

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

NEPR

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IN RE: PERFORMANCE TARGETS FOR
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

SUBJECT: OFFICIAL NOTICE
ORDER

LOCAL ENVIRONMENTAL AND CIVIC ORGANIZATION'S REPLY TO LUMA'S
RESPONSE TO ADMINISTRATIVE NOTICE ORDER

TO THE PUERTO RICO ENERGY BUREAU:

COME NOW, Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc. - Enlace Latino de Acción Climática, Inc., Alianza Comunitaria Ambientalista del Sureste, Inc., Coalición de Organizaciones Anti-Incineración, Inc., Amigos del Río Guaynabo, Inc., CAMBIO, and Sierra Club and its Puerto Rico chapter, and Unión de Trabajadores de la Industria Eléctrica y Riego (collectively, "LECO"), to reply to LUMA's response and opposition in its motions dated June 9th and June 29th. LECO respectfully requests that the Puerto Rico Energy Bureau take administrative notice of the documents listed in LECO's June 9th motion, and confirm administrative notice of the documents listed in PREB's May 25th Resolution. In support, LECO states as follows:

BACKGROUND

PREB, LUMA, and LECO all introduced additional evidence in this docket, after the February 2023 hearings. PREB issued a May 25th Resolution taking administrative notice of twelve documents in three categories. First, PREB Orders.

Second, LUMA filings “made within administrative dockets and proceedings held by the Energy Bureau.”¹ And finally, documents “produced by credible third parties” which LUMA refers to as “extrinsic documents.”²

LECO’s Brief made extensive use of the testimonies and hearing transcript, and also cited several additional documents, which all fit the criteria laid out by PREB for administrative notice, as detailed in LECO’s June 9th response.

And finally, LUMA’s Brief included six new, additional documents:

- A May 11, 2023 Sworn Statement from LUMA witness Melanie Jeppeson³
- A worksheet labeled “Table Metric” giving a proposed revision for LUMA’s Customer Complaint Rate metric⁴
- A worksheet labeled “NEPR QR”, giving details of certain QR complaints filed with PREB in 2019 and 2020⁵
- A worksheet labeled “NEPR RV”, giving details of certain RV complaints filed with PREB in 2019, 2020 and 2021⁶
- A worksheet labeled “Combined QR and RV”⁷
- A worksheet labeled “List of Correct QR”⁸

All of the evidence described above, including the evidence submitted by LUMA, was submitted "at a decidedly advanced stage of this adjudicative

¹ PREB, *Resolution*, at 2, PREB Dkt. NEPR-AP-2020-0025 (May 25, 2023), <https://energia.pr.gov/wp-content/uploads/sites/7/2023/05/20230525-AP20200025-Resolution.pdf>.

² LUMA, *LUMA’s Response and Opposition to the Resolution and Order of May 25, 2023, On Taking Of Administrative Notice*, at 18, 22, 24, PREB Dkt. NEPR-AP-2020-0025 (June 9, 2023) <https://energia.pr.gov/wp-content/uploads/sites/7/2023/06/20230609-LUMAs-Response-and-Opposition-to-Resolution-and-Order-of-May-25-2023-on-Taking-of-Administrative-Notice-2.pdf>.

³ LUMA, *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*, at Exhibit B, PREB Dkt. NEPR-AP-2020-0025 (May 11, 2023).

⁴ LUMA, *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*, at Exhibit C, PREB Dkt. NEPR-AP-2020-0025 (May 11, 2023).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

proceeding...”⁹ All parties, including LUMA, “introduce[d] new evidence to the record after the discovery process concluded, an evidentiary hearing was held, and the parties filed legal briefs...”¹⁰ The parties “did not have the opportunity to dispute the information contained in” these documents, including the six documents submitted by LUMA, “through pre-filed testimonies or other evidence.”¹¹ The introduction of new evidence was not a surprise to anyone - LUMA itself asked PREB for further proceedings, where new evidence could be examined.¹² PREB’s Resolution recognized LUMA’s request as a reason to grant administrative notice for post-hearing documents.¹³

I. PREB Should Invoke Judicial Estoppel to Reject LUMA’s Bad Faith Arguments.

After submitting six pieces of new post-hearing evidence, LUMA now claims such evidence should not be admitted, because it violates the Due Process rights of

⁹ LUMA, *LUMA’s Response and Opposition to the Resolution and Order of May 25, 2023, On Taking of Administrative Notice*, at 2, PREB Dkt. NEPR-AP-2020-0025, (June 9, 2023) <https://energia.pr.gov/wp-content/uploads/sites/7/2023/06/20230609-LUMAs-Response-and-Opposition-to-Resolution-and-Order-of-May-25-2023-on-Taking-of-Administrative-Notice-2.pdf>.

¹⁰ *Id.* at 3. *See also*: Rule of Evidence 201(b), 32 LPRA Ap VI, R. 201. (PREB may take administrative notice of these submissions at any point in the proceedings, including after the close of the trial record.). June 9th Response to Resolution for Official Notice and Request to Take Official Notice on Additional Information para. 4.

