *Id.,* lines 192-193. The

assignment of base points and weighting is consistent with the NY PSC scorecard and LUMA's subject matter experts on emergency response for electric utilities. *Id.*, lines 193-195.

It is important to note that at the end of the year, LUMA will produce a report with evidence of its performance when the MOE Metrics apply, which report is evaluated by the Energy Bureau. Evidentiary Hearing, Vol. 4 (English Portion), p. 851, lines 13-22; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:46:59].

The MOE Metrics are: 1. Preparation Phase, 2. Downed Wires, 3. Damage Assessment, 4. Crewing, 5. Estimated Time of restoration (ETR) for 90% of Service Outages, 6. ETR Accuracy for 90% Service Restoration, 7. Municipality Coordination, 8. EOC Coordination PREMB-Federal OEC Coordination, 9. Utility Coordination, 10. Safety, 11. Mutual Assistance, 12. Call Answer Rates, 13. Web Availability, 14. PREB and Administrator (P3A) Reporting, 15. Customer Communications, and 16. Outgoing message on telephone line. *See* Exhibit 11 of the Evidentiary Hearing, Section 2.8, pp. 40-45. The record establishes the following descriptions of the MOE Metrics:

1. Preparation Phase. These metrics follow the principle that "[g]ood emergency management organizations have a guiding principle of being proactive versus reactive." *See* Exhibit 64 of the Evidentiary Hearing, Rebuttal Testimony, Terry Tonsi February 1, 2022, p. 11, lines 212-213. This metric involves eight steps: 1. Event-level categorization based on weather forecasts, system resiliency assessment, and available resources; 2. Press releases issued/text messages/emails sent; 3. Municipal conference calls held; 4. Critical & essential customers alerted - based on established list with current information; 5. Point of contact for critical facilities alerted - based on established list with current information; 6. Company compliance with training program as specified in the Emergency Response Plan; 7. Participation in all pre-

event mutual assistance group calls; 8. Verify materials/stockpiles level based on forecast. If materials are not on hand, corrective steps are taken in shortest reasonable time to correct the situation. *See* Exhibit 11 of the Evidentiary Hearing, p. 40; Exhibit 65 of the Evidentiary Hearing, Direct Testimony Abner Gómez, lines 55-67; Evidentiary Hearing, Vol. 4, pp. 30-50 (Spanish Portion A. Gómez); AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [2:22:55]. The preparation phase lasts all year. *Id.* p. 30, lines 24-25; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [2:23:16]. When there is an event, the first step is to categorize the event, using the Saffir-Simpson scale. Evidentiary Hearing, Vol. 4, p. 31, lines 16-19 (Spanish Portion A. Gómez); AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [2:24:56]. The second step is communicating with clients, including critical facilities and lifeline customers. *Id.* p. 31, lines 2-11, lines 22-25, p. 32, lines 1-8, p. 39, lines 23-25, p. 40, lines 1-21, and p. 41, lines 8-25; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [2:23:28 / 2:25:10 / 2:25:24 / 2:34:01 / 2:34:23 / 2:35:49]. LUMA also communicates with municipalities and maintains communications with entities and utilities that may provide mutual aid. *Id.* p. 32, lines 9-20, p. 34, lines 1-10, p. 46, lines 8-15; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [2:25:44 / 2:27:48 / 2:41:40]. LUMA also verifies its stockpiles of materials in warehouses across the island. *Id*., p. 34, lines 10-14, p. 47, lines 11-19; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [2:28:14 / 2:43:00]. The preparation phase metrics also include compliance with training programs using FEMA's guidelines and training for emergency response. *Id.* p. 33, lines 17-25, p. 34, lines 1-14, p. 44, lines 6-25, p. 45, lines 1-20; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [2:27:21 / 2:27:48 / 2:39:17 / 2:40:19].

2. Downed wires- "Addresses the response time between a reported downed wire (either when entered into the Customer Information System or through the Municipal Emergency Operations Center) and the initiation of appropriate action." *See* Exhibit 63 of the Evidentiary Hearing, Direct Testimony, Mr. Terry Tonsi (August 17, 2021), p. 6, lines 102-104. Appropriate action involves deploying a broad range of employee and external resources, geared towards remediating any danger as quickly as possible." *Id.,* lines 108-110. Because there is no established industry standard for responding to reported downed wires and a lack of data or any baseline performance data, the basis for the initial performance Targets reflects our best estimate of current state, yet with a stretch in comparison to undocumented unsubstantiated past performance, and intentions to drive improvement over time. *See id.,* p. 10, lines 150-153. The different categorizations between of three to five days (response time, 18 hours), five to ten (response time 36 hours) and greater than ten days (response time 60 hours) were taken from the New York Power Commission's Scorecard. Evidentiary Hearing, Vol. 4 (English Portion), p. 814, lines 24-2; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [0:59:48]. "The longer the event, there's more complexity, there's more damage. And so that's why it's written in this three- to five-day event, we're Targeting at a max that we'll respond within 18 hours to a downed wire. Now, that sounds fairly large. But you've got to think of the system that we're playing with today. It's a very fragile, there's lots of hazards out there. And it will be we will shoot first, it's a target." *Id.* p. 815, lines 7-1; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [0:58:49]. LUMA also took "into consideration what we knew of the system, the system health, and all of the basically unsafe conditions that present itself today." *Id.* p. 816, lines 4-7; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:01:16].

3. Damage Assessment- addresses the time between the beginning of a Major Outage Event (once deemed safe to conduct such an assessment) and the completion of the preliminary damage assessment. *See* Exhibit 63 of the Evidentiary Hearing, p. 10, lines 164-65, p. 11, line 166. Preliminary Damage Assessments are among the most important activities in ensuring success in restoring power during a major outage event. *Id.* p. 11, lines 169-70. Because there is no established industry standard for completing preliminary damage assessments, only agreement as to their relevance in effecting timely repairs/ restoration of service, the basis for the initial Performance Targets reflects our best estimate of current state, yet with a stretch in comparison to undocumented unsubstantiated past performance, and intentions to drive improvement over time. *Id.,* lines 199-206.
4. Crewing- Pertains to pre-mobilization of crews (internal and contract) in anticipation of a forecasted event and based on an initial prediction of damage. Specified in terms of the timeframe before an event is predicted to occur, this metric tracks the staging of materials, equipment, and personnel at the required location. *Id.* p. 13, lines 214-17. LUMA examines if it has crews deployed and people working to be ready to respond to an event. Evidentiary Hearing, Vol. 4, p. 919, lines 2-4; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:54:58]. "The intent is why we put that in there and why we kind of adopted what New York had. We want to make sure we're not sitting on our heels. As soon as we know the information, we are deploying the crews and getting them running as quickly as possible so it shortens the during level of our response. The other part where we put that piece in there, as everyone knows we live on an island and the resources get gobbled up quickly. So if we don't act quick and we don't have these crews deployed, what will happen is more than likely the event will hit the mainland and all of a sudden nobody will have the available resources. .

.." Evidentiary Hearing, Vol. 4, 920, lines 1-14; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:56:32]. The metric measures if 50% of the persons are coming to Puerto Rico within 24 hours of the prediction of an event. Evidentiary Hearing, Vol. 4, page 919, lines 11-18; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:55:44]. Because there is no established industry standard for measuring the effectiveness of Crewing, once the level of damage is predicted, the mobilization rate of crews as a percent of the level required to restore all service can certainly be measured and provides a proxy for prudence in staffing the service restoration effort. *See* Exhibit 63 of the Evidentiary Hearing, p. 13, lines 227-234. Lacking data or any baseline performance data, the basis for these initial performance Targets reflects our best estimate of current capabilities coupled with actual experience in other jurisdictions, tempered by past local utility performance. *See* Exhibit 63 of the Evidentiary Hearing, Mr. Terry Tonsi (August 17, 2021), p. 13, lines 227-234.

