

**GOVERNMENT OF 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:** Administrative Notice

**RESOLUTION**

**I. Introduction and Background**

On December 23, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued an Order commencing this proceeding to establish performance targets for LUMA.<sup>1</sup> The Energy Bureau followed with an Order on January 22, 2021, setting an initial procedural calendar. Several updates to the procedural calendar were made by the Energy Bureau through subsequent Orders. Formal evidentiary hearings were held from February 7, 2023, through February 10, 2023, and final substantive and legal briefs have been filed as of May 11, 2023. Per the most recently updated procedural calendar, issued by the Energy Bureau on May 23, 2023, two procedural events remain to be completed: filing replies to final briefs, due by June 22, 2023, and filing comments from the general public and final briefs by *amicus curiae*, both due by June 29, 2023.<sup>2</sup>

The Energy Bureau **INFORMS** that official notice has been taken regarding (i) certain performance data on several metrics, which have been provided by LUMA in Case No. NEPR-MI-2019-0007,<sup>3</sup> (ii) a related Resolution and Order in the stated case, (iii) data on interconnection performance provided by LUMA in periodic filings in Case No. NEPR-MI-2019-0016,<sup>4</sup> (iv) specific budget information provided by LUMA in Case No. NEPR-MI-2021-0004<sup>5</sup>, (v) an associated Resolution and Order in the stated case, (vi) a relevant Order from the New York State Public Service Commission, and (vii) two public reports, freely available online, about benchmarking for call center performance. This information meets the requirements for administrative notice and is necessary to reach a consistent, full, and fair decision in this proceeding.

**II. Relevant Legal Standard**

Section 9.03(A) of Regulation 8543<sup>6</sup> establishes that the Energy Bureau "may take judicial notice, *motu proprio* or upon request, on those facts and circumstances of public interest that are generally known or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."

As for official or administrative notice, it is defined as how agencies make factual findings without benefit of the adversarial presentation of evidence.<sup>7</sup> Like judicial notice,

<sup>1</sup> LUMA Energy, LLC and LUMA ServCo, LLC. ("collectively, "LUMA").

<sup>2</sup> Resolution, *In re: Performance Metrics Targets for LUMA Energy ServCo, LLC*, Case No. NEPR-AP-2020-0025, May 23, 2023.

<sup>3</sup> *In re: The Performance of the Puerto Rico Electric Power Authority*, Case No.: NEPR-MI-2019-0007

<sup>4</sup> *In re: Interconnection Progress Reports on the Puerto Rico Electric Power Authority*, Case. No. NEPR-MI-2019-0016.

<sup>5</sup> *In re: Review of LUMA's Initial Budget*, Case No.: NEPR-MI-2021-0004.

<sup>6</sup> *Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings*, December 18, 2014.

<sup>7</sup> See Matter of RR-, 20 I&N Dec. 547, 555 (BIA 1992); see also 8 C.F.R. § 1003.1(d)(3)(iv).



administrative notice is an exception to the requirement that decisions be based only on evidence adduced at a hearing. Allowing official notice enhances adjudicative efficiency without sacrificing adjudicative accuracy; and to simplify or ease the process of proof.”<sup>8</sup>

Conversely, Section 2.01 of Regulation 8543 states that “[t]he Rules of Civil Procedure and the Rules of Evidence may apply, in a supplemental manner to this Regulation, in any judicial proceeding before the Commission when, in the exercise of its discretion to handle cases before it, the Commission determines it by way of an order.”

On that matter, Rule 201(C) of the Rules of Evidence for the General Court of Justice<sup>9</sup> states that “[t]he court may take judicial notice on its own or if a party requests it. If it’s at the request of a party and said party provides sufficient information to do so, the Court will take judicial notice.”

In accordance with the above, Section 3.13(d) of Act No. 38-2017<sup>10</sup> states that “the official presiding over the hearing may take official knowledge of everything that could be the subject of judicial knowledge in the courts of justice”.