¹¹ LUMA, *LUMA’s Response and Opposition to LECO’s Request on Taking of Administrative Notice*, at 11, PREB Dkt. NEPR-AP-2020-0025, (June 29, 2023), <https://energia.pr.gov/wp-content/uploads/sites/7/2023/06/20230629-LUMAs-Response-and-Opposition-to-LECOS-Request-to-Take-Administrative-Notice.pdf>.

¹² LUMA, *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*, at 22-23. PREB Dkt. NEPR-AP-2020-0025 (May 11,2023),<https://energia.pr.gov/wp-content/uploads/sites/7/2023/05/20230511-LUMAs-Brief-in-support-of-the-Request-For-Approval-of-the-Proposed-Annex-IX-to-the-TD-OMA-LUMAS-Performance-Metrics-Targets.pdf>.

¹³ PREB, *Resolution*, at 2, Fn,12, PREB Dkt. NEPR-AP-2020-0025 (May 25, 2023), <https://energia.pr.gov/wp-content/uploads/sites/7/2023/05/20230525-AP20200025-Resolution.pdf>.

the parties.¹⁴ LUMA's claim is clearly made in bad faith. LUMA cannot possibly believe that such evidence is inadmissible - the company itself submitted six pieces of new evidence which would violate LUMA's own standards. Under the doctrine of judicial estoppel, PREB should dismiss LUMA's bad faith argument without further consideration.

The doctrine of judicial estoppel "prevents a litigant from pressing a claim that is inconsistent with a position taken by that litigant ... in an earlier phase of the same legal proceeding."¹⁵ Courts have considered three factors in applying judicial estoppel. All three support application here. First: LUMA's two positions are directly inconsistent and mutually exclusive.¹⁶ LUMA's post-hearing brief included six documents "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."¹⁷ LUMA's June 9th and June 29th motions argue that PREB and LECO should not be able to submit documents in the exact same circumstance.

¹⁴ LUMA, *LUMA's Response and Opposition to the Resolution and Order of May 25, 2023, On Taking of Administrative Notice*, at 10-13, PREB Dkt. NEPR-AP-2020-0025 (June 9, 2023) <https://energia.pr.gov/wp-content/uploads/sites/7/2023/06/20230609-LUMAs-Response-and-Opposition-to-Resolution-and-Order-of-May-25-2023-on-Taking-of-Administrative-Notice-2.pdf>

¹⁵ *InterGen N.V. v. Grina*, 344 F.3d 134, 144 (1st Cir.2003); accord *Pegram v. Herdrich*, 530 U.S. 211, 227 n. 8, 120 S.Ct. 2143, 147 L.Ed.2d 164 (2000).

¹⁶ *Alternative Sys. Concepts, Inc. v. Synopsys, Inc.*, 374 F.3d 23, 33 (1st Cir. 2004) ("First, the estopping position and the estopped position must be directly inconsistent, that is, mutually exclusive.")

¹⁷ LUMA, *LUMA's Response and Opposition to LECO's Request on Taking of Administrative Notice*, at 3, PREB Dkt. NEPR-AP-2020-0025, (June 29, 2023), <https://energia.pr.gov/wp-content/uploads/sites/7/2023/06/20230629-LUMAs-Response-and-Opposition-to-LECOS-Request-to-Take-Administrative-Notice.pdf>.

Second: LUMA stands to benefit from its prior position.¹⁸ No party has objected to inclusion of LUMA's six documents, and PREB has not indicated it will not accept them.

Finally: LUMA would derive an unfair advantage from its inconsistent positions.¹⁹ LUMA would gain the benefit of its post-hearing submissions, while avoiding having to address those of PREB and LECO.

In sum – LUMA's claim that post-hearing submissions violate the parties' Due Process rights are made in bad faith, because they are blatantly inconsistent with LUMA's own actions in submitting post-hearing evidence. PREB must reject LUMA's bad faith arguments without further consideration.

II. Administrative Notice is Especially Appropriate in this Proceeding, due to the Abbreviated Hearing.

The ability to add evidence outside of the hearing is especially important in this case, because the parties had limited opportunity to introduce evidence at the hearing. Before the hearing, PREB made the decision to place strict limits on the time of each party for cross-examination.²⁰ The Hearing Examiner imposed those limits in a tough, but fair and impartial manner. LUMA's counsel repeatedly pointed out that

¹⁸ *Alternative Sys. Concepts, Inc. v. Synopsys, Inc.*, 374 F.3d 23, 33 (1st Cir. 2004) (“Second, the responsible party must have succeeded in persuading a court to accept its prior position.”)

¹⁹ *Alternative Sys. Concepts, Inc. v. Synopsys, Inc.*, 374 F.3d 23, 33 (1st Cir. 2004) (“While it is not a formal element of a claim of judicial estoppel, courts frequently consider a third factor: absent an estoppel, would the party asserting the inconsistent position derive an unfair advantage?”)