5. Estimated Time of Restoration. Addresses the publication, timeliness, and update of ETRs for 90 percent of the Service Outages. *See* Exhibit 63 of the Evidentiary Hearing, p. 14, lines 252-253. Ninety percent (90) percent is appropriate from an overall industry perspective. Given existing technology gaps whereby the current system does not measure up to the technology mark of other utilities that have a properly deployed Outage Management System, strong GIS connectivity, fully functional AMI and integrated asset and work management technology platforms, the Target represents a stretch for LUMA as it establishes a performance baseline founded on a less than adequate collection of technology platforms. *Id.* p. 14, lines 255-257, p. 15, lines 258-262. Performance Targets are representative of those adopted by other utilities, and as such are viewed as a stretch, given past performance in providing timely and accurate ETRs. *Id.* p. 16, lines 286-287. LUMA also considered the New York Power Commission's

Scorecard. Evidentiary Hearing, Vol. 4 (English Portion), p. 822, lines 16-17; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:08:41].

6. ETR Accuracy. Tracks global, regional and municipal ETR accuracy for 90% service restoration, based on completion of a thorough damage assessment. *See* Exhibit 63 of the Evidentiary Hearing, p. 17, lines 294-295. Performance Targets were not presented given that challenges regarding the adequacy of applicable IT/OT platforms severely limit LUMA's ability to provide accurate ETRs. *Id.* p. 17, lines 300-301. Also, LUMA understands that ETRs were not previously provided as a matter of routine, nor was the ability to generate an ETR an option within past versions of the Outage Management System. *Id.,* lines 301-303.
7. Municipality Coordination. Revolves around coordination with municipalities regarding road clearing, downed wires, critical customers, etc. and, as such, tracks attendance of the LUMA ICC Municipal Liaison at scheduled Situation Report (SITREP) meetings. *Id.* p. 18, lines 316-320. Includes Scheduled conference calls with municipal officials, including emergency managers; Community Liaison communications (telephonic, electronic and/or in person) with municipal officials, including emergency managers; and provision of emergency conditions and restoration information. *Id.,* lines 327-333.
8. Municipal EOC Coordination. Revolves around coordination with municipal Puerto Rico Commonwealth and Federal EOCs, and, as such, tracks attendance at all scheduled meetings (presuming the State and Federal EOCs are activated). *Id.* p. 19, lines 335-337.
9. Utility Coordination- Monitors coordination with other utilities (e.g., communications, water, etc.), and, as such, confirms the establishment of contact points between LUMA and these organizations. *Id.* p. 19, lines 345-347.

10. Safety. Revolves around the recording of safety incidents in accordance with LUMA's Health, Safety, Environment and Quality Standard, with a focus on elimination of injuries while performing hazard work during storm/outage restoration. *Id.* p. 20, lines 358-361. All incidents causing injury to employees and contractors will be tracked, reported, and assessed, providing full transparency to LUMA Management, the Regulator, and other authorities. *Id.,* lines 363-365. Near misses will be recorded. Evidentiary Hearing, Vol. 4 (English Portion), p. 828, lines 24-25, p. 829, lines 1-10; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:17:33].
11. Mutual Assistance- Address the pre-mobilization of all sources of mutual assistance (or other pre-negotiated contracts with utility service providers), timing based on the completion of damage predictions. Exhibit 63 of the Evidentiary Hearing, lines 376-378. Applying industry experience and knowledge of industry best practice, the following performance Targets have been established: three days prior to a forecasted event, LUMA will complete a damage prediction and determine the requirements for on and off island mutual aid / pre-negotiated contracts with other utility service providers; once the requirements are established, LUMA will activate / place on standby all required resources until the damage assessment is completed; requests for 40% of the committed mutual aid and other utility service provider crews will be made within 70 hours of the completed damage assessment, and requests for 80% of the committed mutual aid and other utility service provider crews will be made within 120 hours of the completed damage assessment. *Id.* p. 21, lines 381-392. The trigger points and targeted percentages of committed mutual aid resources are indicative of industry best practices and experience, tempered by our understanding of current state regarding the availability/practicality of deploying external resources during major events. *Id.,* lines 395-

398. “Where you want to use your mutual aid assistance as much as possible for mutual aid, it’s not like a contract where they are making a strong profit off your -- the response. They are all just cost recovery. Mutual aid is generally -- when we talk mutual aid, it's helping your neighbor and it’s cost recovered. So if you send somebody, it's whatever ·their labor is and their equipment is and it's the basic values; where versus a contingent contractor, you’re paying a premium to make sure they do respond.” Evidentiary Hearing, Vol. 4, p. 922, lines 6-18; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:59:50].

12. Communications Metrics (Call Answer Rates, Web Availability, PREB & P3A Reporting, Customer Communications and Outgoing Message on Telephone Line). They assess the utility’s ability to receive and to disseminate information about the outage event and about the recovery process. These metrics consider web availability, PREB and Administrator (P3A) Reporting, customer Communications and outgoing message on telephone line. *See* Exhibit 41 of the Evidentiary Hearing, Direct Testimony J. Laird, lines 212-216.

LUMA acknowledges that Mr. Cosme expressed certain reservations with MOE Metrics. It is respectfully submitted, however, that the evidence presented on the record addresses and refutes his contentions.

First, this Energy Bureau should reject Mr. Cosme’s contention on p. 5, lines 199-202 of Exhibit 31 of the Evidentiary Hearing, where he opposes the MOE metrics because of the effort and resources required to track and evaluate these Performance Metrics during a MOE. As the record shows, in selecting a private operator for Puerto Rico’s T&D System and signing the T&D OMA, the Government of Puerto Rico determined that the MOE metrics were consistent with energy public policy. *See* Exhibit 64 of the Evidentiary Hearing, lines 139-142. The MOE metrics were negotiated as part of the T&D OMA and are based on the New York Public Service

Commission (NYPSC) Order that applies to 6 utilities: Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, New York State Electric and Gas Corporation, Niagara Mohawk d/b/a National Grid, Orange and Rockland Utilities Inc., and Rochester Gas and Electric Corporation. *Id.*, lines 142-148. These metrics are part of the prudent management of outages and incentivize utilities to be better prepared and have an optimal response during major events as disasters become more frequent across the world. *Id.,* lines 149-152. Tracking, monitoring, and measuring these metrics is essential as they act as a road map to provide LUMA with valuable tracking mechanisms throughout a major event and enable LUMA to prioritize key objectives and allow LUMA to perform a post-event debrief and review its response in order to improve over time. *Id.*, lines 153-157.

Second, LUMA requests that this Energy Bureau declines to adopt the proposal on p. 5, lines 206-208 of Exhibit 31 of the Evidentiary Hearing that "a better incentive is to recover normal operational status as soon as possible in order to start providing services and produce associated revenues as it is not supported by any evidence and lacks a foundation in prudent utility practices. During a significant event, not all customer loads will be restored as soon as the electrical service is repaired. Restoration will depend on damages to customers' property, generation capacity, and businesses choosing to reopen, among others. *See* Exhibit 64 of the Evidentiary Hearing, lines 171-173. As directed in the National Incident Management System (NIMS) framework provided by FEMA, which is incorporated in LUMA's ERP and Restoration Annex, restoration of Community Lifelines must occur before other loads or businesses. *Id.*, lines 173-175. If the utility was measured on producing revenue after a major outage event, it would focus on large industrial loads versus hospitals, radio towers, Residential Lifeline Customers, and medically dependent customers, among others. *Id.,* lines 178-180. Further, during a major event, an electrical utility's

first priority is the safety of the employees and public, and thus, the utility must focus on downed powerlines and dangerous situations before any restoration of service. *Id.*, lines 180-182. LUMA should not be incentivized to turn on the power when it is not safe to do so. *Id.,* line 183. The uncontested record shows that Mr. Cosme's proposal might have unintended consequences by rewarding the utility for putting financial concerns ahead of public safety. *Id.*, lines 185-185.

