

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

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

CASE NO. NEPR-AP-2020-0025

**SUBJECT: LUMA's Response and Opposition to
LECO's Request on Taking of Administrative
Notice**

**LUMA'S RESPONSE AND OPPOSITION TO LECO'S REQUEST
ON TAKING OF ADMINISTRATIVE NOTICE**

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME now **LUMA Energy, LLC** ("ManagementCo"), and **LUMA Energy ServCo, LLC** ("ServCo"), (jointly referred to as "LUMA"), and respectfully states and requests the following:

I. Introduction

On May 25, 2023, the Puerto Rico Energy Bureau ("Energy Bureau") issued a Resolution with the subject matter "Administrative Notice," whereby this Energy Bureau, *motu proprio*, without granting LUMA or the parties in this proceeding prior notice and an opportunity to be heard, took administrative notice of twelve (12) documents ("May 25th Resolution"). The Energy Bureau issued the May 25th Resolution after the four days of the evidentiary hearing had concluded and, therefore, after the evidentiary record had closed. Furthermore, by May 25, 2023, the parties had filed legal briefs as instructed by this Energy Bureau. The May 25th Resolution granted the parties fifteen (15) days to submit their objections to such a decision.

On June 9, 2023, the Local Environmental and Civil Organizations ("LECO"), filed a *Response to Resolution for Official Notice and Request to Take Official Notice on Additional*

Information (“LECO’s Request”). LECO stated having no objection to the May 25th Resolution. However, it requested the Energy Bureau to take administrative notice of news and media articles, as well as “reports, PREB docket entries, Superior Court cases entries, and information provided by LUMA . . .” See LECO’s Request ¶10. Specifically, LECO requests the Energy Bureau take administrative notice of twenty-nine (29) documents, including a *Notice of Investigation to Identify Opportunities to Improve Performance of the Puerto Rico Electric Power Authority* from Case No. CEPR-IN-2016-0002 (“Notice of Investigation”), three Resolutions and Orders from Case No. NEPR-MI-2019-0007, LUMA’s *Motion for Partial Reconsideration of Resolution and Order of April 8, 2021, Motion Submitting Information in Support Thereof, and Requests for Clarification* (filed on April 28, 2021) and submission of corrected spreadsheets from Case No. NEPR-MI-2019-0007. It also includes two Resolutions and Orders in Case No. NEPR-MI-2022-0001, and LUMA’s responses to the Energy Bureau’s 11 Request for Information in this instant proceeding (Case No. NEPR-AP-2020-0025). Lastly, it includes seventeen (17) newspaper and media articles, a report from the National Renewable Energy Laboratory titled *Puerto Rico Energy Efficiency Scenario Analysis Tool*, a report from the Federal Emergency Management Agency (“FEMA”) titled *Programmatic Environmental Assessment Public Facilities Infrastructure Recovery and Resiliency: Puerto Rico*, and three complaints filed before the Puerto Rico Court of First Instance against LUMA.

In support of its request that the Energy Bureau take administrative notice at a decidedly advanced stage of this adjudicative proceeding, LECO invokes Section 9.03 of the Puerto Rico Energy Bureau Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigation Procedures that govern the administrative notice mechanism in the Energy Bureau,

Regulation No. 8543 (“Regulation 8543”) and Section 3.13 of the Puerto Rico Administrative Procedure Act (“LPAU,” by its Spanish acronym).

LECO’s Request infringes on LUMA’s rights to due process, as it introduces new evidence to the record after the discovery process concluded, an evidentiary hearing was held, and the parties filed legal briefs. Moreover, LECO’s Request does not comply with the requirements for taking administrative notice under Puerto Rico law and case law. The fact that the Energy Bureau can apply the Rules of Evidence discretionally regarding taking administrative notice does not render LECO’s Request correct as a matter of law nor reasonable in the context of this proceeding, where LUMA presented 28 pre-filed testimonies and offered 14 witnesses who appeared at the Evidentiary Hearing and were available to be cross-examined.

LUMA hereby respectfully raises its objections to LECO’s Request to take administrative notice of documents and information not submitted as evidence in the Evidentiary Hearing held in this proceeding or before the filing of the substantive and legal briefs by the parties.

II. Background

On December 23, 2020, this Energy Bureau commenced the present 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*.

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 to the Puerto Rico Transmission and

Distribution System Operation and Maintenance Agreement (“T&D OMA”) (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 Puerto Rico Public-Private Partnerships Authority (“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.

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 the Local and Environmental Civil Organizations (“LECO”), and one served by the Independent Consumer Protection Office (“ICPO”). Meanwhile, LECO answered three Requests for Information issued by LUMA. ICPO responded to four Requests for Information served by LUMA.

In the interim, on December 9, 2021, LUMA filed a *Motion to Request the PREB to Inform Witnesses and Evidence to Employ at the Evidentiary Hearing and Petition to Allow LUMA to Conduct Discovery*. Therein, LUMA requested the Energy Bureau to disclose if it intended to employ any consultant or witness at the evidentiary hearing, specifically, if they planned to introduce any evidence and allow discovery on those witnesses the Energy Bureau intended to employ. The Energy Bureau did not issue a response to LUMA’s request, nor did it announce at that time any evidence or testimony of any witnesses.

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, 2021 Resolution and Order* (“LUMA’s February 17th Response in Opposition”) objecting to and requesting relief from a December 22, 2021 Resolution and Order whereby the Energy Bureau

ordered LUMA to include three additional performance metrics categories as part of the revised Annex IX to the T&D OMA. Among others, LUMA contended that the Energy Bureau's decision was issued before granting LUMA an opportunity to present evidence and testimonies to refute the inclusion of such additional metrics.¹

After LECO filed an objection and LUMA submitted a reply, on August 1, 2022, this Energy Bureau entered a Resolution and Order whereby it ordered LUMA to file: (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 the three additional metrics on Interconnection, Energy Efficiency/Demand Response, and Vegetation Management ("August 1st 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 in compliance with the August 1st Order by including the three additional metrics requested by the Energy Bureau. LUMA also submitted the pre-filed testimonies of two witnesses in support therewith. LUMA requested that this Energy Bureau (i) accept the Submission of Revised Annex IX to the T&D OMA, and (ii) deem LUMA complied with previous Resolutions and Orders.

