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Received:

Sep 21, 2023

4:26 PM

In the Matter Of:

RE: PERFORMANCE METRICS TARGETS FOR LUMA ENERGY SERVCO, LLC

FEBRUARY 7, 2023 VOL. 1

February 07, 2023

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

CASE NO. NEPR-AP-2020-0025

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

Volume 1

Transcript of proceedings before the PUERTO
RICO ENERGY BUREAU, held at the World Plaza
Building, 268 Avenida Muñoz Rivera, on the 8th
Floor, San Juan, Puerto Rico, on Tuesday, February
7, 2023, commencing at 9:40 a.m.

Puerto Rico Energy Bureau Members:

EDISON AVILES DELIZ, CHAIRMAN

LILLIAN MATEO SANTOS, COMMISSIONER

FERDINAND RAMOS SOEGAARD, COMMISSIONER

SYLVIA UGARTE ARAUJO, COMMISSIONER

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I N D E X

LUMA Witnesses:

Mario Hurtado

Juan Lara

Donald Hall

Branko Terzic

LECO witnesses:

Agustín Irizarry Rivera

José Alameda

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1 - TRANSCRIPT OF PROCEEDINGS -

2 VOLUME I

3 TUESDAY, FEBRUARY 7, 2023

4 [TIME NOTED: 9:40 A.M.]

5 MR. SEILHAMER: Good morning. It's
6 9:40 a.m. on Tuesday, February 7, 2023, and we are
7 commencing the evidentiary hearing in Case Number
8 NEPR-AP-2020-0025 in regards to the performance
9 targets for LUMA Energy Servco LLC.

10 For the record, I'm Attorney Dennis
11 Seilhamer and I've been designated by the Energy
12 Bureau to be the hearing examiner for this
13 evidentiary hearing.

14 The Energy Bureau issued a resolution
15 on January 27, 2023, in which it informed that the
16 evidentiary hearing will be conducted in a hybrid
17 model. As so, only participants who have previously
18 requested authorization to access the hearing
19 remotely will be allowed to do so.

20 This morning we are joined by Edison
21 Aviles Deliz, Chairman of the Energy Bureau of
22 Puerto Rico Public Service Regulatory Board, and
23 associate commissioners Lillian Mateo Santos,
24 Ferdinand Ramos Soegaard, Sylvia Ugarte Araujo and
25 and Antonio Torres Miranda.

1 Finally, Jay Griffin, Ben Havumaki
2 and Miguel Tulla also joins us today as the Energy
3 Bureau's technical consultants.

4 Act 17-2019, known as the Puerto Rico
5 Energy Transformation and Relief Act, as amended,
6 provided the Energy Bureau with the authority to use
7 alternative mechanisms to cost-base regulation for
8 compliance and implementation of the objectives
9 established in the law, including mechanism for
10 incentives and penalties based on performance
11 metrics for electric service companies and strict
12 compliance with the Energy Bureau orders.

13 On December 23, 2020, the Energy
14 Bureau issued a resolution and order under Case
15 Number NEPR-MI-2019-0007 through which it commenced
16 a proceeding to establish the baseline and the
17 targets and minimum compliance benchmarks with which
18 the Puerto Rico electric system should comply.

19 On June 22, 2020, LUMA Energy Servco,
20 PREPA, and the Puerto Rico Public-Private
21 Partnership Authority entered into an operation and
22 maintenance agreement under which LUMA agreed to
23 manage PREPA transmission and distribution system.

24 As such, on December 23rd, 2020, the
25 Energy Bureau issued a resolution and order that

1 began the process of evaluating and establishing the
2 performance target and performance-assisted
3 mechanism to be applied to LUMA.

4 On October 14, 2022, the Energy
5 Bureau issued a resolution and order to which it
6 established the procedure calendar for this case.
7 As so, the order established this week in the agenda
8 for the evidentiary hearings.okay.

9 Due to the nature of the hearing, it
10 will be conducted in the English language with --
11 simultaneously, and it will also be translated
12 simultaneously in Spanish. This should not prevent
13 the witnesses to present their arguments or answer
14 questions in the Spanish language.

15 In order to facilitate true
16 evaluation, the Energy Bureau has established
17 guidelines which will apply to all participants in
18 the evidentiary hearing. The purpose of this
19 evidentiary hearing and guidelines is to enable the
20 Energy Bureau to conduct an effective and efficient
21 process while giving all parties a reasonable
22 opportunity to question witnesses.

23 It is the Energy Bureau's intention
24 to establish a productive and effective conversation
25 through this process in which the parties can inform

1 and educate the Energy Bureau in order to put them
2 in a position to make a determination on matter at
3 hand.

4 The Energy Bureau has organized the
5 questioning of the witnesses by subject matter
6 panels. Witnesses will not -- will not read their
7 testimony nor make an opening statement. All panels
8 will begin with questions by the Energy Bureau
9 consultants to the witnesses followed by questions
10 from the intervenors and, lastly, questions from
11 LUMA.