²⁰ See, for example, Hearing Examiner Seilhamer's statement before Day 2 of the hearing: “In terms of a housekeeping matter for cross-examination, I talked to the attorneys for each party before the beginning of this proceeding today to inform them that the time for cross-examination for each party is going to be 30 minutes per panel.” Day 2 Transcript 260:24 to 261:4.

those time limits required parties to make hard choices and sacrifices in terms of how to use cross-examination time.²¹ If parties were required to introduce every single piece of evidence through cross-examination, there would not be any time left for questioning. That is why the notice procedures are especially appropriate here.²²

PREB made the decision to set a discrete amount of time for questioning and introducing evidence at the hearing, to preserve efficiency. Adding relevant evidence to the record via notice (judicial, administrative, or official) also serves to enhance PREB's efficiency, and to ease the process of proof.²³ One of the purposes of taking official notice is to overcome the deficiencies in the record of a formal proceeding on material facts.²⁴

III. LUMA's Extreme Adversarial Positions Taken in Discovery and Testimony Make Adjudicative Notice Especially Important in this proceeding.

The notice procedures are further justified in this case by the delays caused by LUMA's unreasonable conduct in the discovery process and the testimony process.

For example:

²¹ Day 1, 243:25; 244:1-11: "...we have been here all day, but we did not get enough time on cross-examination." Day 2, 45:15-22: "Bueno, ha sido -- ha habido interrupciones igual y horita estaban pidiendo 30 segundos de una argumentación mía ... Se lo agradezco. Pero entiendo que quizás podría tener más tiempo con el testigo ..." 54:15-18: "Solicito tiempo adicional. LUMA es la parte promovente en este procedimiento. Media hora para dos testigos ..."; 54:23-55:1: "Para el récord para que quede en el récord las razones por las que entiendo que es indebidamente corto el tiempo"

²² See LECO June 9th Response to Resolution For Official Notice and Request to Take Official Notice on Additional Information para. 10.

²³ See McCormick on Evidence § 359 at 1029 (3d ed. 1988).

²⁴ Demetrio Fernández Quiñones, Derecho Administrativo y Ley de Procedimiento Uniforme, at 169, (Forum, 2nd. ed. 2001)

- LUMA refused to answer questions in PREB’s Fifth Requirement of Information and Tenth Requirement of Information, until being forced to do so through Orders to Compel Responses to Requirements of Information.²⁵ LUMA refused to answer the majority of the questions in LECO’s first five Requests of Information, until being forced to answer through Motions to Compel and a PREB November 4, 2021, Resolution and Order. LUMA's refusal to answer Requests for Information from PREB and LECO is especially harmful because of the information imbalance: as operator of the transmission and distribution grid, LUMA has exclusive access to data and information critical to setting appropriate performance metrics. LUMA's refusal to hand over that information frustrates this process - and casts suspicion on the cherry-picked and skewed information LUMA presents to support its own proposed metrics.
- On March 10, 2022, LUMA filed a baseless Motion to Compel Discovery Responses from LECO. PREB denied that motion on July 11, 2022.
- On December 22, 2021, PREB ordered LUMA to submit additional testimony on three additional categories of performance targets: Interconnection, Energy Efficiency / Demand Response, and Vegetation

²⁵ PREB, *Resolution and Order*, PREB Dkt. NEPR-AP-2020-0025 (October 14, 2022), <https://energia.pr.gov/wp-content/uploads/sites/7/2022/10/20221014-AP20200025-Resolution-and-Order.pdf>; PREB, *Resolution and Order*, PREB Dkt. NEPR-AP-2020-0025 (January 10, 2023), <https://energia.pr.gov/wp-content/uploads/sites/7/2023/01/20230110-AP20200025-Resolution-and-Order.pdf>.

Management. LUMA refused to submit the required testimony until ten months later, in October 2022. PREB concluded that LUMA's delays were "frivolous, constitute a clear showing of bad faith, and are aimed at delaying the proceedings."²⁶

- LUMA wasted the Energy Bureau's time with baseless motions to strike parts of the testimony from LECO Experts Dr. José Alameda-Lozada and Dr. Agustin Irizarry-Rivera. PREB rejected those motions, concluding that LUMA's "superfluous", "overzealous", "unbecoming and unsubstantiated" motions had caused "undue delays" and "time waste": "the instant Motion to Strike, devoid of any procedural or substantive merit is, in and of itself, an unnecessary delay of these proceedings."²⁷

LUMA's unreasonable conduct caused numerous delays in this case and wasted the energies of PREB and the parties on tasks other than putting evidence into the record. LUMA's actions caused a delay in time and afforded them the benefit of controlling the information presented during the hearing. This is precisely why administrative notice is important, because it allows PREB to give the parties back some of that time.