The main purpose of taking judicial knowledge is to save time, labor, and expense in securing and introducing evidence on matters which are not ordinarily capable of being disputed and are actually not bona fide disputed, and the tenor of which safely be assumed from the tribunal’s general knowledge or from slight research. It thus becomes a useful expedient for speeding trials and curing informalities.<sup>11</sup>

In accordance with the legal regulations, the Energy Bureau may take official knowledge of any adjudicative fact that is not subject to controversy and is susceptible to immediate and exact corroboration through sources whose accuracy cannot be reasonably questioned. However, when a party requests that official knowledge be taken, it must provide enough information for it. If the promoting party does not provide the information, the adjudicatory forum will reject the request and the party must then present evidence to prove the fact.

### III. Analysis and Discussion

Having established the applicable rules of law related to official or administrative notice, we confirm that every new fact for which official notice has been taken has been derived from a source that meets the standards. LUMA’s filings have been made within administrative dockets and proceedings held by the Energy Bureau, the Energy Bureau’s Orders are similarly well-known and easily verifiable, and the other materials for which official notice is being taken are associated with regulatory proceedings in other jurisdictions or produced by credible third parties.

The specific LUMA performance data and other related materials for which official notice is being taken are all highly relevant to this proceeding. A key task for LUMA, the intervenors, and the Energy Bureau is to determine performance baselines and performance targets that will be incorporated into LUMA’s revised Annex IX that will dictate the incentive earnings opportunities for LUMA. While LUMA proposed performance baselines as part of its revised Annex IX filing dated October 28, 2022, LUMA has also expressed support for the consideration of more up-to-date data in formulating the final Annex IX.<sup>12</sup> Any updates to performance baselines are accompanied by updates to performance targets.

<sup>8</sup> See McCormick on Evidence § 359 at 1029 (3d ed. 1988)

<sup>9</sup> 32 LPRA Ap. IV, R. 201.

<sup>10</sup> *Administrative Procedure Act of the Government of Puerto Rico*, as amended (“Act 38-2017”).



<sup>11</sup> J.H., Wigmore, *The Pocket Code of the Rules of Evidence in Trials at Laws* § 2120 (2010). See also, *Pérez v. Mun. de Lares*, 155 DPR 697, 705 (2001).

<sup>12</sup> *In Re: Performance Metrics Targets for LUMA Energy Servco, LLC*, Case No. NEPR-AP-2020-0025, *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*, filed by LUMA on May 11, 2023, pp. 22-23.





The Energy Bureau **TAKES OFFICIAL NOTICE** of these adjudicative facts:

- 
- 
1. Resolution and Order. June 2021-May 2022, 12-Month Metrics Summary, Official notice is limited to data for these metrics:
    - Average speed to answer
    - Percent of customer calls answered
    - SAIDI (System; Transmission and Distribution)
    - SAIFI (System; Transmission and Distribution)
    - OSHA DART Rate (Transmission and Distribution)
    - OSHA Severity Rate (Transmission and Distribution)
    - OSHA Fatality Rate (Transmission and Distribution)
    - OSHA Recordable Rate (Transmission and Distribution)
  2. Resumen Métricas Master April 2023.<sup>13</sup> Official notice is limited to data on Sheet "T&D" for these metrics:
    - Average speed to answer
    - Call abandonment rate
    - SAIDI (T&D) 12-month rolling average
    - SAIFI (T&D) 12-month rolling average
    - 12-Month Rolling OSHA DART Rate
    - 12-Month Rolling OSHA Severity Rate
    - 12-Month Rolling OSHA Fatality Rate
    - 12-Month Rolling OSHA Recordable Rate
    - Distribution line inspections
    - Transmission line inspections
    - T&D substation inspections
  3. *Informe de Progreso de Interconexión de Sistemas de Generación Distribuida Trimestre enero a marzo 2023.*<sup>14</sup> Official notice is limited to data on slide 9, which is titled "Información sobre Tiempos Promedio para Interconexión y Medidores Bidireccionales."
  4. *Informe de Progreso de Interconexión de Sistemas de Generación Distribuida Trimestre Octubre a Diciembre 2022.*<sup>15</sup> Official notice is limited to data on slide 9, which is titled "Información sobre Tiempos Promedio para Interconexión y Medidores Bidireccionales."
  5. *Informe de Progreso de Interconexión de Sistemas de Generación Distribuida Trimestre Julio a Septiembre 2022.*<sup>16</sup> Official notice is limited to data on slide 11, which is titled "Información sobre Tiempos Promedio para Interconexión y Medidores Bidireccionales."