Additional discovery was conducted on the three additional metrics. LUMA answered two Requirements for Information issued by the Energy Bureau, one notified by LECO, and one served by the ICPO. As per the Energy Bureau's Resolution and Order (establishing the calendar for the proceeding), discovery ended on December 22, 2022. The Energy Bureau did not present

¹ As explained in detail in forthcoming sections, the arguments raised in LUMA's February 17th Response in Opposition are relevant to the discussion in this Motion, considering that LECO is requesting the Energy Bureau to take administrative notice of a series of documents after the conclusion of the Evidentiary Hearing and submission of the legal briefs.

testimony of any witnesses on the three additional metrics. The Energy Bureau scheduled the Evidentiary Hearing for February 7-10, 2023. On the first day of the Evidentiary Hearing, the Energy Bureau called those witnesses whose testimony pertained to what the government body labeled the “general approach to the Performance Metrics” proposed in this proceeding, which were duly sworn. Also, cross-examinations were conducted on witnesses Mario Hurtado, Donald Hall, Branko Terzic, and Juan Lara for LUMA; Agustín Irizarry and José Alameda for LECO. On the first session of the Evidentiary Hearing, the Energy Bureau admitted eighteen (18) documents in evidence.

The second session of the Evidentiary Hearing was held on February 8, 2023. The Energy Bureau received testimony and evidence from witnesses regarding the “Technical, Safety, and Regulatory” Performance Metrics. This category of metrics 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; Net Energy Metering (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. On the second session of the Evidentiary Hearing, the Energy Bureau admitted twenty-two (22) documents in evidence.

The third session of the Evidentiary Hearing was held on February 9, 2023. The Energy Bureau scheduled the examination of the evidence and 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 evidence, and 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. Cross-examinations were conducted on witnesses Juan Fonseca and Kalen Kostyk for LUMA; Agustín Irizarry for LECO; and Gerardo Cosme for ICPO. On the third session of the Evidentiary Hearing, the Energy Bureau admitted twenty-two (22) documents in evidence.

The fourth and final session of the Evidentiary Hearing was held on February 10, 2023. The Energy Bureau scheduled the examination of the witnesses and evidence concerning the MOE Metrics for that session. Cross-examinations were conducted on witnesses Mario Hurtado, Abner Gómez, and Terry Tonsi for LUMA; Agustín Irizarry for LECO; and Gerardo Cosme for ICPO. On the second session of the Evidentiary Hearing, the Energy Bureau admitted five (5) documents in evidence.

Shortly thereafter, public hearings were held between February 16-17, 2023. As the docket of this proceeding shows, three individuals submitted written comments on February 16, 2023.

Following various procedural events, on April 21, 2023, the Energy Bureau issued a Resolution and Order establishing May 11, 2023, as the deadline to submit the parties' final and substantive legal briefs ("April 21st Resolution and Order"). Additionally, the Energy Bureau set June 1, 2023, as the deadline to file 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, LECO, and ICPO filed their final legal and substantive briefs before the Energy Bureau on May 11, 2023. Then, the Energy Bureau issued the May 25th Resolution, whereby *motu proprio*, took administrative notice of twelve (12) documents. It also ordered the parties to submit their position regarding this determination within fifteen (15) days.

LECO reacted on June 9, 2023, via its Request for the Energy Bureau to take administrative notice of twenty-nine (29) documents. The documents include a Notice of Investigation issued in Case No. CEPR-IN-2016-0002, three Resolutions and Orders from Case No. NEPR-MI-2019-0007, LUMA's partial motion for reconsideration and submission of corrected spreadsheets from Case No. NEPR-MI-2019-0007. It also includes two Resolutions and Orders in Case No. NEPR-MI-2022-0001, and LUMA's responses to the Energy Bureau's 11 Request for Information in this instant proceeding (Case No. NEPR-AP-2020-0025). Lastly, it includes seventeen (17) newspaper and media articles, a report from the National Renewable Energy Laboratory titled *Puerto Rico Energy Efficiency Scenario Analysis Tool*, a report from the Federal Emergency Management Agency ("FEMA") titled *Programmatic Environmental Assessment Public Facilities Infrastructure Recovery and Resiliency: Puerto Rico*, and three complaints filed before the Puerto Rico Court of First Instance against LUMA.

II. LUMA's Rights to Due Process will be infringed if the Energy Bureau grants LECO's Request

Under Puerto Rico law, administrative adjudicative proceedings shall observe the guarantees of due process according to the nature of the proceeding, which ultimately must be fair and equal. *Báez Díaz, ELA*, 179 DPR 605, 623 (2010). Administrative adjudicative proceedings must observe the following minimum guarantees: (1) adequate notice of the proceeding; (2) proceedings before an impartial judge; (3) opportunity to be heard; (4) right to cross-examine witnesses and **examine the evidence presented**; (5) have the assistance of counsel; and (6) **a decision based on the record**. *Román Ortiz v. Oficina de Gerencia de Permisos*, 203 DPR 947, 954 (2020); *see also Cedeño Aponte v. Estado Libre Asociado de Puerto Rico*, 203 DPR 753, 761 (2019).

Due process in the administrative sphere requires a fair and equitable process that guarantees and respects the dignity of the individuals concerned. *López y otros v. Asoc. de Taxis de Cayey*, 142 DPR 109 (1996). The requirements of due process offer protection to regulated parties against administrative arbitrariness. *Henríquez v. Consejo Educación Superior*, 120 DPR 194, 202 (1987). Furthermore, substantive due process precludes state action that unreasonably or arbitrarily interferes with property and liberty interests. *See* Sec. 7, Art. II, Constitution of Puerto Rico; *see e.g. Rivera Rodríguez & Co. v. Lee Stowell, etc.*, 133 DPR 881, 887–88 (1993). In ensuring due process guarantees, parties must not only have a *pro forma* opportunity to present and rebut evidence but be able to do so effectively. *Rentas Nieves v. Betancourt Figueroa*, 201 DPR 416, 429 (2018).