²⁶ PREB, *Resolution*, PREB Dkt. NEPR-AP-2020-0025 (August 1, 2022), <https://energia.pr.gov/wp-content/uploads/sites/7/2022/08/20220801-AP20200025-Resolution-and-Order.pdf>.

²⁷ PREB, *Resolution and Order*, at 3-4, 7-8, PREB Dkt. NEPR-AP-2020-0025 (July 7, 2022), <https://energia.pr.gov/wp-content/uploads/sites/7/2022/07/20220707-Resolution-and-Order-NEPR-AP-2020-0025-Motion-to-Strike-Portions-of-Expert-Testimony-of-Dr.-Agustin-Irizarry-Rivera.pdf>. . See also PREB, *Resolution and Order*, PREB Dkt. NEPR-AP-2020-0025 (July 7, 2022), <https://energia.pr.gov/wp-content/uploads/sites/7/2022/07/20220707-Resolution-and-Order-NEPR-AP-2020-0025-Motion-to-Strike-Portions-of-Expert-Testimony-of-Dr.-Jose-Alameda-Lozada.pdf>.

IV. LUMA's Remaining Arguments Are Unavailing.

Finally, LUMA raised a few arguments pertaining to a few specific documents in LECO's brief. We address each in turn below.

LUMA questions the source of LECO's documents and asks which performance metric each relate to. All of this information and all of these documents were available to LUMA when LUMA prepared its brief – in a few egregious examples, the information came from LUMA itself. LECO's brief clearly stated what performance metric each document related to. The source, and the performance metric each document relates to, are detailed in the attached table²⁸. Many of the documents that LECO included in the table had already been cited to in various motions and ROI's before being included in the final brief. LUMA could have opposed the documents in a timely fashion, but instead they choose to do so here.

A. LECO Provides Newspapers And Media Articles To Support Verifiable Facts And Common Knowledge Affirmations.

Puerto Rico's Supreme Court has extended the power to take judicial notice to agencies, as an exception to the principle of the exclusivity of the administrative record. *Lopez y otros v. Asoc. De Taxis de Cayey*, 142 D.P.R. 109, 114-115 (1996). Additionally, lawmakers envisioned an administrative process where the process to take judicial notice would match the one before a court of justice. To that extent, the LPAU is clear in that “[t]he officer presiding over the hearing may officially take

²⁸ See Appendix A

notice of anything that could be subject to judicial notice in courts of justice."²⁹ (Translation added). And, as LUMA itself highlighted “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.”³⁰

The Supreme Court of Puerto Rico has also examined whether news articles can be subject to judicial notice, and to that extent they ruled that **if statements** contained in newspaper articles are presented to establish their truth, they qualify as hearsay evidence. *UPR v. Laborde* 180 DPR 253, 279 (2010); *Pons v. Rivera Santos*, 85 DPR, 524, 524 (1962). This is not the case in the newspaper articles being cited by LECO. Many of the articles cited by LECO in their brief are presented only as supporting evidence of facts that are easily verifiable and of general knowledge. Facts that anyone in Puerto Rico can attest to. For example, in Footnote 100 of LECO’s legal brief two articles are cited, referencing the deaths of two employees, Roger Drone Smith and Gamalier Reyes Burgos. These articles are not there to cite a statement made by LUMA, but rather to underscore that labor safety cannot be disregarded in order to meet other metrics. Would LUMA be so bold as to deny that these two men died while working?

²⁹ Administrative Procedure Act of the Government of Puerto Rico, as amended, Act 38-2017, 3 LPRA. §2163 (2017).

³⁰ LUMA, LUMA’s Response and Opposition to LECO’s Request on Taking of Administrative Notice, at 12-13, PREB Dkt. NEPR-AP-2020-0025, (June 29, 2023), <https://energia.pr.gov/wp-content/uploads/sites/7/2023/06/20230629-LUMAs-Response-and-Opposition-to-LECOS-Request-to-Take-Administrative-Notice.pdf>.

Other articles simply referenced the dangers behind being without power for multiple days, it is common knowledge that someone without power does not have electricity to connect their medical equipment or refrigerate their medicines. These articles were not referencing a specific case but rather an overall situation that was lived by those left without power in Puerto Rico. Various articles also referenced the increasingly aging population in Puerto Rico, this is backed up by Census data and can be easily verified by anyone.

The information provided in LECO's brief that is supported by newspaper articles plays a crucial role in establishing strong metrics, and these articles serve only as supplementary information to reinforce specific claims that stand on their own. LUMA's opposition to taking notice of these facts can be described as "methodically ignoring what everyone knows". *Gierbolini Rodríguez v. Gobernador*, 129 DPR 402, 438 (1991).