Third, Mr. Cosme's proposals on ETR metrics should be rejected. The evidence refutes the contention on p. 5, lines 210-220, and p. 6, lines 221-227 of Exhibit 31 of the Evidentiary Hearing, that the MOE metrics on Preparation Phase, Downed Wires, Damage Assessment, Crewing, Municipality Coordination, Municipal EOC Coordination PR and Federal EOC Coordination, Utility Coordination, Safety and Mutual Assistance, are inspection or planning related steps and that positive or negative outcomes on these steps will be ETR (Estimated Time of Restoration) and ETR accuracy. These metrics should not be perceived as inspection or planning-related steps related to ETR and ETR accuracy. *See* Exhibit 64 of the Evidentiary Hearing, lines 195-199. ETR gives awareness of when power will be restored and is about communications and making customers aware of the estimated timing for their electrical service to be restored, and ETR Accuracy measures how often LUMA hits the mark of the ETR informed to customers. *Id.*, lines 199-202. In contrast, LUMA's MOE Metrics are designed to measure LUMA's overall response to a MOE and thus serve independent and important measurable objectives on LUMA's efficacy in responding overall to a MOE; they are not steps to measure ETR and ETR accuracy. *Id.*, lines 202-206.

Finally, this Energy Bureau should reject Mr. Cosme's recommendation on p. 6, lines 229-230 of Exhibit 31 of the Evidentiary Hearing, that this Energy Bureau approves the ETR metrics for monitoring purposes and not as incentive metrics. Even Mr. Cosme, in his testimony, agreed

on the importance of the ETR metrics. That is enough to reject the proposal that the Energy Bureau declines to adopt this metric for purposes of an incentive. It is important for a utility to provide the restoration of a customer's electricity, particularly during a major event or prolonged outage, as seen during Hurricane María. *See* Exhibit 64 of the Evidentiary Hearing, lines 228-231. During Hurricane María, standby generation across the island was limited as the FEMA and businesses were trying to assign and relocate these units to meet the demand for key services. *Id.,* lines 231-233. This caused wasted effort as these backup generator units were not coordinated with the overall utility restoration plan. *Id.*, lines 233-234. Because ETR information can give customers and first responders data to support the appropriate allocation of resources, the T&D OMA includes within the MOE metrics two ETR metrics that LUMA submitted for approval by the Energy Bureau. *Id.,* lines 235-237.

In conclusion, the record establishes that the MOE Metrics serve important public policy and safety purposes. LUMA respectfully submits that the MOE Metrics comprehensively address key aspects of LUMA's responses to emergencies and are in alignment with practices followed in the state of New York to hold utilities accountable during emergencies. These metrics will evolve over time and as LUMA's experience implementing its ERP evolves. Intervenors did not submit an alternate proposal nor other activities to be tracked as part of the proposed MOE Metrics. Thus, LUMA's proposal for MOE Metrics remains uncontested on the record and supported by the testimonies of LUMA's experts with experience in planning for and managing emergencies in Puerto Rico and abroad.

IV. Conclusion

The Performance Metrics are consistent with the public policy mandate that Performance Metrics must measure and ensure the reliability of services, including electric power services,

customer service, management of electric power costs, and infrastructure maintenance. *See* Act 17-2019, Section 6.25(B). They track key performance areas identified in Section 7.3 of Regulation No. 9137, such as customer service, financial performance, employee safety, compliance with regulatory requirements on safety, reliability and resilience, and key components of system performance. They also include quantifiable indicators of performance in key areas under LUMA's control as Operator of the T&D System.

The customer service Performance Metrics are designed and structured to achieve a high level of customer satisfaction across all customer classes, two of which are baselined according to third-party measures on customer satisfaction. These metrics also include key aspects of customer satisfaction, average speed of answer, abandonment rate by customer callers, and customer complaint rates. These Performance Metrics comply with the policies and requirements of Act 17-2019 that stress the importance of improving services to customers. *See* Act 17-2019, Section 6.25(B); *see also* Regulation 9137, Arts. 7.1(A) and 7.3. The customer service metrics also comply with the guiding principles set forth by this Energy Bureau to target areas with significant performance issues by PREPA and to set Performance Metrics and levels that benefit the public interest. As the record shows, there are significant gaps in current processes to collect data on customer satisfaction, including Customer Complaint Rate, Average Speed of Answer, and Abandonment Rate. Thus, customer service metrics were selected and designed to address areas that have performance issues. LUMA's efforts to meet and exceed the proposed Targets are designed to incentivize LUMA to go above and beyond Minimum Performance Levels in an area that currently has significant performance issues that also involve complex and difficult tasks, especially given existing gaps in data.

The technical Performance Metrics are designed to measure and achieve a safe and reliable operation of the electric grid, through improvements in safety in operations and in processes related to system interruptions, performing vegetation maintenance with attendant benefits in reliability and reduction of outages, and by conducting inspections of distribution and transmission lines, and T&D substations. These Performance Metrics address difficult tasks in key areas and activities that PREPA did not conduct. The metrics will incentivize improvements that are key to achieving efficiencies in providing electric services and to the benefit of the public interest as they are meant to reduce incidents and service interruptions and are tied to efforts and restoration programs that will document and improve the health of the grid's assets, as required by Act 57-2014 and Act 17-2019.

To reach target levels on technical metrics, LUMA will undertake technical tasks and data-gathering efforts on critical components of the grid's structure and operations, as was discussed in this legal brief. *See also* the Energy Bureau Resolution and Order of May 31, 2021, on LUMA's Initial Budgets, Case No. NEPR-MI-2021-0004 (determining that the Initial Budgets "provide for effective remediation and transformation of Puerto Rico's electric system.") and Energy Bureau Resolution and Order of June 23, 2021, on LUMA's System Remediation Plan, Case NEPR-MI-2020-0019 at p. 37 (finding that "LUMA has developed a reasonable approach to identify and prioritize both, physical asset deficiencies and business process deficiencies, and has developed initiatives designed to remediate those systems."). LUMA's plan to achieve target performance levels on technical performance categories, impacts areas with significant performance issues where PREPA is currently lacking proper data and processes to assess and restore the health of the system and the physical integrity of the assets, which are key to providing services in accordance with public policy and industry practices.

The Performance Metrics will also further comply with applicable regulations, such as employee safety regulations by OSHA. These regulations involve key areas in the public interest to ensure and incentivize employee safety. *See* Regulation 9137, Section 7.1(A). Safety is a crucial aspect of the operation of any electric utility, as it permeates all other areas of the business. Considering the deficient performance in the health and safety area of PREPA, incentivizing better performance, rather than penalizing deficient performance, will help to achieve optimum and accelerated levels of workplace health and safety. In such a critical area, performing beyond the minimum required by OSHA is vital and would help increase better performance in other areas.

The NEM Project Activation Duration Performance Metric is designed to comply with the current parameters set by law. Its targets direct the utility to overachieve the requirements of the law to provide faster and more reliable service to NEM customers. Meanwhile, the Energy Savings as Percent of Total Energy Sales and Peak Demand Savings as a Percent of Total Peak Demand Performance Metrics are designed to achieve energy and peak demand reduction under the proposed Targets, promoting a more cost-efficient service to customers.