LECO's request to take administrative notice in this proceeding contradicts two foundational due process guarantees: the right to present evidence and the right to have an administrative agency issue a final decision based on the administrative record. First, LECO's

Request is belated. It was submitted more than three months after the discovery phase of the proceeding ended, after the evidentiary record in this proceeding closed, and weeks after the parties filed their final legal briefs. Note that discovery in this proceeding took place for more than one year and was arduous and meticulous. In the discovery stage, LECO never filed a request for taking of administrative notice of any documents or information. Nor did LECO offer evidence during the Evidentiary Hearing regarding the documents it has now introduced *via* its final brief and its request that the Energy Bureau take official notice of twenty-nine (29) documents identified in LECO's Request.

LECO's Request is particularly improper because the parties drafted and submitted their final legal briefs, considering the evidence already in the administrative record, which consisted of the documents and testimonies admitted during the Evidentiary Hearing. The parties constructed and developed their arguments in the proceeding based on said evidence. Admitting new evidence at this point in the proceeding violates the due process rights of LUMA, as it completely impairs its right to examine the evidence and refute the same. *See Álvarez v. Junta de Condómines*, 121 DPR 896 (1988) (“a fundamental requirement of the due process of law is the opportunity to present evidence and argue and to be able to rebut contrary evidence”); *Asoc. de Taxis de Cayey*, 142 DPR 109 (*stating* that the right to a public hearing would be meaningless if the administrative agency were allowed to base its decision on evidence outside the hearing without allowing the parties to rebut or cross-examine new evidence or present other evidence to the contrary).

LUMA is at a disadvantage at the culmination of this proceeding and a stage when the procedural calendar envisioned filing reply briefs to allow this Energy Bureau to issue a determination. LECO requests the Energy Bureau to take administrative notice at this stage of the proceeding of a considerable number of documents, some of which are lengthy and include several

statements and facts. The timing of LECO's Request impairs LUMA from effectively being able to dispute the requests to take administrative notice through testimonies or other evidence at the opportune and reasonable time, which in this case was the Evidentiary Hearing. This impairment is compounded by the fact that LECO did not explain how each of the documents is relevant to the matter in controversy, nor did it identify the specific Performance Metrics Targets that pertain to its request for this Energy Bureau to consider documents that were not announced as evidence prior to the Evidentiary Hearing nor presented during the Evidentiary Hearing. Without this information, LUMA cannot present to this Energy Bureau a fulsome defense to LECO's Request. Also, LECO's Request imposes an undue burden since it requires LUMA to defend against the potential admission of evidence of twenty-nine (29) documents when the parties are near the stage of filing their reply briefs.

Second, LUMA has not been given proper time to study the documents LECO requests to take administrative notice. LUMA did not have the opportunity to dispute the information contained in these documents through pre-filed testimonies or other evidence. LUMA's witnesses, who submitted pre-filed testimonies and were available for cross-examination, were not given a chance to submit testimonies to counter a proposal by LECO that LUMA's filings in other proceedings and information from other energy regulators or third parties are relevant and admissible in this proceeding. Moreover, a considerable amount of the documents included in LECO's Request were already in the dockets of other proceedings, in some cases, for more than a year. LECO was aware those documents were on the Energy Bureau's records. However, it neglected to include them in the evidence presented during the Evidentiary Hearing, and it is not until now, at such an advanced stage of the proceeding, that LECO purports to submit evidence for the record, through taking of official notice, conveniently avoiding the formal presentation of

evidence. Also, LECO did not, even at this late stage in the proceedings, put the Energy Bureau, or LUMA, in a position to determine the relationship between the documents in LECO's Request and the purpose for its introduction into the administrative record.

Finally, LECO's Request infringes LUMA's due process rights and the guarantee that the final decision must be made based on facts in the administrative record. *See* Sec. 3.1 of the LPAU, 3 LPRA § 9641; *see also Fuentes Bonilla v. ELA et al*, 200 DPR 364, 395 (2018); *see also* Sec. 3.18 of the LPAU, 3 LPRA § 9658 (*directing* that the administrative record shall constitute the exclusive basis for agency action in an adjudicative proceeding for judicial review) and Sec. 4.5 of the LPAU, 3 LPRA §9675 (*providing* that the administrative record shall constitute the exclusive basis for agency action in an adjudicative proceeding for judicial review). The information and documents included in LECO's Request are not part of the record in this case. They were not part of discovery, nor were they discussed during the hearings, nor did the Energy Bureau refer to them in its bench orders. Moreover, LECO never hinted that it would request the Energy Bureau to take administrative notice at some point in the proceeding. LUMA has never been given the opportunity to timely determine if it was proper or necessary to file additional testimonies or evidence to dispute the facts and documents for the record.

IV. LECO has not met the Requirements to Take Administrative Notice under the Puerto Rico Rules of Evidence and its Interpretative Case Law.

Judicial or administrative notice is a means of proof. It establishes a fact as true without the formal need to present evidence. Thus, taking judicial or administrative notice of an adjudicative fact means it is accepted as true without the need to present evidence of its truthfulness. Notwithstanding this, the opposing party is not precluded from offering evidence to the contrary. *UPR v. Laborde*, 180 DPR 253, 276-77 (2010). Courts and administrative agencies in Puerto Rico may take judicial or administrative notice of an adjudicative fact without the need

to present formal evidence to establish the fact's truthfulness. *See Laborde*, 180 DPR 276-77; *see also Jordi v. San Geronimo Caribe Project, Inc.*, KLRA201000101, 2010 WL 4628914 at pp. *12-13 (July 16, 2010). However, as stated above, admitting new evidence at this point in the proceeding violates the due process rights of LUMA, as it completely impairs its right to examine the evidence and refute the same.