12 The Commissioners will also be
13 allowed to ask questions at any time during this
14 process. The identified witnesses are expected to
15 be able to respond to cross-examination, his or her
16 testimony, discovery responses or technical
17 statements pertaining to each topic area.

18 While topic overlap is expected,
19 questions will be expected to stay within the rough
20 balance of the topic area for each panel. Redirect
21 examination will be permitted at the Energy Bureau's
22 discretion and only if there's time remaining of the
23 particular panel.

24 With respect to questions asked by
25 LUMA or intervenors, only one attorney from each

1 party may ask questions on a particular panel
2 regarding a specific subject topic. However,
3 different attorneys from a party may ask questions
4 providing they address during a different panel.

5 Once an attorney asks a question in a
6 specific panel, no changes except party attorneys
7 will be allowed unless extraordinary circumstances
8 regard to do so.

9 In answering questions, all witnesses
10 must refrain from repeating answers previously
11 given. Their responses must be succinct and
12 sufficient to adequately answer question. Only the
13 person to whom the question is addressed may answer
14 that question.

15 With the intent to promote an orderly
16 and productive hearing, the following rules -- the
17 following rules will govern the process:

18 Before asking any question or
19 addressing the Energy Bureau, all deponents must
20 identify themselves for the record by stating their
21 name and the party they represent and in what
22 capacity.

23 Please open the microphone to speak
24 and when finished, turn it off.

25 In each session of questions, the

1 Energy Bureau will be the first to ask questions to
2 the witnesses.

3 The Energy Bureau technical
4 consultants will read each topic of questions.

5 Discussion of confidential
6 information is not allowed.

7 No statements are allowed before,
8 during or after the hearing.

9 The hearing examiner will strictly
10 adhere to the hearing timeline. However, if time
11 remains after initial rounds of questions are over,
12 the hearing examiner may allow additional question
13 rounds.

14 The hearing will be recorded in audio
15 and video, which will later be available to all
16 parties on the Energy Bureau's website. The hearing
17 will be streamlined both in English and Spanish at
18 the Bureau's website.

19 Make sure phones are off so we don't
20 have any interruptions.

21 We hope that today we can conduct an
22 efficient and productive hearing that will help the
23 Energy Bureau develop a more comprehensive record.
24 Thank you all for your participation and
25 collaboration in this process.

1 Before proceeding, I would like to
2 ask the Commissioners if they have any opening
3 comments.

4 CHAIRMAN AVILES: (In Spanish).

5 MR. SEILHAMER: I'm going to go
6 through list of intervenors in the -- for the case
7 and who asked to be present.

8 Independent Consumer Protection
9 Office.

10 MS. DÍAZ: Here.

11 MR. SEILHAMER: LECO.

12 MR. MURTHY: Hi, good morning.

13 MR. SEILHAMER: PREPA.

14 UNIDENTIFIED SPEAKER: Good morning.

15 MR. SEILHAMER: ICSE.

16 MR. VAZQUEZ: [Gesturing.]

17 MR. SEILHAMER: And of course LUMA.

18 MS. MERCADO: Good morning.

19 MR. SEILHAMER: Prior to taking the
20 oath for the witnesses, the agenda as established in
21 the resolution of Friday, February 10, 2023, calls
22 for the morning session to be the general approach
23 to performance metrics and the witnesses that have
24 been listed either for direct testimony or rebuttal
25 are the following -- if I'm missing someone, this

1 will be the time to let me know.

2 In the case of LUMA, we have Mario
3 Hurtado, Donald Hall, Branko Terzic and Juan Lara.

4 MS. MERCADO: For LUMA, those are our
5 direct witnesses.

6 MR. SEILHAMER: And then LECO has
7 Agustín Alexi Irizarry Rivera and José Alameda
8 Rosado.

9 MR. MURTHY: Those are our witnesses.
10 Thank you, Your Honor.

11 MR. SEILHAMER: Okay.

12 Prior to the beginning of today's
13 hearing, I met with the attorneys and we agreed to
14 mark all the direct testimony and rebuttals as
15 exhibits. And, as so, we have already marked the
16 ones for the morning session. And I'm going to read
17 the -- each exhibit that was marked so you guys have
18 it for your internal records and for your questions.

19 Exhibit Number 1 is the direct
20 testimony for Mario Hurtado.

21 [Exhibit Number 1 was marked for
22 identification.]

23 MR. SEILHAMER: Exhibit Number 2 is
24 the rebuttal testimony for Mario Hurtado for
25 March 3, 2022.

1 [Exhibit Number 2 was marked for
2 identification.]

3 MR. SEILHAMER: Exhibit Number 3 is
4 the rebuttal for Mario Hurtado, April 27, 2022.

5 [Exhibit Number 3 was marked for
6 identification.]