The Financial Performance Metrics are designed to provide safe, reliable, and efficient services, within the budgets approved by this Energy Bureau. As discussed in this legal brief, financial performance is a key and complex component of LUMA's duties as Operator of the T&D System and is designed to comply with principles of early compliance with public policy to provide efficient, reliable, cost-effective services to ratepayers.

The Performance Metric on Capital Budget – Federally Funded- involves a key complex area of performance that is tied to LUMA's overall recovery and transformation efforts as explained in the System Remediation Plan that was approved by the Energy Bureau and was filed in Case No. NEPR-MI-2020-0019. To reach and exceed performance targets in this area, LUMA

will leverage expertise in the receipt and management of federal funds. The Performance Metric related to the non-federally funded capital budget is also a key component of recovery and transformation efforts. These Performance Metrics directly involve efficiency goals, as well as difficult tasks that require technical and multi-faceted work to ensure that LUMA operates and implements its System Remediation Plan and improvement programs within the budget to the benefit of customers.

The Days Sales Outstanding Performance Metrics are designed to reach targets on effective collection efforts that are key to upkeep efficient services within the current rate structure. These Performance Metrics incentivize lowering the current timeframe it takes the utility to collect from customers. Achieving comparable industry collection timeframes impact positively the utility's operation as it creates certainty in the business cash flow. Relatedly, the Overtime Performance Metric is designed to achieve efficiencies in payroll expenses. Incentivizing the control of overtime by setting standards and targets to follow decreases expenses, while promoting personnel efficiency and reducing the risk of safety and health incidents around the workplace.

Finally, the MOE Metrics guide LUMA on the phases of emergency Mitigation, Preparedness, Response, and Recovery and will support LUMA's emergency response efforts and increase communications both internally and externally, in addition to ensuring that resources are in place throughout a MOE to further the public policy interest of a comprehensive and efficient response to emergencies that pose the threat of a MOE, *see* Act 83, Section 6(m), 22 LPRA §196 (requiring annual submittals to the Governor of Puerto Rico, the Legislative Assembly of Puerto Rico and the Energy Bureau of emergency response plans for PREPA).

In conclusion, LUMA requests that this Energy Bureau accept the recommendation of the expert witness, Mr. Terzic, that the "PREB begin with the current metrics submitted by LUMA for

approval that are based on the OMA) keeping in mind the PREB also is and has been requiring LUMA/PREPA to report on several metrics. The PREB may wish to track additional or different metrics for PREPA in the future, but . . . the right procedure would be to include those in a concurrent rate case so that the appropriate financial resources could be applied where improving metrics requires additional capital investment or operating costs." *See* Exhibit 5 of the Evidentiary Hearing, lines 302-308. The Energy Bureau should "give the greatest weight to the [Performance Incentive Mechanisms] submitted for approval. Those PIM[s] reflect the priorities identified by studies used by PREB and [P3A] based on those areas of PREPA operations most in need of attention to bring PREPA closer to 20th century electric service available elsewhere." *Id.*, lines 619-622.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned and **approve** LUMA's Proposed Performance Metrics Targets and the Revised Annex IX submitted on October 28, 2022.

RESPECTFULLY SUBMITTED.

We hereby certify that we filed this motion using the electronic filing system of this Energy Bureau. We will send an electronic copy of this motion to counsel for PREPA, Joannely Marrero-Cruz, jmarrero@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 a 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 Climatica, Alianza Comunitaria Ambientalista del Sureste, Inc., Coalicion 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, lvelez@earthjustice.org, rmurthy@earthjustice.org, jcassel@earthjustice.org.

In San Juan, Puerto Rico, on this 11th day of May 2023.

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EXHIBIT A

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NEPR

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Jun 23, 2022

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

IN RE:

THE PERFORMANCE TARGETS FOR LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

SUBJECT: LUMA's Opposition to LECO's Motion Requesting Imposition of Penalties in LUMA's Performance-Based Mechanism

OPPOSITION TO LECO'S MOTION REQUESTING IMPOSITION OF PENALTIES IN LUMA'S PERFORMANCE-BASED MECHANISM

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC ("ManagementCo"), and LUMA Energy ServCo, LLC ("ServCo"), (jointly "LUMA"), and respectfully state and request the following:

I. INTRODUCTION:

On May 26, 2022, the intervenor parties known as LECO, filed a *Motion Requesting the Imposition of Penalties in LUMA's Performance-based Mechanism* ("LECO's Request") whereby they requested from the Puerto Rico Energy Bureau ("Energy Bureau" or "Bureau") that the performance mechanism adopted as a result of the instant proceeding include a penalty scheme as a measure to encourage LUMA's compliance with its responsibilities and obligations pursuant to the *Transmission and Distribution System Operation and Maintenance Agreement* entered into by LUMA, the Puerto Rico Public-Private Partnerships Authority ("P3 Authority") and the Puerto Rico Electric Power Authority ("PREPA") of June 22, 2020 (the "T&D OMA"). LECO's Request should be denied not only as untimely but as improper as it makes reference to matters that are extraneous to the record of this proceeding and that are clearly intended to improperly influence the judgment of this honorable Bureau. As such, it should be denied without further consideration.

Nonetheless, additional reasons merit the denial of LECO's Request. For instance, the request for the imposition of penalties in this particular case is inappropriate and, therefore, not consistent with the legal framework adopted by the Government of Puerto Rico and pursuant to which the T&D OMA was executed. The adoption of a mechanism as proposed by LECO would also alter the contractual representations pursuant to which LUMA balanced the risk inherent to the T&D OMA and assumed the responsibilities and obligations set forth in the contract.

In its Request, LECO also refers to matters that are inapposite to the present proceeding and still under investigation. The investigation into the root cause of the April 6th Incident at Costa Sur is still ongoing and is the object of a separate and active investigative proceeding before this Bureau. As such, any allegations related to the causes of the April 6th Incident are not relevant to the instant case and should not be allowed to enter into the record. Instead, they should be stricken as they are unsupported and premature at this juncture.

For the reasons more fully set forth below, LUMA respectfully requests that this honorable Energy Bureau deny LECO's Request.

II. BACKGROUND:

PREPA and the P3 Authority entered into the T&D OMA with LUMA to (i) provide management, operation, maintenance, repair, restoration and replacement, and other related services for the transmission and distribution system ("T&D System"), in each case that is customary and appropriate for a utility transmission and distribution system service provider, and (ii) establish policies, programs, and procedures with respect thereto. *See*, OMA Section 5.1. Pursuant to Section 4.2(f) of the T&D OMA, ManagementCo was required to prepare a "revised Annex IX of the T&D OMA including (i) proposed baseline, target and minimum performance levels for certain Performance Metrics [as the term is defined in the T&D OMA]; (ii) Key

Performance Metrics; (iii) Major Outage Event Performance Metrics, together with an explanation of the basis for each" and submit them to the P3 Authority for review and comment. Once the review and comment phase was completed with the P3 Authority, the revised Annex IX would be submitted to this Energy Bureau for review and approval. *See*, *Id*. The T&D OMA contemplated three main Performance Categories: (i) Customer Satisfaction; (ii) Technical, Safety and Regulatory; and (iii) Financial Performance. *See*, Table 1 of Annex IX of the T&D OMA. Table 2 of Annex IX of the T&D OMA further specified the Performance Metrics included in each category.