B. PREB may take notice of complaints filed against LUMA, as evidence of lack of customer satisfaction.

LUMA contends that PREB must not take administrative notice of three complaints filed against LUMA before the Puerto Rico Court of First Instance. These three complaints are included under the Customer Satisfaction Metrics section that begins on page 63 and are mentioned in this context to support the recommendation that PREB ensures customer satisfaction is accurately measured under this metric, as opposed to what LUMA has proposed: a metric that only measures LUMA's own satisfaction with the law. LECO proposes that just as the number of specific

administrative complaints should be considered in determining customer satisfaction, actions filed before other courts should also be considered. It is clear from LECO's brief that LECO is not seeking that PREB consider the content of these actions, but rather the fact that they exist. This is consonant with Puerto Rico's Supreme Court decision in *Asoc. De Periodistas v. González*, 127 DPR 704, 714-715 (1991), where the court resolved that administrative courts can consider proceedings from any case within the same court or in any court within the same jurisdiction. The Puerto Rico Supreme Court establishes that these are verifiable facts that can be confirmed immediately "through a mere examination of the judicial record." In this instance, PREB must only confirm the existence of the filed actions, there is no need to examine the content because the content is irrelevant. The fact that individuals feel compelled to initiate a judicial proceeding should be factored into a metric that measures customer satisfaction.

C. PREB may take notice of documents created by the Federal Energy Management Agency National Renewable Energy Laboratory, created specifically to address PREB's infrastructure recovery plan and proposed energy efficiency regulations, respectively.

LUMA asks PREB to ignore a report from the National Renewable Energy Laboratory titled *Puerto Rico Energy Efficiency Scenario Analysis Tool* and a document authored by FEMA titled *Programmatic Environmental Assessment Public Facilities Infrastructure Recovery and Resiliency: Puerto Rico, The Programmatic Environmental Assessment Public Facilities Infrastructure Recovery*

and Resiliency: Puerto Rico. Both documents are directly relevant to performance metrics being considered in this proceeding. The FEMA document, found in FEMA's website, is mentioned under the Finance Metrics section, and it is brought forth to illustrate the importance of considering the installation of microgrids by LUMA's largest customers on their budget.

The *Puerto Rico Energy Efficiency Scenario Analysis Tool* from DOE's National Renewable Energy Laboratory was created specifically to address PREB's proposed energy efficiency regulations – it is directly on point to the energy efficiency performance metric being considered in this proceeding. In fact, during the IRP Technical Hearing held on August 8, 2023, LUMA admitted to using NREL's Energy Efficiency analysis, from DOE's PR 100 Study, to forecast the annual energy and peak load.

CONCLUSION

LECO respectfully requests that the Puerto Rico Energy Bureau take administrative notice of the documents listed in LECO's June 9th motion and confirm administrative notice of the documents listed in PREB's May 25th Resolution.

Respectfully submitted. In San Juan Puerto Rico, August 9, 2023.

[Signatures followed in the following page]

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CERTIFICATION OF SERVICE

I hereby certify that on August 9, 2023, I served this Reply to the following parties:

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APPENDIX A

Documents That Should Be Admitted into The Docket: Sources and Corresponding Performance Metrics

Reference	Was LUMA aware of this fact prior to filing its Brief?	Did LECO's Brief State Which Performance Metric this document relates to?
Footnotes 5, page 2 of LECO's Legal Brief – PREB, Notice of Investigation to Identify Opportunities to Improve Performance of the Puerto Rico Electric Power Authority, In Re: The Performance of the Puerto Rico Electric Power Authority Dkt, No. CEPR-IN-2016-0002 (Nov. 15, 2016) https://energia.pr.gov/wp-content/uploads/sites/7/2016/11/15-nov-2016-Notice-of-Investigation-AEE-CEPR-IN-2016-0002.pdf	Yes. PREB entered this order in November 2016, and it applies to all performance metrics for all third-party providers. LUMA was well aware of this PREB order before it even began considering becoming a third-party provider.	Yes. This PREB order states principles for all performance metrics imposed on a third party provider, such as LUMA.

<p>Footnote 35, page 11 of LECO's Legal Brief – LUMA, <i>Disc. Resp. to PREB's 11th Req. of Information</i> - RFI-LUMA-AP-2020-0025-R11-PREB-05JAN23-018(c) and RFI-LUMA-AP-2020-0025-R11-PREB-05JAN23-033(f) (Jan. 19, 2023).</p>	<p>Yes. LUMA itself provided this information in its responses to PREB's 11th Request for Information.</p>	<p>Yes. All metrics, especially Major Outage Metrics.</p>
<p>Footnote 60, page 19 of LECO's Legal Brief – PREB's January 12, 2023, Order in Docket NEPR-MI-2019-0007.</p>	<p>Yes. LUMA received this PREB Order in January 2023 in Docket NEPR-MI-2019-0007.</p>	<p>Yes. This document provides one reason that PREB should require independent verification of all LUMA submissions, across all metrics.</p>