7 MR. SEILHAMER: Exhibit Number 4 is
8 rebuttal for Donald Hall.

9 [Exhibit Number 4 was marked for
10 identification.]

11 MR. SEILHAMER: Exhibit Number 5 is
12 rebuttal of Branko Terzic.

13 [Exhibit Number 5 was marked for
14 identification.]

15 MR. SEILHAMER: Exhibit Number 6 is
16 rebuttal, Juan Lara.

17 [Exhibit Number 6 was marked for
18 identification.]

19 MR. SEILHAMER: Exhibit Number 7 is
20 testimony for Agustín Irizarry, November 17, 2021.

21 [Exhibit Number 7 was marked for
22 identification.]

23 MR. SEILHAMER: Exhibit Number 8 is
24 testimony for José Alameda.

25 [Exhibit Number 8 was marked for

1 identification.]

2 MR. SEILHAMER: And Exhibit Number 9
3 is testimony for Agustín Irizarry, March 22, 2022.

4 [Exhibit Number 9 was marked for
5 identification.]

6 MR. SEILHAMER: With that being said,
7 then we are going to proceed to take the oath of all
8 of the witnesses for the morning panel and we are
9 also going to include the court reporter, the
10 hearing reporter, Mr. Dennis Zambataro, to take oath
11 at this time.

12 [DENNIS ZAMBATARO Court Reporter, was first duly
13 sworn by the Hearing]

14 MR. SEILHAMER: Do you affirm that
15 the testimony that you will provide today is true,
16 correct and based on your own and personal knowledge
17 and that to the best of your understanding, none of
18 the information you will provide in today's hearing
19 is misleading or untruthful.

20 [MARIO HURTADO, JUAN LARA, DONALD
21 HALL and BRANKO TERZIC for LUMA and AGUSTÍN IRIZARRY
22 RIVERA and JOSÉ ALAMEDA for LECO were first duly
23 sworn by the Hearing Officer and Notary Public
24 Dennis Seilhamer:
25

1 [All witnesses responded
2 affirmatively.]

3 MR. SEILHAMER: Let the record
4 reflect that all witnesses answered in the
5 affirmative.

6 As previously stated, then, we are
7 going to let the consultants for the Bureau start
8 their questions to the witnesses.

9 MS. MERCADO: This is Margarita
10 Mercado for LUMA, if I may.

11 MR. SEILHAMER: Yeah.

12 MS. MERCADO: I have two housekeeping
13 matters that I would like to address.

14 First, to confirm that live
15 translation, if a witness testifies or questions are
16 asked in Spanish, to confirm that all in the room
17 will be able to hear the live translation in the
18 language of the proceedings, which is English.

19 MR. SEILHAMER: Well, if someone has
20 a problem with one of the languages they should
21 request at this time the headphones so they have
22 them available.

23 So if there's someone in the room --

24 MS. MERCADO: Yes, so we have two
25 native -- three -- two native English speakers.

1 MR. SEILHAMER: English speaking. So
2 we would need the translation in Spanish.

3 If we can request two hearings for
4 the witnesses.

5 MS. MERCADO: And to clarify, then,
6 the record will be the official record both in
7 Spanish and English if someone speaks in Spanish?
8 It's just for the matter of the record how it's
9 going to be reflected.

10 MR. SEILHAMER: Well, the hearing is
11 going to be in English. If someone speaks in
12 Spanish, you know, it's on the record at that
13 precise moment --

14 MS. MERCADO: Yeah.

15 MR. SEILHAMER: -- so that testimony,
16 there's not much we can do. We'll have the
17 translation and the hearings in English so you can
18 go over it. But once he's testified in a language,
19 it's there in the record.

20 MS. MERCADO: Okay. Yeah.

21 So, since the ruling was that the --
22 we understood that the official record would be
23 fully in English and that there would be
24 translations as needed for all -- to make sure we
25 understand --

1 MR. SEILHAMER: Correct. But the
2 problem is that we don't have -- unless I'm not
3 aware, unless LUMA has a translator, if you guys
4 have a translator that was approved and then once he
5 testifies in Spanish, that will be translated in
6 English, then that could have been the case.

7 MS. MERCADO: But we asked about this
8 and since the ruling was that it was in English, we
9 thought that the rule would be live translation to
10 English.

11 MR. SEILHAMER: Well, there's going
12 to be the streaming in English, so they are going to
13 have access to what's being said in the other
14 language. So...

15 MS. MERCADO: Okay.

16 COMMISSIONER MATEO: The interpreter
17 that is being used by the Bureau for the use of the
18 channel, is going to be switching from English to
19 Spanish and back, depending on who is asking
20 questions.

21 So people who need translation need
22 to have the headset in order for that to work. And
23 the audio is going to be switching from language to
24 language.