In Puerto Rico, the LPAU regulates the mechanism by which agencies take administrative notice of an adjudicative fact. Specifically, the LPAU allows an administrative law judge to take official notice of all the facts that can be admitted by judicial notice in the Puerto Rico Courts. Section 3.13 of the LPAU, 3 LPRA § 9653(d). Notably, the LPAU subordinates its official notice provision to that of the Puerto Rico Rules of Evidence. *Irizarry Caraballo v. Departamento de Salud del Estado Libre Asociado de Puerto Rico*, KLRA201600139, 2016 EL 3040139, at p. *8 (Apr. 27, 2016); *Comisionado de Seguros de Puerto Rico v. Integrand Assurance Co.*, KLRA0300307, 2003 WL 23317682 at p. *2 (Oct. 8, 2003). This subordination means that for an agency to take administrative notice of a fact, it shall consider Rule 201 and Rule 202 of the Puerto Rico Rules of Evidence and its interpretative jurisprudence. 32 LPRA Ap. VI, R. 201 & R. 202.

Rule 201 of the Puerto Rico Rules of Evidence allows courts to take judicial notice of an adjudicative fact. The Supreme Court has defined an adjudicative fact as a disputed fact by the parties and the applicable law of the case. *Pérez v. Mun. de Lares*, 155 DPR 697, 704 (2001); *Asoc. de Periodistas v. González*, 127 DPR 704, 712-13 (1991). Rule 201 establishes two criteria that shall be met for a court to take judicial notice of an adjudicative fact that is not subject to reasonable dispute. 32 LPRA Ap. VI, R. 201. The first criterion is that the fact shall be generally known within the court's territorial jurisdiction. *Id.* The second criterion requires that the fact can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned. *Id.* This

means that a judge cannot take judicial notice of an adjudicative fact through personal knowledge. *San Geronimo Caribe Project, Inc.*, at p. *12.

Additionally, an adjudicative fact must be pertinent and admissible evidence. *Laborde*, 180 DPR at p. 278. Rule 402 of the Puerto Rico Rules of Evidence establishes that evidence lacking pertinence is inadmissible. 32 PR Laws Annot. Ap. VI, R. 702. Pertinent evidence is defined as that which tends to make the existence of a material fact more or less probable. 32 PR Laws Annot. Ap. VI, R. 401. **In other words, the court and parties cannot use the judicial notice mechanism to admit into evidence a fact that otherwise would be subject to a rule of exclusion or fact that could not have been proven with admissible evidence.** *Id.* This is so because when judicial or administrative notice is proper, the moving party is relieved from presenting evidence on the adjudicative fact, and it is presumed that the fact will not be disputed. *Id.* at pages 277-78.

Importantly, Rule 201 of Evidence entitles the parties to be heard on the propriety of taking judicial notice. 32 LPRA Ap. VI, R. 201; *see Laborde*, 180 DPR at p. 277 (stating that an affected party may offer evidence to oppose judicial notice). Rule 201 also entitles the affected party to be heard after taking judicial notice. 32 LPRA Ap. VI, R. 201.

The Puerto Rico Supreme Court has held that an agency can take administrative notice of its own official records as long as they are related to previous litigation by the same parties. *Asoc. de Taxis de Cayey*, 142 DPR 109 (*citing J.R.T. v. Club Náutico*, 97 DPR 386, 391 (1969)). Administrative forums may take official notice of anything that could have been the subject of judicial notice in the courts, especially of their own records relating to prior, **interrelated** litigation between the same parties. It is key to ensure that all parties have the opportunity to rebut the evidence and its effect on the administrative adjudication (*citing id.*, pp. 114-15).

On the other hand, Rule 202 of the Puerto Rico Rules of Evidence allows the court to take judicial notice of matters of law. Rule 202 specifies what matters of law the courts will take judicial notice of: (1) the Puerto Rico Constitution and laws; and (2) the United States Constitution and its laws. The courts may take judicial notice of: (1) the Rules and Regulations of Puerto Rico and the United States of America; (2) the Rules and Regulations of the states and territories of the United States of America; (3) the ordinances of the municipalities of Puerto Rico; and (4) treaties to which the United States is a party and applies to Puerto Rico. 32 LPR Ap. VI, R. 202.

The mechanism of taking administrative notice is an exception to the foundational rule in an administrative procedure that the decision of an administrative agency must be supported on the administrative record. *Asoc. de Taxis de Cayey*, 142 DPR, at p. 109. **This mechanism, however, does not substitute the evidence presentation process in an evidentiary hearing; thus, its use is not unrestricted.** *Sabol v. Departamento de Desarrollo Económico y Comercio*, KLRA201900583, 2020 WL 5411593 at page *7 (June 29, 2020) (*stating* that an agency can take official notice of its own files in interrelated cases, **provided that the specificity of the fact is alluded to**, the source from which the information comes is specified, and **an adequate opportunity is provided to the opposing party to argue.**)

The authority to take administrative notice is limited. Agencies: (1) cannot rely on their expertise and must specify the fact and provide the source from which it took the information, and (2) must provide an affected party an opportunity to oppose or provide additional information about the fact admitted by judicial notice. *Id.* (*quoting* Demetrio Fernández Quiñónez, *Derecho Administrativo y Ley de Procedimiento Administrativo Uniforme*, at pages 170-71); *see also* *Oficina de Seguridad v. Puerto Rico Telephone Company, Inc.*, KLRA200300597, KLRA200300719, 2004 WL 2419142 at p. *9 (TCA Sept. 20, 2004) (holding that an

Administrative Judge abused its discretion by failing to provide the affected party an opportunity to oppose the administrative notice and by not citing to the source of information).

Relatedly, Section 9.03 of Regulation 8543 allows the Energy Bureau to *sua sponte* or, upon a party's request, take administrative notice of "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." *Id.* Section 2.01 of Regulation No. 8543 states that, in adversary proceedings, the Rules of Evidence may apply to supplement the dispositions of Regulation 8543 per the Energy Bureau's discretion. However, a determination to take administrative notice under Regulation 8543 is still subject to the limitations established under the Puerto Rico Rules of Evidence and its interpretative case law.