<sup>13</sup> In Re: The Performance of the Puerto Rico Electric Power Authority. Case No. NEPR-MI-2019-0007, Submission of Performance Metrics Report for January through March 2023 and in Compliance with Orders of January 12, 2023, and April 3, 2023, filed by LUMA on April 20, 2023.

<sup>14</sup> In Re: Informes de Progreso de Interconexión de la Autoridad de Energía Eléctrica de Puerto Rico. Case No. NEPR-MI-2019-0016, Motion Submitting Interconnections Progress Report for January to March 2023 and Presentation for Next Compliance Hearing, filed by LUMA on April 13, 2023.

<sup>15</sup> In Re: Informes de Progreso de Interconexión de la Autoridad de Energía Eléctrica de Puerto Rico. Case No. NEPR-MI-2019-0016, Motion Submitting Interconnections Progress Report for October to December 2022 and Presentation for Next Compliance Hearing, filed by LUMA on January 13, 2023.

<sup>16</sup> In Re: Informes de Progreso de Interconexión de la Autoridad de Energía Eléctrica de Puerto Rico. Case No. NEPR-MI-2019-0016, Motion Submitting Interconnections Progress Report for July to September 2022 and Presentation for Next Compliance Hearing, filed by LUMA on October 26, 2022.



6. *Informe de Progreso de Interconexión de Sistemas de Generación Distribuida Trimestre Mayo a Julio 2022.*<sup>17</sup> Official notice is limited to data on slide 13, which is titled “Información sobre Tiempos Promedio para Interconexión y Medidores Bidireccionales.”
7. Resolution and Order. Determination on LUMA’s FY23 Annual Budgets and LUMA’s FY24 Annual Budgets pre-filing requirements and later amendments.<sup>18</sup>
8. LUMA Annual Report for Fiscal Year 2022 Ending June 30, 2022.<sup>19</sup>
9. LUMA Annual Budgets for Fiscal Years 2024 to 2026.<sup>20</sup>
10. Order Approving the Scorecard for use by the Commission as a Guidance Document to Assess Electric Utility Response to Significant Outages.<sup>21</sup>
11. “Measuring Call Center Performance: Global Best Practices.” Presentation from International Finance Corporation (IFC) of the World Bank Group.<sup>22</sup>
12. “2021 Talkdesk Global Contact Center KPI Benchmarking Report.” Report from Talkdesk.<sup>23</sup>

For all the reasons discussed above, the Energy Bureau **DETERMINES** that it is appropriate to take OFFICIAL NOTICE of all the items identified in **Part III** of this Resolution and Order.

All the parties shall have fifteen (15) days from the date of the notification of this Resolution and Order to file their position on taking official notice of the forgoing facts or upon the certainty of the matters to be noticed.

Be it notified and published.



<sup>17</sup> *In Re: Informes de Progreso de Interconexión de la Autoridad de Energía Eléctrica de Puerto Rico*, Case No. NEPR-MI-2019-0016, *Motion Submitting Interconnections Progress Report for May to July 2022 and Presentation for Next Compliance Hearing*, filed by LUMA on August 15, 2022.

<sup>18</sup> Resolution and Order, *In Re: Review of LUMA’s Initial Budgets*, Case No. NEPR-MI-2021-0004, issued on February 27, 2023.