25 MS. MERCADO: Okay.

1 COMMISSIONER MATEO: So today we
2 don't have two channels, one in Spanish and one in
3 English. He is switching from one language to the
4 other.

5 MS. MERCADO: Can we request an extra
6 set of headphones for our table?

7 MR. SEILHAMER: You have -- right
8 there, you have one.

9 MS. MERCADO: Thank you. Okay.

10 MR. VAZQUEZ: We will be requesting
11 also one set of headphones.

12 UNIDENTIFIED SPEAKER: Me too.

13 COMMISSIONER MATEO: They were
14 available at the entrance and you should have
15 requested them. So go, please, to the entrance and
16 sign for them.

17 MR. SEILHAMER: So let's take a
18 two-minute recess and then we'll get back to
19 whatever -- other housekeeping issues that are
20 pending.

21 [Whereupon, a recess transpired from 9:56
22 a.m. until 9:59 a.m.]

23 MR. SEILHAMER: Any other issues? I
24 don't know if you were finished.

25 MS. MERCADO: Yes, I have.

1 Again, Margarita Mercado for LUMA and
2 good morning to all.

3 The other housekeeping matter is we
4 have the protocol that the Energy Bureau issued on
5 January 30, 2023, and it's just to clarify
6 Subsection 7, Item 7 and 8 on the documents that the
7 witnesses may have with them while testifying.

8 We understand that both Items 7 and 8
9 provide that witnesses should not have other
10 documents, testimonies with them.

11 On behalf of LUMA, we're okay with
12 witnesses taking notes in blank legal pads. But to
13 clarify, that no documents -- should be no other
14 documents other than the exhibits should be on the
15 table.

16 MR. SEILHAMER: And I don't have it
17 with me right now, but based on your read, it's
18 pretty straightforward. So, yeah, other than the
19 legal pads to, you know, take notes, that's the
20 ruling.

21 MS. MERCADO: Okay. So we would ask
22 then that the witnesses remove documents from the
23 tables.

24 MR. SEILHAMER: If there are any
25 documents on table, please --

1 COMMISSIONER MATEO: Yeah, you
2 shouldn't have anything that would help you testify
3 except the exhibits that the person asking you the
4 questions is going to make reference to, and the
5 notepads.

6 MS. MERCADO: Thank you.

7 A then the final matter from LUMA,
8 regarding the order of the witnesses, we do
9 understand that the Energy Bureau has discretion on
10 the order.

11 Our proposal is that to facilitate
12 questioning for all counsels and for consultants, if
13 it's possible within the order that the Energy
14 Bureau and consultants want to follow with the -- in
15 the panel, to finish with one witness and then
16 examinations for all the intervenors and for LUMA to
17 be conducted per witness.

18 And we do understand that you could
19 recall or re-ask a question to a prior witness, but
20 I think it would be -- it would help us as attorneys
21 if we conduct examinations by witness rather than
22 doing an examination after a few hours of testimony.

23 MR. SEILHAMER: Like we mentioned in
24 our opening statements, our consultants are going to
25 start their questioning to witnesses and once they

1 are done, we are going to go to the other
2 intervenors.

3 Obviously, if we have to ask
4 questions later on, we'll call back the witnesses.
5 But that's the order, basically.

6 We're not going to start asking
7 questions, LUMA, and then jump to intervenors and
8 then come back to LUMA. So there's going to be that
9 type of order in terms of the questions.

10 MS. MERCADO: Okay. And sorry if I
11 misspoke. Our proposal is you can do LUMA first and
12 then intervenors, but one witness, all questioning,
13 finishing with that witness, and then move to the
14 next witness.

15 So in the order that you choose, but
16 witness by witness.

17 MR. SEILHAMER: That would alter the
18 preparation of our consultants. The consultants
19 will ask questions and try to be specific, but they
20 already have a preparation.

21 And it may happen that a question
22 that will be asked will be to a different one. They
23 will try to adhere to that request as much as
24 possible.

25 But there will be times that another

1 witness within the panel would need to answer a
2 question and that's out of my control.

3 MS. MERCADO: Okay.

4 COMMISSIONER MATEO: The convenience
5 and the purpose and intent of having a panel was to
6 talk with all of the witnesses on the same topic at
7 that time rather than having to call them at
8 different times during the hearing.

9 So like the hearing examiner, to the
10 extent possible, will have some latitude. But
11 that's why they are seated in a panel rather than
12 calling each individually.

13 MS. MERCADO: Noted.

14 And then just one final request from
15 LUMA or proposing a concern that we have. As you
16 know, at least two of LUMA's witnesses, Dr. Juan
17 Lara and Branko Terzic are rebuttal witness. That
18 means that they provided testimony in response to
19 the testimonies that were filed first by experts for
20 LECO, Irizarry and Alameda.