<p>Footnote 100, page 29 of LECO’s Legal Brief – Fallece trabajador de empresa subcontratada por LUMA Energy, TELEMUNDO (March 21, 2023, 5:59 p.m.), https://www.telemundopr.com/noticias/puerto-rico/fallece-trabajador-arrollado-por-camion-de-luma-energy-en-gurabo/2463903/;</p> <p>Muere empleado de LUMA tras recibir descarga eléctrica en Barranquitas TELEMUNDO (Feb. 22, 2023, 7:03 p.m.), https://www.telemundopr.com/noticias/puerto-rico/muere-empleado-de-luma-tras-recibir-descarga-electrica-en-barranquitas/2453980/</p>	<p>Yes. This report describes deaths in LUMA’s workforce in March and April 2023.</p>	<p>Yes. Labor Safety Performance Metrics.</p>
<p>Footnote 104, page 31 of LECO’s Legal Brief – PREB, <i>Resolution and Order</i> at 4, PREB Dkt. NEPR-MI-2019-0007 (May 21, 2021).</p>	<p>Yes. LUMA received this PREB Order in May 2021, in Docket NEPR-MI-2019-0007.</p>	<p>Yes. This Order describes the principles and methods for setting the benchmarks or baselines for all performance metrics.</p>
<p>Footnote 147, page 41 of LECO’s Legal Brief - Puerto Rico Energy Efficiency Scenario Analysis Tool (PREESAT), where using a uniform adoption of all potential energy efficiency measures presented in the study could lead up to 62% of total energy savings by 2040. National Renewable Energy Laboratory at 28 (Sept. 2021). Available at https://www.nrel.gov/docs/fy21osti/79977.pdf (last visit on May 8, 2023).</p>	<p>Yes. The National Renewable Energy Laboratory published this document in response to PREB’s April 2021 draft Regulation for Energy Efficiency, and its requirement to achieve the 30% reduction still mandated in P.L. 17-2019.</p>	<p>Yes. Energy Efficiency / Demand Response.</p>
<p>Footnote 167, page 45 of LECO’s Legal Brief – PREB, <i>Resolution and Order</i>, PREB Dkt. NEPR-MI-2022-001 (Feb. 16, 2023). <i>See</i></p>	<p>Yes. LUMA received these PREB Orders in February and April 2023.</p>	<p>Yes. Energy Efficiency / Demand Response.</p>

<p>https://energia.pr.gov/wp-content/uploads/sites/7/2023/02/20230216-MI20220001-Resolution-and-Order.pdf. Subsequently, PREB vacated its decision related to the activity-based metrics and incentives established in the previous order. PREB. Resolution and Order, PREB Dkt. NEPR-MI-2022-001 (April 3, 2023). See https://energia.pr.gov/wp-content/uploads/sites/7/2023/04/20230403-MI20220001-Resolution-and-Order.pdf</p>		
<p>Footnote 215, page 59 of LECO’s Legal Brief – LUMA, Submission of Corrected Spreadsheets on Performance Metrics Quarterly Report for October through December 2022, and Corrected Data on Reliability Metrics for July through August 2022, PREB Dkt. NEPR-MI-2019-0007 (March 3, 2023). See Submission of Corrected Spreadsheets on Performance Metrics Quarterly Report for October through December 2022, and Corrected Data on Reliability Metrics for July through August 2022</p>	<p>Yes. This is LUMA’s own submission on performance metrics, to the NEPR-MI-2019-0007 docket, in March 2023.</p>	<p>Yes. Reliability Metrics.</p>
<p>Footnote 219, page 61 of LECO’s Legal Brief – Patricia Mazzei, <i>Why Don’t We Have Electricity?: Outages Plague Puerto Rico</i>, N.Y. TIMES (Oct. 19, 2021), https://www.nytimes.com/2021/10/19/us/puerto-rico-electricity-protest.html.</p>	<p>Yes. LUMA received these through LECO’s January 2021 response to LUMA-LECO-IRIZARRY-ROI-01-059, and also attached to LECO’s March 9th Response to LUMA’s Motion to Strike Portions of Expert Testimony of Jose Alameda.</p>	<p>Yes. Reliability Metrics.</p>
<p>Footnote 220, page 61 of LECO’s Legal Brief – Nina Lakhani, <i>We</i></p>	<p>Yes. LUMA received these through LECO’s</p>	<p>Yes. Reliability Metrics.</p>