As explained, LECO's Request for the Energy Bureau to take administrative notice of twenty-nine (29) documents includes a *Notice of Investigation to Identify Opportunities to Improve Performance of the Puerto Rico Electric Power Authority* from Case No. CEPR-IN-2016-0002, three Resolutions and Orders from Case No. NEPR-MI-2019-0007, and LUMA's partial motion for reconsideration and submission of corrected spreadsheets from Case No. NEPR-MI-2019-0007. It also includes two Resolutions and Orders in Case No. NEPR-MI-2022-0001 and LUMA's responses to the Energy Bureau's 11 Request for Information in this instant proceeding (Case No. NEPR-AP-2020-0025). Lastly, it includes seventeen (17) newspaper and media articles, a report from the National Renewable Energy Laboratory titled *Puerto Rico Energy Efficiency Scenario Analysis Tool*, a report from the Federal Emergency Management Agency ("FEMA") titled *Programmatic Environmental Assessment Public Facilities Infrastructure Recovery and Resiliency: Puerto Rico*, and three complaints filed before the Puerto Rico Court of First Instance against LUMA.

These documents included in LECO's Request do not include the Puerto Rico Constitution, laws, regulations, municipal ordinances, the United States Constitution, its laws, regulations, nor treaties to which the United States is a party. Thus, LUMA understands that LECO's Request does not fall under the purview of Rule 202 of the Puerto Rico Rules of Evidence. Thus, it is fair to conclude that the only applicable standard available for taking administrative notice of these documents is under Rule 201. As will be explained, however, LECO's Request has not met that standard.

A. Documents Pertaining to Other Proceedings before this Energy Bureau.

LECO's Request includes five (5) Resolutions and Orders entered by this Energy Bureau, and two (2) reports and motions filed by LUMA in other proceedings before this Energy Bureau and for purposes that are not directly related to LUMA's Proposed Performance Metrics Targets or LUMA's revised Annex IX. Additionally, it seeks to belatedly enter into the record one of LUMA's responses to discovery requests issued in this instant proceeding. We will address those documents in turn.

The *Autoridad de Energía Eléctrica de Puerto Rico* docket, Case No. CEPR-IN-2016-0002, was a proceeding whereby this Energy Bureau opened an investigation to carry out independent audits and establish a rulemaking process to prepare proposed rules on performance regulation. The Energy Bureau sought to improve PREPA's overall performance by establishing the proposed performance regulation as part of that proceeding. However, the last substantive entry in that proceeding is dated June 9, 2017 (a filing of comments by stakeholders), and the last entry available is a Resolution and Order issued by the Energy Bureau on October 31, 2017, lifting a stay of proceedings issued in the aftermath of Hurricane María. No further activity has taken place

in Case No. CEPR-IN-2016-0002, and no activity has been conducted in connection with LUMA's operation of the T&D System.

In presenting its request to take administrative notice of the Notice of Investigation issued in Case No. CEPR-IN-2016-0002, LECO does not explain how an order in an idle proceeding is relevant and admissible in this proceeding. Especially, when considering that the Energy Bureau initiated that process in 2016 to investigate PREPA's performance, more than four years before LUMA began operating the T&D System. Moreover, the applicable legal framework in this proceeding is the Puerto Rico Energy Public Policy Act, Act 17-2019, as amended, the T&D OMA, and the Resolutions and Orders entered by the Energy Bureau in this proceeding. The determinations entered by the Energy Bureau in Case No. CEPR-IN-2016-0002 predates the Puerto Rico Energy Public Policy Act, in its current form and full force, and also the T&D OMA. As explained above, LECO is purporting to move this Energy Bureau to amend and broaden the legal framework of this proceeding *via* administrative notice and, as the record shows, at an unduly late stage. The records of Case No. CEPR-IN-2016-0002 do not include or are adjudicative facts relevant to this proceeding. Particularly, the Notice of Investigation issued in Case No. CEPR-IN-2016-0002 is not relevant nor applicable to this proceeding and, thus, cannot be admitted for the record through a petition for taking of administrative notice.

LECO also requests that the Energy Bureau take administrative notice of a Resolution and Order of May 21, 2021, entered in Case No. NEPR-MI-2019-0007 on the principles and methods for setting benchmarks and baselines for performance metrics. *See* LECO's Request, p. 8. LUMA opposes such request. Any discussion on benchmarks is irrelevant to this instant proceeding, as the Energy Bureau is not currently considering benchmarks. In fact, this Energy Bureau already stated in Case No. NEPR-MI-2019-0007, that any benchmarks are for illustrative purposes only.

See Resolution and Order dated April 8, 2021, in Case No. NEPR-MI-2019-0007, p. 8. The Energy Bureau indicated that although it will continue to consider benchmarks or the information they provide, they have not been used to establish baselines in the Performance Metrics Targets docket. *Id.* Evidence on benchmarks in this instant docket is, thus, irrelevant, impertinent, and, thus, inadmissible. Moreover, LECO's request is unduly broad and does not place LUMA in a position to determine which portions of the Resolution and Order of May 21, 2021, entered in Case No. NEPR-MI-2019-0007 are encompassed in the request to take administrative notice, nor the relevance and purpose of the statements that LECO purports to introduce.

Furthermore, the discussion found on the Resolution and Order of May 21, 2021, entered in Case No. NEPR-MI-2019-0007, regarding baselines, cannot be considered in a vacuum, as LECO requests. The Energy Bureau should consider the record of this proceeding, including the evidentiary record that postdates that Resolution and Order, and includes evidence filed by LUMA regarding baselines for each of the proposed Performance Metrics Targets.