21 So we propose that a better course of
22 proceedings would be for the LECO witnesses to be
23 questioned first and then the LUMA witnesses, who
24 are here to rebut their position then have a second
25 turn, so for them to go first.

1 MR. SEILHAMER: And the answer will
2 be same: Our consultants have done preparation and
3 they already have a game plan.

4 Basically, they will try to adhere to
5 your position as much as they can, but if at some
6 point, they need to point out something about the
7 rebuttal, they will be allowed to do so.

8 MS. MERCADO: Okay.

9 MR. SEILHAMER: Can we have a
10 two-minute recess?

11 MS. MERCADO: Yes.

12 [Whereupon, a recess transpired from 10:05
13 a.m. until 10:08 a.m.]

14 MR. SEILHAMER: We're ready, then, to
15 start with questions for the witnesses. Please, I'm
16 going to -- and this might sound repetitive and it
17 will continue on through the course of the day --
18 please, every time one of the witnesses speak, for
19 the record, just identify yourself so we can in the
20 transcript know who is actually speaking.

21 So I would appreciate that and I know
22 we are going to tend to forget at some point but we
23 at least try to make the effort.

24 With that being said --

25 MS. MERCADO: Sorry to interrupt,

1 Margarita Mercado for LUMA.

2 Just for the ruling on our last
3 request --

4 MR. SEILHAMER: Just as I stated,
5 that we are going to try to adhere to it, but there
6 will be times that our consultants, based on their
7 notes and their line of questioning, they might need
8 to ask questions to one of the witnesses that might
9 be part of the rebuttal, and it will be allowed.
10 But they will try to adhere at first to the direct
11 testimony.

12 MS. MERCADO: Thank you.

13 MR. SEILHAMER: So then we are going
14 to start our questions.

15 Go ahead.

16 MR. GRIFFIN: Good morning. Jay
17 Griffin, consultant for the Energy Bureau.

18 MARIO HURTADO,
19 having been previously duly sworn, was examined and
20 testified as follows:

21 EXAMINATION

22 BY MR. GRIFFIN:

23 Q. My first set of questions are for
24 Mr. Hurtado.

25 Good morning, Mr. Hurtado. Just, could

1 **you state your name and position for the record.**

2 A. Good morning. My name is Mario Hurtado,
3 I'm chief regulatory officer for LUMA.

4 **Q. Could you state your role as a LUMA**
5 **witness in relation to the others in submitting your**
6 **testimony?**

7 A. Yes. I'm appearing on behalf of LUMA and
8 my testimony covers the general principles behind
9 the performance metrics and some rebuttal and
10 specific points brought by intervenor witnesses.

11 **Q. Great. Thank you.**

12 **Can you explain your overall role in**
13 **developing LUMA's proposals for Annex IX.**

14 A. Yes. For the record, my overall role was
15 as vice president in charge of regulatory. And as
16 regulatory officer, I oversaw the preparation of the
17 materials and participated in some of the work to
18 put together the proposed performance metrics during
19 the front-end transition and subsequently in the
20 different stages of the -- this case.

21 **Q. Thank you very much for that.**

22 **And I'm going to move now to your direct**
23 **testimony, I have some questions there.**

24 **The first one, the Witness section, the**
25 **lines 80 to 115. And this is in relation to the**

1 question to describe the process --

2 [Reporter requests clarification.]

3 MR. GRIFFIN: So you want me to
4 repeat the question?

5 BY MR. GRIFFIN:

6 Q. I'm referencing his testimony and the
7 questions in the testimony itself. It's lines 80
8 and 81.

9 MS. MERCADO: This is Margarita
10 Mercado for LUMA. I would ask that -- I understand
11 that the consultant is referring not Exhibit 1.

12 If the exhibit could be shown to the
13 witness since there's a question on the particular
14 lines from the testimony.

15 MR. GRIFFIN: Yeah.

16 MS. MERCADO: Thank you.

17 THE WITNESS: While he does that,
18 you're referring to the initial testimony,
19 August 2021?

20 MR. GRIFFIN: Correct. Exhibit 1.

21 MS. MERCADO: Excellent.

22 MR. GRIFFIN: And I'm going to ask
23 about your Exhibits 1 and 2, if it's available.

24 BY MR. GRIFFIN:

25 Q. I'm referring to the section lines 80 to

1 115, if you want to open up to that.

2 A. [Witness complies.]

3 Q. So the question that you were asked here,
4 this is for the court reporter: Describe the
5 process followed to revise Annex IX to LUMA -- to
6 submit with LUMA's performance metrics targets.

7 So the question that I have for you in
8 here: Can you state for the record how many times
9 LUMA submitted Annex IX?

10 A. To whom?

11 Q. To the Bureau. I believe there have been
12 multiple versions of revisions, just so we're clear.

13 A. So to my understanding, there are three
14 main submittals. The first one is in February of
15 2021. The second one is September/October of 2021
16 after the Bureau opened this current docket case.