<p><i>want sun: the battle for the solar power in Puerto Rico</i>, THE GUARDIAN (Oct. 18, 2021) available at https://www.theguardian.com/environment/2021/oct/18/puerto-rico-solar-power-climate-resilience.</p>	<p>January 2021 response to LUMA-LECO-IRIZARRY-ROI-01-059, and also attached to LECO's March 9th Response to LUMA's Motion to Strike Portions of Expert Testimony of Jose Alameda.</p>	
<p>Footnote 222, page 61 of LECO's Legal Brief – <i>Massive power outage in Puerto Rico affects hundreds of thousands amid growing outrage</i>, CBS NEWS (June 16, 2021) available at https://www.cbsnews.com/news/puerto-rico-power-outage-latest-2021-06-16/.</p>	<p>Yes. LUMA received these through LECO's January 2021 response to LUMA-LECO-IRIZARRY-ROI-01-059, and also attached to LECO's March 9th Response to LUMA's Motion to Strike Portions of Expert Testimony of Jose Alameda.</p>	<p>Yes. Reliability Metrics.</p>
<p>Footnote 223, page 61 of LECO's Legal Brief – <i>María Luisa Paúl, Two major power outages in a week fuel fear in Puerto Rico – and memories of Hurricane María</i>, THE WASHINGTON POST (June 18, 2021) available at https://www.washingtonpost.com/nation/2021/06/18/puerto-rico-power-outages/.</p>	<p>Yes. LUMA received these through LECO's January 2021 response to LUMA-LECO-IRIZARRY-ROI-01-059, and also attached to LECO's March 9th Response to LUMA's Motion to Strike Portions of Expert Testimony of Jose Alameda.</p>	<p>Yes. Reliability Metrics.</p>
<p>Footnote 224, page 61 of LECO's Legal Brief – <i>Puerto Ricans March to Protest Ongoing Power Outages After Privatization of Electric Grid</i>, DEMOCRACY NOW! (Oct. 18, 2021) available at https://www.democracynow.org/2021/10/18/headlines/puerto-ricans-march-to-protest-ongoing-power.</p>	<p>Yes. LUMA received these through LECO's January 2021 response to LUMA-LECO-IRIZARRY-ROI-01-059, and also attached to LECO's March 9th Response to LUMA's Motion to Strike Portions of</p>	<p>Yes. Reliability Metrics.</p>

<p>outages after privatization of electric grid.</p>	<p>Expert Testimony of Jose Alameda.</p>	
<p>Footnote 225, page 62 of LECO’s Legal Brief – Johnny Irizarry Rojas, <i>Four years after María, Puerto Rico’s power grid still in shambles / Commentary</i>, orlando sentinel (Sept. 22, 2021) available at https://www.orlandosentinel.com/opinion/guest-commentary/os-op-puerto-rico-power-grid-in-shambles-20210922-w6cwdrregwffzrb25ruylhigsmystory.html</p>	<p>Yes. LUMA received these through LECO’s January 2021 response to LUMA-LECO-IRIZARRY-ROI-01-059, and also attached to LECO’s March 9th Response to LUMA’s Motion to Strike Portions of Expert Testimony of Jose Alameda.</p>	<p>Yes. Reliability Metrics.</p>
<p>Footnote 240, page 65 of LECO’s Legal Brief – LUMA, Motion for Partial Reconsideration of Resolution and Order of April 8, 2021, Motion Submitting Information in Support Thereof, and Requests for Clarifications, PREB Dkt. NEPR-MI-2019-0007 (April 28, 2021) [hereinafter Motion for Partial Reconsideration].</p>	<p>Yes. This is LUMA’s own filing of April 2021 in Docket NEPR-MI-2019-0007.</p>	<p>Yes. Customer Satisfaction Survey.</p>
<p>Footnote 241, page 65 of LECO’s Legal Brief – PREB’s rejection stated “...there are still many questions about the process and outcome of the survey that remain. Therefore, the Energy Bureau will not consider this matter at this time in the process of establishing the baseline for PREPA’s performance.”. PREB, Resolution and Order at 17, PREB Dkt. NEPR-MI-2019-0007 (April 8, 2021).</p>	<p>Yes. PREB issued this order in April 2021 in Docket NEPR-MI-2019-0007.</p>	<p>Yes. Customer Satisfaction Survey.</p>
<p>Footnote 253, page 68 of LECO’s Legal Brief – Frances Rosario,</p>	<p>Yes. The increase of elder population in</p>	<p>Yes. Customer Satisfaction Metrics.</p>

<p><i>Crece a ritmo acelerado la población envejeciente en la Isla, PRIMERA HORA</i> (Dec. 8, 2022, 10:45 p.m.) available at https://www.primerahora.com/noticias/puerto-rico/notas/crece-a-ritmo-acelerado-la-poblacion-envejeciente-en-la-isla/</p>	<p>Puerto Rico is common knowledge, a notorious fact easily verifiable among Puerto Ricans and by Census data.</p>	
<p>Footnote 254, page 68 of LECO’s Legal Brief – “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.) available at https://www.univision.com/local/puerto-rico-wlii/decenas-de-ancianos-abandonados-en-hospitales-en-puerto-rico-por-la-crisis.</p>	<p>Yes. The increase of elder population in Puerto Rico is common knowledge, a notorious fact easily verifiable among Puerto Ricans and by Census data.</p>	<p>Yes. Customer Satisfaction Metrics.</p>
<p>Footnote 259, page 69 of LECO’s Legal Brief – <i>Demographers identify the causes, challenges of a rapidly aging Puerto Rico</i>, PennState Social Science Research Institute, (Feb. 8, 2023) available at https://ssri.psu.edu/news/demographers-identify-causes-challenges-rapidly-aging-puerto-rico</p>	<p>Yes. The increase of elder population in Puerto Rico is common knowledge, a notorious fact easily verifiable among Puerto Ricans and by Census data.</p>	<p>Yes. Customer Satisfaction Metrics.</p>
<p>Footnote 273, page 72 of LECO’s Legal Brief – See <i>Cooperativa de Agricultores del Suroeste – CASO Coop v. LUMA Energy Company et al</i>, Civil No. MZ2023CV00024 (Court of First Instance,</p>	<p>Yes. These were lawsuits filed against LUMA in May 2022 and January 2023.</p>	<p>Yes. Customer Satisfaction Metrics and Reliability Metrics.</p>