As part of the foregoing process of review and approval of the revised Annex IX, on December 23, 2020, the Puerto Rico Energy Bureau (the "Energy Bureau") commenced this proceeding by issuing a Resolution and Order setting forth the legal and regulatory framework pursuant to which it would conduct the evaluation and establishment of the performance targets and Performance Incentive Mechanisms ("PIMs") that would further the compliance and implementation of the public policy and objectives established through Act 57-2014, known as the Puerto Rico Energy Transformation and RELIEF Act and Act 17-2019, known as the Puerto Rico Energy Public Policy Act ("December 23 Resolution and Order"). Through the December 23 Resolution and Order, this Energy Bureau also published the public interest principles, along with the targets and minimum compliance benchmarks for the Puerto Rico electric system established in Case No. NEPR-MI-2019-0007 should guide LUMA in making its request for the establishment of the PIMs.

On January 14, 2021, LUMA appeared before the Energy Bureau for a technical conference where LUMA offered an overview of the performance metrics targets it would file in February 2021. On February 25, 2021, LUMA filed its *Submittal and Request for Approval of Revised Annex*

IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement, whereby it submitted a revised Annex IX pursuant to the December 23 Resolution and Order (the "February 25th Submittal and Request"). The revised Annex IX filed with the February 25th Submittal and Request was the product of the efforts and consultations conducted by LUMA for eight months, from July through February 2020, in compliance with the contractual obligations required as part of the Front-End Transition Period, which included the establishment of a planning team with PREPA and the P3 Authority. *See*, Section 4.2(f) of the T&D OMA.

The revised Annex IX filed by LUMA with the Energy Bureau on February 25, 2021, was also the result of the process pursuant to Section 4.2(f) of the T&D OMA, which lasted approximately two additional months, according to which the P3 Authority commented on LUMA's proposed Performance Metrics Targets and proposed revised Annex IX. In the February 25th Submittal and Request (which is incorporated herein by reference), LUMA explained that the submission complied with the December 23 Resolution and Order.

On August 18, 2021, in compliance with a Resolution and Order issued by the Energy Bureau on July 2, 2021, as amended *nunc pro tunc* on July 13, 2021 to correct the calendar, and on August 9, 2021 to extend the filing deadline, LUMA filed a revised *Submittal of Request for Approval of Revised Annex IX to the OMA* (the "Revised Performance Metrics Targets Request"), which included as Exhibit I, a revised Annex IX of the T&D OMA ("revised Annex IX" or revised Annex IX of the T&D OMA"). LUMA also submitted the pre-filed direct testimonies of eight witnesses in support of its Revised Performance Metrics Targets Request.

Through its Revised Performance Metrics Targets Request, LUMA requested that this Energy Bureau accept the revised Annex IX to the T&D OMA and LUMA's Revised Performance Metrics Targets; approve the revised Annex IX to the T&D OMA as filed; set the Performance

Metrics and targets to apply for an initial period of three years of operations; and allow the periodic review of the performance baseline metrics and targets in accordance with the T&D OMA and Energy Bureau Regulation for Performance Incentive Mechanisms, Regulation No. 9137 dated December 17, 2019 ("Regulation No. 9137). *See*, Revised Performance Metrics Targets Request at page 31. LUMA also raised concerns with regard to the significant gaps in PREPA's processes and data collection, which posed a challenge to setting realistic baselines and targets for the proposed metrics. *See*, Revised Performance Metrics Targets Request at pages 20-21. The proposed Performance Metrics included in the revised Annex IX are grouped into three major categories established according to the T&D OMA. *See*, Annex IX of the T&D OMA.

After considering LUMA's Revised Performance Metrics Targets Request, on August 25, 2021, the Energy Bureau issued a Resolution and Order, which, among other topics, included a Determination of Completeness. Specifically, the Energy Bureau expressed at the time:

> Upon review of the documents related to the August 18 Revised Request, the Pre-Filed Testimonies Motion, the August 20 Motion, and the August 23 Motion (collectively, "Revised Filing"), the Energy Bureau DETERMINES that the information filed by LUMA complies with the minimum requirements established by the Energy Bureau to continue its evaluation as part of the instant case.

The Energy Bureau also stated that its Determination of Completeness should not be construed as an acceptance or approval of LUMA's proposal nor as a determination that the proposal is consistent with the Energy Bureau's orders and directives contained in the May 21, 2021 Resolution and Order in Case No. NEPR-MI-2019-0007. *See*, Resolution and Order dated August 25, 2021.

The issuance of the Determination of Completeness allowed the instant proceeding to continue to the discovery stage as per the procedural calendar established by the Energy Bureau.

To date, the Energy Bureau, the intervening parties, and LUMA have engaged in discovery by issuing and responding to written interrogatories and requests for the production of documents and information. In accordance with the Determination of Completeness, LUMA conducted and responded to discovery related to the three main categories of performance metrics included in the revised Annex IX: (i) Customer Services; (ii) Technical, Safety and Regulatory; and (iii) Financial Performance.

After several procedural developments regarding discovery, on November 17, 2021, ICPO and LECO submitted the pre-filed testimonies of their proposed witnesses, which included proposals to add additional performance metrics as part of the revised Annex IX. Particularly, LECO expert Agustin Irizarry ("Mr. Irizarry") proposed that the Energy Bureau consider additional performance metrics on the integration of renewable energy, energy efficiency, and demand response, see Mr. Irizarry's testimony of November 16, 2021, pages 23-25, Table 5, and enhancing vegetation management, see id., page 35, Table 8. Mr. Irizarry also proposed that the performance-based mechanism include penalties that would be triggered in case LUMA's performance falls below a given level. *Id*. at page 8, lines 1-3 and page 64, lines10-12.

From November 18 through December 28, 2021, LUMA conducted discovery on the written testimonies filed by intervenors and, until February 7, 2022, was in the process of exhausting meet and confer efforts with regards to the intervenors' responses to the same. LUMA also timely objected to the discovery pertaining to additional performance metrics proposed by Mr. Irizarry as unrelated to the performance metrics included in the revised Annex IX, exceeding the scope of the subject matter of this proceeding, and not reasonably calculated to lead to the discovery of admissible evidence. LUMA also objected to such requests on the basis that they

called for the production of irrelevant documents and/or information and reserved unto itself the right to challenge the Energy Bureau's determination before the pertinent forums.

Notwithstanding the fact that LUMA was conducting discovery to formulate its rebuttal witnesses' testimonies, on December 22, 2021, the Energy Bureau entered a Resolution and Order whereby it concluded that additional performance-based incentive metrics must be evaluated as part of this proceeding ("December 22 Resolution and Order"). To that end, the Energy Bureau identified three additional areas of performance metrics: (i) Interconnection of Distributed Energy Resources; (ii) Energy Efficiency and Demand Response; and (iii) Vegetation Management. The Energy Bureau issued its decision based on LUMA's responses to written discovery and other filings not specifically identified in the December 22 Resolution and Order. Furthermore, the Energy Bureau considered information outside the confines of this adjudicative proceeding. It took notice of comments submitted by LUMA in connection with the draft regulation on Energy Efficiency, NEPR-MI-2021-0005, and data on vegetation-related outages filed by LUMA in Case NEPR-MI-2019-0007, which, prior to the December 22 Resolution and Order, had not been made part of the evidence introduced in the record in this proceeding, nor was LUMA afforded prior notice of the Energy Bureau's intent to include the aforementioned filings in this proceeding to issue an interlocutory order to LUMA.

In the December 22 Resolution and Order, the Energy Bureau ordered LUMA to file a revised Annex IX to the T&D OMA, including targets and supporting metrics for (i) Interconnection; (ii) Energy Efficiency/Demand Response; and (iii) Vegetation Management. The Energy Bureau also ordered that LUMA provide supplemental or revised direct pre-filed testimonies for the new metrics and targets. The Energy Bureau also allowed additional discovery

by the intervenors and LUMA on the three additional metrics and amended the procedural calendar to provide for such discovery.