17 And the third one was upon following a
18 resolution and order from the Bureau to add metrics.

19 We submitted a third revised Annex IX in
20 October of 2022.

21 Q. Okay. Great. Thanks. That was the
22 information that I was looking for. Yeah, there are
23 three versions that have been submitted.

24 I want to ask you about the revisions --
25 LUMA's revisions in submitting the second one, so

1 the second filing.

2 Can you summarize to your knowledge what
3 you remember of the overall revisions to the revised
4 Annex IX with the second version?

5 MS. MERCADO: This is Margarita
6 Mercado for LUMA. And since the document is not
7 being shown to the witness, I just want to clarify
8 that we would like the document to be submitted for
9 consideration, but I understand --

10 MR. GRIFFIN: I don't have a problem
11 if he wants to refer to the document. I was looking
12 for a general summary with the understanding that he
13 is the overall lead for the company in developing
14 and submitting the proposal.

15 If he wants to refer to it, as
16 needed, but just the general understanding of what
17 was changed.

18 MS. MERCADO: For the record, it
19 hasn't been marked as an identification for any of
20 the parties. I don't have an issue with him
21 answering it. I just want to be sure that it's in
22 the record. But it hasn't been marked for the
23 purposes of the hearing.

24 THE WITNESS: Mario Hurtado, for
25 record.

1 I believe that I covered this in my
2 testimony already and I talked about what the
3 process was for the first submission and then when
4 the second submission was made.

5 BY MR. GRIFFIN:

6 Q. Okay. Did you revise the underlying --
7 the methodology to develop the targets in the first
8 version?

9 A. Mario Hurtado, for the record.

10 I would have to -- to answer fully, I
11 would have to go through each one and -- but when I
12 think about it, I don't think that we changed any
13 methodology.

14 There were some updates between the first
15 submission and the second one. Primarily there was
16 some -- my recollection is that there was some
17 additional data because of the passage of time.

18 So at the conclusion of the front-end
19 transition period we had a bit more data than in
20 November of 2020. And so there was some additional
21 data that was added.

22 At this time, I don't recall a change in
23 methodology.

24 Q. Okay. So what you're saying -- off the
25 top -- your general knowledge, you're not able to

1 provide a summary to us of the changes that were
2 made of that version?

3 A. No.

4 Q. Okay. Let's move to your testimony where
5 you speak about more specifically lines 108 to 115.

6 A [Witness complies.]

7 Q. This is what you are just alluding to.
8 This is on the topic of actual revisions to the
9 baselines.

10 So we look at citation lines 108 to 115.
11 So I think this is what you were just alluding to.
12 So can you just, again, provide for us your
13 observation here and your basis for making those
14 revisions to the baselines for the metrics.

15 A. Certainly. Mario Hurtado for the record.

16 The revisions were done based on
17 additional data and additional observations because
18 the work that was done during the front-end
19 transition and the committee that was set up to do
20 that during the front-end transition and then later
21 to present and discuss with the P3 Authority, over
22 the passage of time, there was additional data that
23 was available to the team, in order to provide
24 additional backing to the baselines, primarily the
25 targets to make sure that there wasn't anything that

1 needed to be changed because of the additional data
2 or if there was, there was some slight changes.

3 Q. Okay. Thank you for that.

4 So to summarize your -- after your
5 front-end transmission period, you had additional
6 data and experience and the revised submission
7 reflected that experience.

8 A. For the record, Mario Hurtado.

9 Yes, I mean, in general, the data -- a lot
10 of the data that our team found from -- from PREPA
11 had issues in terms of accuracy, precision, quality
12 of the data in general terms, and then the method of
13 recording that data.

14 So over time, we were able to basically
15 continue our work to try to provide the best data we
16 could on those specific metrics.

17 Q. Okay. Thank you for that.

18 I'm going to move on a little bit further
19 down that page in the testimony, lines 122 to 130.

20 A [Witness complies.]

21 Q. And here you talk about -- the links
22 between the performance metrics and the improvement
23 programs.

24 So can you explain to me -- I mean my
25 understanding is that through the front-end

1 transition period, LUMA developed and submitted a
2 series of improvement programs -- I'm just trying to
3 better understand the link between those and any
4 revised baselines and targets that you submitted
5 with that second revision.

6 A. Well -- Mario Hurtado.

7 I don't know that it's specific to whether
8 there was a revision or not. I mean, the process
9 during the front-end transition that LUMA went
10 through involved doing a fairly comprehensive long
11 gap assessment, the state of the utility in terms of
12 the condition of assets as well as different utility
13 processes and business processes that were going to
14 be taken over or were going to become the
15 responsibility of LUMA, on upcoming operations.