<p>Mayagüez Superior Court, filed Jan 9, 2023); Herrero Domenech et al v. LUMA Energy, LLC et al. and Wendco of Puerto Rico Inc. et al, v. LUMA Energy, LLC et al., Civil Nos. SJ2022CV02868 and SJ2022CV03169, respectively filed in the Court of First Instance, San Juan Superior Court, and consolidated by Order entered by the San Juan Superior Court on May 17, 2022.</p>		
<p>Footnote 290, page 78 of LECO’s Legal Brief – FEMA, Programmatic Environmental Assessment for Public Facilities Infrastructure Recovery and Resiliency, Puerto Rico, FEMA-DR-4336-PR, FEMA-DR-4339-PR, FEMA-DR-4473-PR, (2022). More concretely: www.fema.gov/sites/default/files/documents/fema_dr-4336-4339-4473-public-facilities-pea_08182022.pdf</p>	<p>Yes. LUMA received this document from FEMA in December 2022. Among other things, it establishes that LUMA’s largest customers plan to lower their energy demand, and their reliance on LUMA, by installing microgrids.</p>	<p>Yes. Finance Metrics.</p>
<p>Footnote 304, page 82 of LECO’s Legal Brief – <i>See, e.g.</i>, 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</p>	<p>Yes. This report explains the commonly known, notorious, easily verifiable fact that when power is interrupted for extended periods, as happened after Hurricanes Maria and</p>	<p>Yes. Major Outage Events.</p>

<p>generators as islanders worry about the availability of fuel and other supplies,” (Sept. 23, 2022) <i>available at</i> https://www.nbcnews.com/news/latino/lack-power-puerto-rico-creates-life-death-situations-medical-needs-rcna49151; Molly Hennessy-Fiske, Los Angeles Times, “Amid power outages, hospitals pushed to their limits in Puerto Rico,” (Sept. 26, 2017) <i>available at</i> https://www.latimes.com/nation/latina-puerto-rico-hospital-20170926-story.html.</p>	<p>Fiona, sickly patients dependent on equipment or medicines requiring refrigeration face grave risks and may perish. LUMA is well aware of this fact.</p>	
<p>Footnote 305, page 82 of LECO’s Legal Brief – <i>See</i> 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), <i>available at</i> https://www.washingtonpost.com/nation/2022/12/08/puerto-rico-maria-fiona-water-crisis/.</p>	<p>Yes. This report explains the commonly known fact that many Puerto Ricans lose access to running water due to power outages. LUMA is well aware of this fact.</p>	<p>Yes. Major Outage Events.</p>
<p>Fn. 306, page 82 of LECO’s Legal Brief – <i>See, e.g.</i>, Kevin Crowe, USA Today, “In Comerio, Puerto Rico, Hurricane Fiona has left people without water, food and medicine: ‘we are not OK,’” (Sept. 21, 2022) <i>available at</i> https://www.msn.com/en-us/news/us/in-comer%C3%ADo-puerto-rico-hurricane-fiona-has-left-people-without-water-food-and-medicine-we-are-not-ok/ar-AA126EW2; Ben Fox, A.P. News,</p>	<p>Yes. This report explains the commonly known, notorious, easily verifiable fact that Puerto Ricans have suffered from spoilage of food and medicine after Major Outage Events.</p>	<p>Yes. Major Outage Events.</p>

<p>“Puerto Rico emerges from storm; water and some food scare,” (Sept. 26, 2017) <i>available at</i> https://apnews.com/article/puerto-rico-us-news-ap-top-news-international-news-hurricanes-26175c2cb7154af3bbc909b3571d59fd</p>		
<p>Footnote 307, page 82 of LECO’s Legal Brief – <i>See</i> Arelis Hernandez, Washington Post, <i>In graying Puerto Rico, the elderly face climate disasters alone</i>, (Jan. 13, 2023) <i>available at</i> https://www.washingtonpost.com/nation/2023/01/13/puerto-rico-hurricanes-climate-elderly/</p>	<p>Yes. This report explains the commonly known, notorious, easily verifiable fact that elderly Puerto Ricans are more vulnerable after outages.</p>	<p>Yes. Major Outage Events.</p>