On February 17, 2022, LUMA filed its *Response in Opposition and Objection to December 22, 2021 Resolution and Order and Request to Vacate or Grant LUMA Relief from the December 22, 20201 Resolution and Order on Additional Metrics* ("LUMA's Objection") arguing that the December 22 Resolution and Order run contrary to LUMA's due process rights in the present proceeding because it constituted an adjudication of controversies by this forum without providing LUMA the opportunity to be heard as to whether the inclusion of the additional performance metrics in this proceeding is proper considering the contractual provisions of the T&D OMA, including its Annex IX, the status of the proceedings and the evidence on record to date. LUMA's Objection is still pending adjudication by this honorable Energy Bureau.

In addition to insisting on the imposition of additional metrics in excess of the scope of this proceeding, LECO now proposes that the performance metrics mechanism include a penalty scheme not contemplated by the T&D OMA nor by the applicable legal and regulatory scheme.

III. DISCUSSION:

i. LECO's Request is contrary to due process and should be denied without further consideration

Through its request, LECO invites this honorable Energy Bureau to adopt penalties as part of the performance-based mechanism at a stage of the proceedings in which the evidentiary hearing has not been held and, therefore, no cross-examination of the expert witness (Mr. Irizarry) suggesting that approach has been conducted. LECO is essentially derailing once again the Energy Bureau's ability to conduct a just and fair adjudication of the matters that are the object of this proceeding and intends to deprive LUMA of its procedural rights in connection with such request.

Agreeing with LECO's Request would deprive LUMA of its due process rights as the regulated entity insofar as a penalty mechanism implies the deprivation of property.

As stated by LUMA in its Objection to Additional Metrics, as the regulated party in this proceeding, LUMA is entitled to the basic protections required by the due process clause of the Constitution of the Commonwealth of Puerto Rico. P.R. Const. Art. 1, sec. 7. In its procedural vein, the right to due process establishes the minimum guarantees that a governmental agency shall provide to a party whose life, ***property***, or liberty may be affected by governmental action. *See*, *Rivera Rodríguez & Co. v. Stowell Taylor*, 133 DPR 881, 887-88 (1993). In making its determination on whether a proceeding is fundamentally fair, it is necessary first to identify a protected interest and, once that condition is satisfied, establish what process is due. *See*, *Rivera Santiago v. Sec. de Hacienda*, 119 DPR 265, 274 (1987).

Upon adopting the Puerto Rico Uniform Administrative Procedure Act, Act 38-2017 ("LPAU" for its Spanish acronym), the Legislative Assembly extended certain minimum due process guarantees to the adjudicative proceedings conducted by administrative agencies in Puerto Rico. *See*, *Gutiérrez Vázquez v. Hernández et al*., 172 DPR 232, 245 (2007). The administrative process must be fair and equitable. *See*, *Torres v. Junta de Ingenieros*, 161 DPR 696, 713 (2004). In concrete terms, Section 3.1 of the LPAU establishes that when an agency must formally adjudicate a controversy, the agency in question must guarantee the promoted party "(i) the right to timely notice of the charges or complaints or claims against one of the parties; (ii) ***the right to introduce evidence***; (iii) the right to an impartial adjudication; and (iv) ***the right to have the decision based on the record of the case***." Section 3.1 of the LPAU, 3 LPRA § 9641. (Emphasis added).

Here, LECO invites this honorable Energy Bureau to adopt penalties as part of the performance-based mechanism applicable to LUMA prior to an evidentiary hearing, that is, without submitting the testimony that purportedly supports its request for cross-examination so that the honorable Energy Bureau is in a position to fairly and adequately consider its basis. As such, LECO's intention is to preclude LUMA from exercising its constitutional right to be heard and submit evidence for the record. Doing so would be contrary to LUMA's procedural rights as such action would not be supported by the record of this proceeding and would also curtail LUMA's right to introduce evidence into the record with regards to this particular issue. *See ECP Incorporated v. OCS*, 205 DPR 268, 281-282 (2020) (stating the general rule that decisions by administrative agencies should be reasonable and based on the administrative record).

Consequently, any order adopting penalties as part of the performance-based mechanism would be null and void. *See*, *Rivera Torres v. Díaz López*, 2021 TSPR 96 at *11 (2021) (expressing that a court may relieve a party from a judgment when – among other reasons– such judgment is null and establishing that a judgment is null when it has been entered in violation of due process rights); *see also*, *García Colón v. Suc. González*, 178 DPR 527, 543 (2010) ("a judgment is null when it has been entered without jurisdiction or in violation of due process"); *see also OCS v. Lone Star Ins. Procedures Inc*., KLRA 2005-0327, 2006 WL 548659 (TA PR January 31, 2006) (recognizing circumstances in which a resolution issued by an administrative agency that does not guarantee procedural due process rights may be arbitrary and null). The foregoing is reason enough to deny LECO's Request, but substantive considerations also demand such a result.

ii. The imposition of penalties as part of the performance mechanism is inappropriate in this case and, therefore, inconsistent with the applicable statutory and contractual frameworks.

In support of its request for the imposition of penalties as part of the performance-based mechanism, LECO cites Section 1.5(3)(d) of Act 17-2019, which provides that "***[w]hen deemed appropriate,*** in the ratemaking processes, the Bureau shall establish performance based incentives and penalty mechanisms based on performance metrics applicable to electric power service companies as well as mechanisms that ensure strict compliance with the orders of the Bureau." 22 PR Laws Ann. §1141d(3)(d). (Emphasis added). The express language of Section 1.5(3)(d) makes clear that the imposition of penalties is not mandated by the statute but established as an option to be considered by the Energy Bureau as part of the rate-making process. For the reasons discussed in detail below, LUMA respectfully avers that such additional penalties are inappropriate in this case.

By the same token, the fact that the definition of a "Financial Incentive" pursuant to Regulation 9137 of this honorable Energy Bureau includes reference to *penalties* is not equivalent to a mandate or requirement for this Energy Bureau to impose penalties. First, upon defining the term "Financial Incentive", Regulation 9137 makes reference in its pertinent part to "the financial reward ***or*** penalty that ***may*** be attached to a Target and which, if attached, is applied to a given Electric Power Service Company, for meeting or failing to meet such Target." Section at 1.7(B)(9) of Regulation 9137. (Emphasis added). Section 7.3(2)(b) of the same Regulation further establishes that a Financial Incentive "***may***" include a penalty. Again, the clear language of Regulation 9137 establishes without room for doubt that the adoption of a penalty as part of an incentive mechanism is discretionary. To interpret otherwise would run counter to the clear language of the Act 17-2019 which, as discussed, also *contemplates* but does not *mandate* the

adoption of penalties as part of a performance-based mechanism. LUMA's contention is that adopting a penalty mechanism in this case would constitute an unreasonable and arbitrary determination that not only disregards the provisions of the T&D OMA but effectively impairs them. In other words, it would constitute an abuse of discretion and unreasonable determination by this forum. *Ramírez v. Policía de P.R.*, 158 DPR 320, 339 (2002) (stating that the exercise of discretion by an administrative agency must be rooted in reasonableness and in accordance with applicable law).