16 And so as part of that process, and as a
17 requirement of the T&D OMA, the operating
18 maintenance agreement, between LUMA, PREPA and the
19 P3 Authority, LUMA proposed specific programs to
20 address many of the gaps that were found during the
21 assessment period.

22 So these programs worked towards, in
23 general, going from where the state of things were
24 at the time of takeover, speaking in general terms,
25 and then making improvements, especially to those

1 programs that were below industry standards to bring
2 them initially up to industry standards within a
3 given period of time by carrying out certain
4 activities and then to go beyond that.

5 And so in those areas that the performance
6 metrics addressed, some of those areas also have
7 specific improvement programs.

8 So in general, the targets for the
9 improvement -- for the performance metrics are tied
10 to the resources, the budget and the timing of a
11 program to make those improvements.

12 And so there's some coincidence between
13 specific improvement programs and specific
14 performance metrics and in general the progress --
15 or expected progress based on the targets has to do
16 with the expected progression along those programs.

17 Q. Okay. I think that's helpful.

18 I'm just trying to understand, you said
19 some -- I think, the term was some coincidence
20 between the execution of those programs and the
21 performance. I guess I'm trying to basically best
22 understand how tightly those are linked.

23 Are the revised targets explicitly -- you
24 know, the percentage improvements for each of these
25 tied explicitly directly to the implementation of

1 those programs or more loosely, I think you said,
2 coincident?

3 A. Mario Hurtado.

4 I'm not sure I can comment on what you
5 mean by "loosely."

6 So the programs are set up to reach
7 certain goals and to make certain improvements.

8 The metrics -- and when the different team
9 members looked at the metrics, they looked at the
10 baseline, current state of the utility, or the
11 current state of the business processes involved in
12 that, and then what -- based on the budgets that
13 were submitted and eventually approved, what kind of
14 progress would be made.

15 Much of that is contained in the system
16 remediation plan for which there was a specific
17 docket and then in the initial budgets for which
18 there was a specific docket.

19 And so that managers or responsible
20 parties within LUMA that needed to carry out those
21 plans and set the targets for the different areas,
22 looked at how those -- the progression -- you know,
23 how things would progress or how different parts of
24 the implementation would take place and what impact
25 that would have and how that would affect the target

1 actual metric, right?

2 So they all looked at what budget is
3 available, what's my plan, and how am I going to
4 make the changes that are going to be reflected in
5 different results from where we're starting.

6 Q. Okay. So if I follow that, I think that's
7 consistent with your testimony.

8 I think what I want to ask you about is,
9 that identifies some inconsistencies there
10 potentially with some of your other witnesses.

11 So I think I want to ask for -- I want to
12 compare what you had here with testimony from one of
13 your witness, Don Cortez' direct testimony, line 358
14 where he states:

15 "Since no reliable historical data exists
16 that indicates what degree of T&D reliability
17 improvement can generally be expected from
18 specific level of funds invested in Puerto
19 Rico."

20 So I'm trying to understand, I think what
21 I hear you saying is you identified programs, and
22 they are tied to a certain level of improvement, and
23 then other times there are citations saying: We
24 can't really make a very strong direct link there.

25 I'm just trying to understand on balance

1 how you've managed that through the development of
2 the performance targets.

3 MS. MERCADO: Margarita Mercado for
4 LUMA.

5 I would ask that would you please
6 clarify the precise question? There were a few
7 statements referencing also statements from another
8 witness, and what would be the precise question?
9 And if he could be shown the other witness statement
10 since it's not one that he subscribed under oath.

11 MR. SEILHAMER: We can show him the
12 other witness, but the witness was ready to answer.

13 MR. GRIFFIN: I can show him the
14 citation.

15 THE WITNESS: I would like to see the
16 testimony that I'm supposed to be commenting on.

17 MR. GRIFFIN: I have a quote from it.
18 It hasn't been entered --

19 MR. SEILHAMER: Can he read the quote
20 or do we need to see the exhibit?

21 MS. MERCADO: Could you identify
22 which, so I can also follow?

23 MR. GRIFFIN: Don Cortez direct
24 testimony starting at line 358.

25 MS. MERCADO: Okay. Give me a

1 minute.

2 MR. HURTADO: It's not numbered here
3 yet.

4 I'm sorry. Is it one of these that
5 is in this binder? What's the number of the
6 exhibit?

7 MR. GRIFFIN: It hasn't been entered
8 yet. But it's one of your witnesses.

9 Sixty-seven.

10 MR. SEILHAMER: Just -- I want to
11 clarify, even though it hasn't been -- we were doing
12 housekeeping at the beginning of the hearing -- and
13 even though we have marked 1 to 9, it doesn't mean
14 that the rest of the direct testimonies have already
15 been agreed to be marked as exhibit.

16 The reason we don't have it is
17 because we came to that agreement at the beginning
18 of the meeting and we didn't have time to mark all
19 30.