Regarding LECO's request that the Energy Bureau take administrative notice of a Resolution and Order of April 8, 2021, and LUMA's Partial Motion for Reconsideration in Case No. NEPR-MI-2019-0007, regarding the J.D. Power Customer Satisfaction Survey, it is important to emphasize that LUMA's Partial Motion for Reconsideration requested the Energy Bureau to reconsider the Resolution and Order of April 8, 2021, that declined—at that juncture—in the year 2021, to set a baseline for JD Power Customer Satisfaction Residential and Business Customer surveys. However, the Energy Bureau's determination in Case No. NEPR-MI-2019-0007 was issued prior to the LUMA's submissions of the revised Annex IX and supporting testimonies and evidence. To wit, after issuing said Resolution and Order, the Energy Bureau accepted pre-filed

testimonies and allowed discovery on the JD Power Customer Satisfaction Residential and Business Customer performance metrics.

Moreover, the Energy Bureau heard and admitted the testimony of Ms. Jessica Laird, LUMA's witness for those performance metrics. Ms. Laird was cross-examined extensively during the Evidentiary Hearing. LUMA's evidence on the JD Power Customer Satisfaction Residential and Business Customer performance metrics was admitted for the administrative record. LECO's request and intention to introduce into evidence a pleading from another proceeding, which clearly predates the activity in this instant proceeding, has no fruitful purpose and should be denied.

LECO also requests the Energy Bureau to take administrative notice of a Resolution and Order of January 12, 2023, and data submitted by LUMA on the SAIDI metric for the periods of October through December 2022 and July through August 2022 in Case No. NEPR-MI-2019-0007. LECO's Request seeks to circumvent various determinations of the Energy Bureau that establish that current performance will not be considered in this instant proceeding. For example, in a Resolution and Order of April 8, 2021, in Case No. NEPR-MI-2019-0007, the Energy Bureau set baselines based on PREPA's data from the Fiscal Year 2020. Predicated on that data, the Energy Bureau ordered LUMA to revise its proposed targets in the instant proceeding. The Energy Bureau has not instituted a process to revise those baselines, even though data is available for Fiscal Years 2021, 2022, and 2023 as part of the quarterly reporting requirements regarding PREPA's Performance, established in Case No. NEPR-MI-2019-0007. Data from Fiscal Years 2021, 2022, and 2023 has not been the subject of LUMA's proposal or any direct testimony or discovery in this instant proceeding and is thus irrelevant, impertinent, and inadmissible. Any decision to consider current performance in this instant proceeding would amount to an arbitrary and capricious change in the Energy Bureau's position without prior notice and infringe upon

LUMA's procedural due process rights. Use of current performance to be considered in the ruling in this proceeding runs counter to cardinal elements of due process of law and amounts to an arbitrary ruling. *See e.g., Ramírez v. Policía de PR*, 158 DPR 320, 339 (2003) (stating that the exercise of discretion by an administrative agency must be rooted in reasonableness and in accordance with applicable law).

Additionally, the two Resolutions and Orders in Case No. NEPR-MI-2022-0001 from February 16 and April 3, 2023 that LECO includes in its request for taking of administrative notice involves LUMA's Proposed Transition Period Plan on the Energy Efficiency and Demand Response programs, which are not under consideration in this proceeding. LECO ignores that the Resolution and Order from February 16, 2023, was partially vacated by the Energy Bureau in its April 3, 2023 Resolution and Order due to a motion for reconsideration filed by LUMA. LECO does not explain how these determinations by the Energy Bureau impact the Energy Efficiency and Demand Response-related Performance Metrics Targets. Primarily when those rulings were issued months after witnesses' testimonies and documentary evidence were offered at the Evidentiary Hearing.

Moreover, there is no controversy that LUMA's proposed Energy Efficiency and Demand Response-related Performance Metrics Targets should be deferred until the Transition Period Plan ("TPP") ends. The record of this proceeding establishes that the TPP cannot be fully implemented until there is a funding mechanism, which is not currently in place, is pending final approval by this Energy Bureau, and is expected to be implemented in July 2023 at the earliest, subject to approval by this Energy Bureau of the proposed EE Rider. Additionally, those resolutions and orders cover a broad scope of topics regarding the TPP that are not relevant to LUMA's Proposed Performance Metrics Targets and the revised Annex IX. LECO did not identify with any specificity

which portions of those orders are relevant for the determinations that this Energy Bureau is called upon to make in this proceeding. LECO did not place LUMA and this Energy Bureau in a position to identify the materiality of those resolutions and orders. LUMA cannot fully respond to LECO's Request on the particular facts that may qualify as adjudicative facts subject to official notice. It is respectfully submitted that the Energy Bureau should decline to consider in this proceeding, the two Resolutions and Orders in Case No. NEPR-MI-2022-0001, from February 16 and April 3, 2023, as they are not relevant to LUMA's proposed Performance Metrics Targets and the revised Annex IX and are impertinent and, thus, inadmissible through via the taking of administrative notice.

Finally, LECO's intention to enter into the administrative record of this instant proceeding LUMA's responses to the Energy Bureau's 11th Request for Information, in this case, is a clumsy intent to circumvent the fact that LECO did not announce that document as evidence as required by the orders of this Energy Bureau and did not present said discovery response during the Evidentiary Hearing via cross-examination of LUMA's witnesses or otherwise. On January 30, 2023, the Energy Bureau issued a Hybrid Evidentiary Hearing Protocol, which required the parties to submit any documentary evidence the parties proposed to introduce into evidence during the Evidentiary Hearing no later than February 2, 2023, at 5:00 pm. *See* Attachment A of the Resolution of January 30, 2023. LECO had ample opportunity to enter into evidence LUMA's responses to any discovery request notified by the parties during the Evidentiary Hearing. The Energy Bureau should not allow LECO's pretense to add, at this juncture, evidence to the record after the administrative record closed and the parties submitted their legal briefs.

B. The Puerto Rico Supreme Court has Expressly Rejected Taking Administrative Notice of the Content of Newspaper and Media Articles.

The Puerto Rico Supreme Court has rejected taking judicial notice of newspaper articles without the benefit of having the evidence presented at trial. *Laborde*, 180 DPR at p. 279. Specifically, it has ruled that newspaper articles with quotations of what someone allegedly said are inadmissible hearsay to prove the accuracy of what was quoted. *Id.* As is known, it is a general rule that newspaper articles are not admissible to establish what is reported therein because they are hearsay. *Pons v. Rivera Santos*, 85 DPR 524, 542 (1962).