Additionally, it must be considered that Section 7.2 (B)(2) of Regulation 9137 ("Establishment of Incentives and Penalties") is limited in scope as to the power to impose penalties. Section 7.2(B)(2) states, in its relevant part, that "the Bureau may impose penalties for noncompliance under its authority pursuant to Section 6.36 of Act 57-2014." Section 6.36 of Act 57-2014 ("Penalties for Noncompliance") refers specifically to those situations where the Energy Bureau may impose administrative fines for violations of Act 57-2014, an Energy Bureau Regulation or for violations to the Energy Bureau's Resolutions and Orders. 22 Laws of PR Ann. §1054jj. Section 6.36 of Act 57-2014 does not make reference to a situation where companies are subject to penalties for not achieving certain performance targets. Likewise, Section 7.2 (B)(2) fails to contemplate a situation where companies are outright subject to penalties for not reaching a set of performance targets. Therefore, LECO's arguments pursuant to Act 57-2014 and Regulation 9137 fail.

Additionally, Annex IX of the T&D OMA specifically establishes in Section I that "For each Contract Year, the Operator shall be eligible to receive ***financial incentive compensation*** ("Incentive Fee") based on the Operator's performance during the Contract Year as measured against the performance goals set forth by the Performance Metrics as described in this Annex IX

(*Performance Metrics*)." As anticipated, Annex IX contemplates three main Performance Categories: (i) Customer Satisfaction; (ii) Technical, Safety and Regulatory; and (iii) Financial Performance. *See*, Table 1 of Annex IX of the T&D OMA. Table 2 of Annex IX of the T&D OMA further specified the Performance Metrics included in each category. In sum, Annex IX clearly establishes a performance-based mechanism that does not include penalties. Through the T&D OMA the parties agreed to a performance-based mechanism pursuant to which LUMA might be eligible for an Incentive Fee if the metrics contemplated therein are met. Adding elements to such mechanism would be equivalent to modifying the representations agreed to through the T&D OMA.

The T&D OMA, however, does include a section on Events of Default that detail the consequences of any non-compliance with the contractual terms. *See*, Article 14 of the T&D OMA. As testified by Mr. Branko Terzic, Expert Witness for LUMA in the instant proceeding, the T&D OMA's Events of Default effectively constitute contractual "penalties". *See*, Rebuttal Testimony of Brank Terzic dated February 15, 2022, p. 18 l. 345-347. Further, the adoption of additional or independent penalties "after a contract has been negotiated and signed and [approved] by two independent government agencies and approved by the independent regulator, the Energy Bureau, adds additional risks which were not considered by the parties in the original negotiations." *Id*. at p. 18 l. 350-353. In other words, upon entering into the T&D OMA, LUMA (as did PREPA and P3 Authority) considered and balanced the risks inherent to the contract. Once the contract is signed, however, "LUMA has no way of accommodating this additional risk if penalties are added or changed retrospectively without other contract adjustments." *Id*. at l. 356-357. As these penalties were not considered or contemplated during the initial contract negotiation, the penalties could

also potentially represent budget changes to ensure adequate resources are available to meet the evaluation criteria. *Id*. at l. 357-359. Such a result would likely impact the people of Puerto Rico.

LUMA is aware of prior expressions of this honorable Energy Bureau with regards to the binding effects of the T&D OMA. Nonetheless, serious consideration should be given to the fact that LUMA assumed its obligations based on the representations included in the T&D OMA and that the imposition of penalties not contemplated therein would constitute an alteration of the performance mechanism established in Annex IX of the contract without the prior consent of the parties to the contract. Such an action would be unreasonable and fundamentally impair the contractual framework pursuant to which LUMA offers its services. It would also question the reliability of legal obligations in our jurisdiction, thus making it inappropriate in this case. Again, the fact that Act 17-2019, Act 57-2014 and Regulation 9137 contemplate penalties does not automatically translate to their adoption in all cases. Here, the totality of circumstances clearly advises against it.

iii. Reference to the April 6th Incident should be stricken from the record

In support of its baseless argument, in its Request, LECO alludes to the April 6th Incident that caused a blackout after a fire erupted at the Central Costa Sur. Any reference to the April 6th Incident is clearly inflammatory and made to improperly influence the honorable Bureau's adjudicative powers.

The April 6th Incident is currently the object of an investigation in which developments are reported in Case No. NEPR-IN-2022-0002. As per that docket, the investigation is still ongoing, and the root cause of the incident has not been identified to date. As such, referring to such incident as a justification for the adoption of a penalty as part of the performance-based mechanism is

improper and premature at this juncture. Those references should therefore be disregarded by this honorable Bureau and, moreover, stricken from the record. It is so respectfully requested.

Further, the incentive-based mechanism adequately promotes the attainment of the targets or goals described by the Legislative Assembly upon adopting Act 57-2014 and Act 17-2019 and protects the interests codified therein. As cited by Mr. Terzic in his rebuttal testimony, "…in a capitalist, profit motivated economy, companies are not driven by the need to avoid penalties. They are driven by the desire to increase profits, and it is this force, this goal, that drives increases in productive efficiency and cost cutting where possible." *Id*. at l. 379-382. *Citing*, Michael R. Schmidt, Performance-Based Ratemaking: Theory and Practice. Therefore, the positive or reward-centric mechanism is controlling. *Id*. at l. 383-384.

IV. CONCLUSION AND PRAYER FOR RELIEF:

In sum, there is no justification for adopting additional penalties as part of LUMA's performance-based mechanism. Such a mechanism is not appropriate or necessary in this case because the T&D OMA already includes appropriate penalties. The adoption of additional penalties would also imply modifying the terms of the T&D OMA without the consent of the parties thereto. It would improperly alter the representations upon which LUMA consented to enter into the current T&D OMA.

LUMA does not waive its right to raise any arguments or defenses at the evidentiary hearing or file a petition and memorandum of law arguing on the merits of why additional penalties should not be considered at this time or in this proceeding.

WHEREFORE, LUMA respectfully requests that this honorable Bureau **deny** LECO's *Motion Requesting the Imposition of Penalties in LUMA's Performance-based Mechanism*.

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 Climatica, Alianza Comunitaria Ambientalista del Sureste, Inc., Coalicion 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, lvelez@earthjustice.org, rmurthy@earthjustice.org, rstgo2@gmail.com, notificaciones@bufete-emmanuelli.com, pedrosaade5@gmail.com., jessica@bufete-emmanuelli.com; rolando@bufete-emmanuelli.com; lvelez@earthjustice.org.

In San Juan, Puerto Rico, this 23rd day of June, 2022.

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EXHIBIT B

EXHIBIT B

SWORN STATEMENT

I, Melanie J. Jeppesen, of legal age, single, Director, and resident of Bayamón, Puerto Rico, in my capacity as Director of Billing Services for LUMA Energy ServCo, LLC, hereby solemnly swear:

1. My personal and professional circumstances are as expressed herein.

2. On September 24, 2021, I executed a written Revised Direct Testimony as Director of Billing Services for LUMA Energy ServCo LLC ("LUMA") in support of the Customer Complaint Rate for LUMA's Revised Performance Metrics Targets and Revised Annex IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement of June 22, 2020 ("Revised Annex IX"), filed under Case No. NEPR-AP-2020-0025 before the Puerto Rico Energy Bureau ("Energy Bureau").

3. In the Revised Direct Testimony dated September 24, 2021 ("Revised Direct Testimony"), I submitted to the Energy Bureau testimony in support of LUMA's proposed baseline, Minimum Performance Level, and Performance Metrics Targets, which were reflected in Exhibit A to the testimony, Table 2-7 of the Revised Annex IX filed on September 24, 2021.

4. LUMA's proposed baseline for the Customer Complaint Rate Performance Metric, established in the Revised Annex IX of September 24, 2021, and the Revised Direct Testimony, included complaints classified under the nomenclature "NEPR-QR" but excluded complaints classified as "NEPR-RV."