<sup>19</sup> *In Re: Review of LUMA’s Initial Budgets*, Case No. NEPR-MI-2021-0004, *Motion Submitting LUMA’s Annual Report for Fiscal Year 2022 and Report on Efficiencies*, filed by LUMA on February 27, 2023.

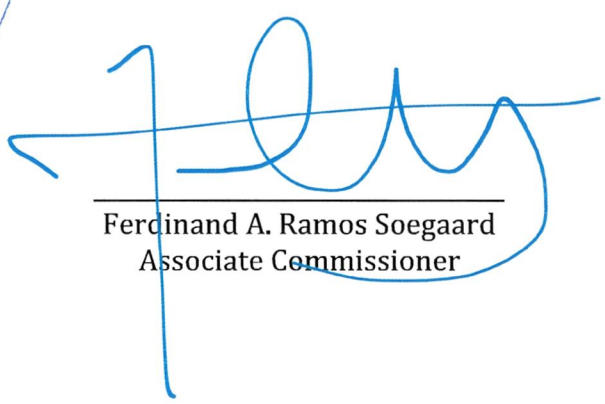
<sup>20</sup> *In Re: Review of LUMA’s Initial Budgets*, Case No. NEPR-MI-2021-0004, *Annual Budget Fiscal Year 2024 to 2026*, filed by LUMA on May, 16 2023.

<sup>21</sup> State of New York Public Service Commission, *Proceeding on Motion of the Commission to Consider Utility Emergency Performance Metrics*, Case 13-E-0140, *Order Approving the Scorecard for use by the Commission as a Guidance Document to Assess Electric Utility Response to Significant Outages*, issued on December 23, 2013.

<sup>22</sup> International Finance Corporation. World Bank Group. *Measuring Call Center Performance: Global Best Practices*, <https://www.ifc.org/wps/wcm/connect/3a656e01-ad18-459a-b1ed-87784c1f1616/Tool+9.4.+Measuring+Call+Center+Performance.pdf?MOD=AJPERES&CVID=jENLHxM> (last visited, May 22, 2023)

<sup>23</sup> Talkdesk, *2021 Talkdesk Global Contact Center KPI Benchmarking Report*, [https://infra-cloudfront-talkdeskcom.svc.talkdeskapp.com/talkdesk.com/2021-Talkdesk-global-contact-center-KPI-benchmarking-report-sl\\_swap.pdf](https://infra-cloudfront-talkdeskcom.svc.talkdeskapp.com/talkdesk.com/2021-Talkdesk-global-contact-center-KPI-benchmarking-report-sl_swap.pdf) (last visited, May 22, 2023)




  
\_\_\_\_\_  
Edison Aviles Deliz  
Chairman  
\_\_\_\_\_  
Ferdinand A. Ramos Soegaard  
Associate Commissioner  
\_\_\_\_\_  
Sylvia B. Ugarte Araujo  
Associate Commissioner  
\_\_\_\_\_  
Antonio Torres Miranda  
Associate Commissioner

**CERTIFICATION**

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on May 25, 2023. Associate Commissioner Lillian Mateo Santos did not intervene. I also certify that on May 25, 2023, a copy of this Resolution was notified by electronic mail to margarita.mercado@us.dlapiper.com, yahaira.delarosa@dlapiper.com, jmarrero@diazvaz.law, jcassel@earthjustice.org; hriviera@jrsp.pr.gov, contratistas@jrsp.pr.gov, agraitfe@agraitlawpr.com, rstgo2@gmail.com, pedrosaade5@gmail.com, flcaseupdates@earthjustice.org, rolando@bufete-emmanuelli.com, notificaciones@bufete-emmanuelli.com, jessica@bufete-emmanuelli.com, zoe@emmanuelli.law; rhoncat@netscape.net, larroyo@earthjustice.org; lvez@earthjustice.org; rmurthy@earthjustice.org; and I have proceeded with the filing of the Resolution issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, on May 25, 2023.

  
\_\_\_\_\_  
Sonia Seda Gaztambide  
Clerk