LECO requests the Energy Bureau to take administrative notice of seventeen (17) newspaper and media articles referenced in their Brief from local and mainland media outlets. The articles discuss various topics, from Puerto Rico’s economic crisis, demographics, outages, solar energy, Hurricane Fiona, and work-related accidents. *See* LECO’s Request at pp. 8-12 and pp. 14-15. LECO’s sole basis for its request is that these matters are general knowledge, and allegedly, the facts are notorious and easy to verify, as described below in detail:

Reference in LECO’s Brief	Newspaper or Media Article
Footnote 100, page 29	Fallece trabajador de empresa subcontratada por LUMA Energy, TELEMUNDO (March 21, 2023, 5:59 p.m.)
Footnote 100, page 29	Muere empleado de LUMA tras recibir descarga eléctrica en Barranquitas TELEMUNDO (Feb. 22, 2023, 7:03 p.m.)
Footnote 219, page 61	Patricia Mazzei, <i>Why Don't We Have Electricity?: Outages Plague Puerto Rico</i> , N.Y. TIMES (Oct. 19, 2021),
Footnote 220, page 61	Nina Lakhani, <i>We want sun: the battle for the solar power in Puerto Rico</i> , THE GUARDIAN (Oct. 18, 2021)
Footnote 222, page 61	<i>Massive power outage in Puerto Rico affects hundreds of thousands amid growing outrage</i> , CBS NEWS (June 16, 2021)
Footnote 223, page 61	Maria Luisa Paul, <i>Two major power outages in a week fuel fear in Puerto Rico — and memories of Hurricane Maria</i> , THE WASHINGTON POST (June 18, 2021)
Footnote 224, page 61	<i>Puerto Ricans March to Protest Ongoing Power Outages After Privatization of Electric Grid</i> , DEMOCRACY NOW! (Oct. 18, 2021)
Footnote 225, page 62	Johnny Irizarry Rojas, <i>Four years after Maria, Puerto Rico's power grid still in shambles / Commentary</i> , orlando sentinel (Sept. 22, 2021)

Reference in LECO's Brief	Newspaper or Media Article
Footnote 253, page 68	Frances Rosario, <i>Crece a ritmo acelerado la poblacion envejeciente en la Isla, PRIMERA HORA</i> (Dec. 8, 2022, 10:45 p.m.)
Footnote 254, page 68	"La crisis económica y la histórica emigración que vive Puerto Rico han agravado la situación que sufren decenas de ancianos en la isla, quienes viven en hospitales abandonados por familiares incapaces de hacerse a cargo de ellos." <i>Decenas de ancianos abandonados en hospitales en Puerto Rico por la crisis</i> , Univision (July 14, 2016, 4:09 p.m.)
Footnote 259, page 69	<i>Demographers identify the causes, challenges of a rapidly aging Puerto Rico</i> , PennState Social Science Research Institute, (Feb. 8, 2023)
Footnote 304, page 82	Daniella Silva and Nicole Acevedo, NBC News, "Lack of power in Puerto Rico creates life-or-death situations for those with medical needs: In the aftermath of Hurricane Fiona and in the fifth day without power and water, families of sick patients need generators as islanders worry about the availability of fuel and other supplies," (Sept. 23, 2022)
Footnote 304, page 82	Molly Hennessy-Fiske, Los Angeles Times, "Amid power outages, hospitals pushed to their limits in Puerto Rico," (Sept. 26, 2017)
Footnote 305, page 82	Arelis Hernandez, WASH. POST, <i>Puerto Rico was promised billions for safe water. Taps and still running dry: A fragile power grid and haphazard backup system leave the island's water system prone to collapse</i> , (Dec. 8, 2022)
Footnote 306, page 82	Kevin Crowe, USA Today, "In Comerío, Puerto Rico, Hurricane Fiona has left people without water, food and medicine: 'we are not OK,'" (Sept. 21, 2022)
Footnote 306, page 82	"Puerto Rico emerges from storm; water and some food scare," (Sept. 26, 2017)
Footnote 307, page 82	Arelis Hernandez, Washington Post, <i>In graying Puerto Rico, the elderly face climate disasters alone</i> , (Jan. 13, 2023)

LUMA strongly objects LECO's petition for the Energy Bureau to take administrative notice of any newspaper and media articles. First, the Puerto Rico Supreme Court has categorically rejected taking judicial or administrative notice of the content of newspaper articles. LECO precisely seeks that the Energy Bureau take administrative notice of the content of such articles, including myriad hearsay statements and the premises and conclusions they establish, alleging they are general knowledge matters. The Puerto Rico Supreme Court has ruled that the content of newspaper articles is not general knowledge, and taking administrative notice would only circumvent the rule that hearsay is inadmissible evidence.

Second, LECO has not established the relevancy of the seventeen (17) newspaper and media articles referenced in their Brief in this proceeding, nor have they established a relationship between those and the metrics that are part of this proceeding. The issues discussed in the newspaper and media articles go beyond the topics of controversy in this instant proceeding. Moreover, LECO has not established the accuracy of the information contained in the newspaper and media articles and proposes biased and incomplete summaries of facts or the subject matters of the article. The information on these documents is inadmissible and, at best, unreliable to support the Energy Bureau's final decision. LECO's Request is barred by applicable law and should be denied.

C. Extrinsic documents whose relevance has not been established by LECO.

LECO's Request includes two unrelated documents to the Energy Bureau or the parties in this proceeding. The first document is a report from the National Renewable Energy Laboratory titled *Puerto Rico Energy Efficiency Scenario Analysis Tool*. It provides a spreadsheet-based customizable scenario tool in which users can toggle input values and develop scenarios to reach certain levels of energy reductions from energy efficiency. LECO requests the Energy Bureau take administrative notice of the *Puerto Rico Energy Efficiency Scenario Analysis Tool* arguing that a uniform adoption of all potential energy efficiency measures presented in the study could lead to up to 62% of total energy savings by 2040. *See* LECO's Request, p. 8. LECO's clearly hypothetical conclusion is derived from a biased and subjective application and a misunderstanding of the use of the analysis tool.