5. As a result of the discussion that arose regarding the Customer Complaint Rate performance metric on February 9, 2023, during the Evidentiary Hearing held in Case No.

NEPR-AP-2020-0025, on behalf of LUMA, I am supporting a revision to the Customer Complaint Rate Performance Metric.

6. LUMA proposes to include both complaints classified as "NEPR-QR" and "NEPR-RV" in the calculation of the total number of complaints in the Customer Complaint Rate Performance Metric.

7. This alternative calculation takes into consideration key concerns expressed by the Energy Bureau Commissioners during the Evidentiary Hearing on the desirability that the Customer Complaint Rate Performance Metric measures a comprehensive view of customer complaints, including those in which a customer may be appealing a decision or determination by the utility.

8. The overall calculation methodology will remain the same. This is the total number of customer complaints divided by the total customer count (approximately 1,480,000 customers) multiplied by 100,000. The baseline will comprise the same period originally proposed from May 2019 through February 2020, annualized.

9. To include "NEPR-RV" complaints in the calculation of the Revised Customer Complaint Rate Performance Metric, we have verified with the Energy Bureau staff the first complaint filed for the "NEPR-RV" category in May 2019. The first recorded complaint in May 2019 was NEPR-RV-2019-0094. The last recorded complaint in February 2020 was NEPR-RV-2020-0024.

10. We have thoroughly reviewed the information published on the Energy Bureau's website as the public source of data for "NEPR-RV" complaints.

11. Exhibit C attached to this Sworn Statement includes a worksheet labeled "NEPR-RV," which lists all the complaints classified as "NEPR-RV" by the Energy Bureau in the

period comprising May 2019 to February 2020, and these are included in the baseline for the Revised Customer Complaint Rate Metric.

12. Further, Exhibit C attached to the Sworn Statement includes a worksheet labeled "Combined QR and RV," which presents the calculation of the baseline for complaints classified as "NEPR-QR" and "NEPR-RV" by the Energy Bureau from May 2019 to February 2020.

13. Even though LUMA is proposing the inclusion of both complaints classified as "NEPR-QR" and "NEPR-RV" in the calculation of the total number of complaints in the Customer Complaint Rate performance metric, LUMA still has concerns regarding the potential for fluctuations in the filing of those complaints due to external factors (fuel cost increases, natural disasters, rate changes, etc.). It is typical for these types of events to impact not just customer perception leading to complaints, but actual complaints due to a customer's individual experience, resulting from these other factors.

14. Furthermore, we thoroughly reviewed the information published on the Energy Bureau's website as the public source of data for "NEPR-QR" complaints.

15. We verified with the Energy Bureau staff the first complaint filed and opened by this Energy Bureau under the "NEPR-QR" category in May 2019. The first recorded complaint in May 2019 was NEPR-QR-2019-0070. The last recorded complaint in February 2020 was NEPR-QR-2020-0020. The revised baseline for the revised Customer Complaint Rate Performance Metric includes these cases filed in 2019 after NEPR-QR-2019-0070 and up to case NEPR-QR-2020-0020.

16. In the review, we identified that the baseline of the Customer Complaint Rate Performance Metric submitted with the Revised Annex IX of September 24, 2021, and

supported by the Revised Direct Testimony, originally included two cases that fall outside the baseline period. The reason for this is that the first document available to LUMA in the Energy Bureau docket and considered to include these two cases in the baseline calculation does not correspond to the month or year the complaint was initiated with the Energy Bureau. We now know that those cases were not initiated between May 2019 and February 2020; thus, we eliminated them from the baseline calculation. The cases subtracted from the baseline calculation are NEPR-QR-2019-0054 and NEPR-QR-2020-0063.

17. In the review, we also identified that four "NEPR-QR" complaints were incorrectly labeled as non-Puerto Rico Electric Power Authority ("PREPA") cases and, thus, were excluded from the baseline calculation of the submitted with the Revised Annex IX of September 24, 2021, and supported by the Revised Direct Testimony. These four cases were originally added to the calculation of the baseline for the revised Customer Complaint Rate Performance Metric. The four cases were NEPR-QR-2019-0085, NEPR-QR-2019-0131, NEPR-QR-2019-0137, and NEPR-QR-2019-0179.

18. Upon review with the Energy Bureau staff, the first NEPR-QR filed in May 2019 was NEPR-QR-2019-0070. Thus, the updated calculation includes four cases NEPR-QR-2019-0085, NEPR-QR-2019-0131, NEPR-QR-2019-0137, and NEPR-QR-2019-0179. The result of the correction increases the number of "NEPR-QR" cases in the original baseline calculation by four additional cases.

19. Exhibit C attached to this Sworn Statement includes a worksheet labeled "NEPR-QR," in which all complaints classified as "NEPR-QR" by the Energy Bureau in the period comprising May 2019 to February 2020 are listed, including the baseline for those cases only. Also included is a worksheet labeled "List of Correct QR from original," which identifies the

four cases that were originally incorrectly labeled as non-PREPA and excluded from the baseline calculation submitted with the Revised Annex IX of September 24, 2021, and supported by the Revised Direct Testimony. The worksheet labeled "List of Correct QR from original" also identifies the two cases that were included in the baseline calculation submitted with the Revised Annex IX of September 24, 2021, and supported by the Revised Direct Testimony, and that are now excluded from the baseline calculation because they are outside the relevant baseline period.

20. The revised calculation of the proposed Minimum Performance Level and Targets for Years 1, 2, and 3 of the Customer Complaint Rate Performance Metrics is proportional to the original values included in the Revised Annex IX of September 24, 2021, and Exhibit A to the Revised Direct Testimony. The values increased proportionally as a result of the inclusion of the 151 "NEPR-RV" complaints for May 2019 to February 2020 and the addition of the new "NEPR-QR" complaints to the calculation of the baseline. The total number of "NEPR-QR" proposed in the baseline with the correction and review of the timeline is a total of 139.

21. The proposed baseline, Minimum Performance Level, and Targets for the Revised Customer Complaint Rate Performance Metric are shown in Exhibit C attached to this Sworn Statement in the worksheet labeled "Table Metric." For ease of reference, the table is shown below:

Proposed Revised Metric - May 2023; QR and RV							
	Target Threshold	Minimum Performance Level	150%	125%	100%	50%	25%
Baseline					23.51		
Year 1	23.51	24.73	22.36	23.05	23.51	24.21	24.67
Year 2	22.39	23.56	21.27	21.95	22.39	23.07	23.51
Year 3	21.27	23.44	20.15	20.83	21.27	21.95	22.39

22. Exhibit C attached to the Sworn Statement includes in the worksheet labeled "Table Metric," a comparison between the previous values for the Customer Complaint Rate performance metric and the ones being proposed today.

23. I reaffirm the other statements provided in the Revised Direct Testimony of September 24, 2021.

24. I execute this sworn statement as an addendum to the Revised Direct Testimony of September 24, 2021.

25. Everything stated above is true to the best of my knowledge, information, and belief.

Therefore, I hereby sign this Sworn Statement in San Juan, Puerto Rico, today, May 11, 2023.

Melanie J. Jeppesen

Affidavit No. 482

Acknowledged and subscribed before me by Melanie J. Jeppesen, whose full name is as expressed herein, of legal age, single, Director, and resident of Bayamón, Puerto Rico, in her capacity as Director of Billing Services for LUMA Energy, who is personally known to me.

In San Juan, Puerto Rico, today, May 11, 2023.

NOTARY PUBLIC

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$5.00
Sello de Asistencia Legal
80885-2023-0509-42842043

David Manuel Magraner Ortiz
Puerto Rico
Abogado-Notario

EXHIBIT C