However, the *Puerto Rico Energy Efficiency Scenario Analysis Tool* includes important disclaimers in its Conclusion, stating that it relies on data from outside Puerto Rico to create many energy reduction estimates and that local data is always preferable. *See* National Renewable

Energy Laboratory, *Puerto Rico Energy Efficiency Scenario Analysis Tool*, p. 31. Moreover, it states that future work could include incorporating more local data (particularly in the commercial sector), adding the costs of efficiency measures, and analyzing the impact of specific energy efficiency programs within the tool. *Id.* Thus, the authors clearly indicate that this spreadsheet-based tool is a work in progress, not based on Puerto Rico data, and also excludes the costs of efficiency measures and the impact of specific energy efficiency programs. In fact, the document does not even mention that data on customers of a public utility or an electric power company was considered. Thus, neither this Energy Bureau —nor LUMA— are in the position to review the underlining data on the tool. Moreover, LECO’s Request lacks an explanation regarding how or in what manner this document may include information relevant, pertinent, or applicable to PREPA or LUMA, or Puerto Rico, for that matter. LECO’s petition for administrative notice of this document and the projections included therein has no purpose, pertinence, or relevance in this proceeding.

The second document was authored by FEMA and labeled *Programmatic Environmental Assessment Public Facilities Infrastructure Recovery and Resiliency: Puerto Rico*. It states FEMA prepared the document for recovery actions involving public facilities after hurricanes Irma and María and subsequent seismic events within Puerto Rico. The document seems to show that FEMA developed various alternatives based on anticipated project proposals. LECO requests that the Energy Bureau take administrative notice of this document, specifically on the planning to implement public facility microgrids. *See* LECO’s Request, p. 13.

LECO omits to note that the public facilities’ microgrids are part of a group of alternatives based on anticipated project proposals. The document provides four different alternatives ranging from No Action Alternative, Repair of Public Facilities with added Resiliency Measures,

Relocation of Public Facilities, and Combination of Alternatives 2 and 3. See FEMA, *Programmatic Environmental Assessment Public Facilities Infrastructure Recovery and Resiliency: Puerto Rico*, July 2022, pp. 13-18. The public facilities' microgrids are just one of the examples included in the Repair of Public Facilities with added Resiliency Measures alternative, along with the upgrade of utilities and stormwater management systems. The document expressly states that those two examples are typical types of actions that could occur under the Repair of Public Facilities with added Resiliency Measures alternative. *Id.*, p. 14. Therefore, the document does not establish any current or projected plan to install microgrids, but a possible scenario based on anticipated project proposals. However, no relationship to any performance metric is included as part of the information in the document. Nor does LECO attempt to relate this document to any metric discussed in the instant case.

These two documents, which per LECO's Request may be found via the Internet, do not constitute adjudicative facts admissible as evidence in this proceeding. Their accuracy is definitely questioned and bears no relationship to any of the evidence submitted by LUMA in the form of pre-filed testimonies by LUMA's personnel and expert witnesses who detailed their qualifications and were cross-examined. Moreover, LECO has not identified any evidence to show how the data on energy efficiency included in the *Puerto Rico Energy Efficiency Scenario Analysis Tool* has been validated. For example, the *Puerto Rico Energy Efficiency Scenario Analysis Tool* does not reveal if this tool has been implemented by an electric utility company or its feasibility within that industry.

LECO's Request does not establish that the *Puerto Rico Energy Efficiency Scenario Analysis Tool* and the *Programmatic Environmental Assessment Public Facilities Infrastructure Recovery and Resiliency: Puerto Rico* include information that can be accurately and readily

determined from sources whose accuracy cannot be reasonably questioned. The information on these documents is not proper for the Energy Bureau to make a final decision. LUMA is concerned about how the information contained in these documents will be applied to this proceeding's controversy.

The *Puerto Rico Energy Efficiency Scenario Analysis Tool* and the *Programmatic Environmental Assessment Public Facilities Infrastructure Recovery and Resiliency: Puerto Rico*, are documents entirely extrinsic to this proceeding. LECO has not provided LUMA nor the Energy Bureau the foundation to establish the accuracy of the proposals contained in those documents, the results of any implementation of those proposals, the underlining data, or their viability and applicability for Puerto Rico's transmission and distribution system in its current state. Without those elements, neither the Energy Bureau nor LUMA is in a position to understand LECO's Request for the admissibility of a series of documents that, although available through the Internet, include proposals that have not been proven to have been implemented in an electric power utility. The reliability or validity of documents obtained from the Internet is unknown. They cannot be admitted or used to determine in this proceeding. No discernible purpose will be advanced by taking administrative notice of these documents. To the contrary, LUMA's right to due process and to have a decision be issued on the administrative record developed during the Evidentiary Hearing will be transgressed.

Finally, LECO purports that the Energy Bureau take administrative notice of three (3) complaints filed against LUMA before the Puerto Rico Court of First Instance due to alleged interruptions in the electric service. Specifically, LECO requests the Energy Bureau to take administrative notice that these cases were filed to claim damages allegedly caused to property by voltage fluctuations. LECO does not explain how these claims relate to LUMA's Performance

Metrics Targets and LUMA's revised Annex IX at issue in this instant proceeding. The complaints include allegations by parties adverse to LUMA, which allegations have not been proven and, thus, are not facts that can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned, as required by the Rules of Evidence and Section 9.03 of Regulation 8543. Thus these complaints cannot be reasonably considered admissible in this proceeding for any discernable purpose.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **grant** LUMA's Objections and Opposition to LECO's Request as stated in this Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 29th day of June 2023.

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-emmanueli.com, pedrosaade5@gmail.com, jessica@bufete-emmanueli.com; rolando@bufete-emmanueli.com, lvelez@earthjustice.org, rmurthy@earthjustice.org, jcassel@earthjustice.org.



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