20 So in order to expedite the morning
21 session, we did 1 to 9, but that testimony has been
22 admitted as an exhibit.

23 So just to clarify that aspect of
24 the -- so --

25 MR. HURTADO: I would like to look at

1 the testimony, if you're asking me to comment on it.

2 MR. GRIFFIN: Okay. I can restate
3 the question.

4 MS. MERCADO: I have my copy.

5 MR. SEILHAMER: He has -- if it's a
6 LUMA testimony, he has a copy of all the --

7 MS. MERCADO: If I may, I may show
8 him.

9 MR. SEILHAMER: We can identify the
10 specific testimony.

11 MR. HURTADO: Is it August 2021
12 testimony?

13 MR. GRIFFIN: Continuing the direct
14 testimony.

15 MR. SEILHAMER: Just direct
16 testimony.

17 MR. HURTADO: Okay, I have it now.

18 MR. GRIFFIN: You have it available,
19 line 358?

20 MR. SEILHAMER: Line 358.

21 COMMISSIONER MATEO: We have Exhibits
22 1 through 9 and this one has been made reference to?

23 MR. SEILHAMER: Okay. We are going
24 to mark, then, as Exhibit Number 10 the direct
25 testimony. So we are going to mark that as Exhibit

1 Number 10.

2 [Exhibit Number 10 was marked for
3 identification.]

4 THE WITNESS: I'm there.

5 [Witness reviews document.]

6 BY MR. GRIFFIN:

7 Q. You've read it?

8 A. I have.

9 Q. How do I reconcile that statement with
10 your statement that the targets are linked to the
11 programs?

12 A. Mario Hurtado for the record.

13 So Mr. Cortez is speaking here about
14 looking at the data that was available, first
15 establishing the baselines, and the issues around
16 that and some of the challenges in setting the
17 targets based on incomplete data and the utility
18 operation, which wasn't being run at the time by
19 LUMA.

20 So I think that that's the context for
21 that comment.

22 Q. So how --

23 A. I don't -- I think that it's still tied to
24 the programs and how the programs are going to
25 progress. The fact that there was data that was

1 difficult and that had issues I think is
2 well-established in the record. And we've had
3 a lot of -- there's a fair amount of discussion on
4 that.

5 I don't see how that changes the fact that
6 you tie a program to specific investments and
7 activities that you're going to carry out and that's
8 how you think about what the correct targets or what
9 the attainable targets are within a given period of
10 time.

11 There's a degree of uncertainty or
12 difficulty in terms of the data, and I think that
13 that's something that we -- it's also established in
14 the testimony.

15 **Q. Okay. So I think -- what I'm trying to**
16 **really get a handle on is your proposed targets,**
17 **how -- I mean, how -- let me ask it this way:**

18 **If those programs are delayed, if they end**
19 **up costing more, what would we expect -- how would**
20 **we expect that to affect the targets that you had**
21 **put forward?**

22 **MS. MERCADO:** I just want to state
23 for the record, it's a hypothetical question and not
24 directed at a particular program, so I have an
25 objection.

1 MR. SEILHAMER: Denied. We are going
2 to allow the question.

3 MR. GRIFFIN: I can ask a more
4 specific question.

5 BY MR. GRIFFIN:

6 Q. The T&D reliabilities are particularly
7 focused on the system remediation plan; is that
8 correct, implementation of your remediation plans --

9 A. No. The consumer remediation plan covers
10 wide areas. Reliability is certainly one of them.

11 Q. So if the reliability portion of it was
12 delayed, how is that going to affect your
13 performance?

14 A. Well, I can talk about in general. If a
15 program takes longer and the steps that you're
16 taking to effect the changes that produce the result
17 are delayed, that would change the attainment -- all
18 other things being equal -- that would change the
19 attainment of that target.

20 But, you know, one would have to see. But
21 I think if you look at our revised Annex IX, I
22 believe, or if not it's in other reports -- we have
23 several presentations where we talk about the
24 specific programs and how the programs affect the
25 attainment of the metrics, the targets.

1 **Q.** Okay. And then if I come back to the
2 proposal in the second revision, what's the
3 assumption on the degree of completion of those
4 plans in each of the three target years?

5 MS. MERCADO: This is Margarita
6 Mercado.

7 Could you clarify what you mean by
8 the second revision? Was it the October time frame?

9 MR. GRIFFIN: Actually, the second
10 submission, the first revised Annex IX.

11 THE WITNESS: Can you repeat the
12 question, please.

13 BY MR. GRIFFIN:

14 **Q.** For the targets that you proposed in that
15 filing, what's the level of assumption of
16 implementation of these remediation plans?

17 A. I'm sorry, what did you mean by "level of
18 assumption"?

19 **Q.** The level of implementation, sorry.

20 A. Mario Hurtado for the record.

21 The targets were established assuming that
22 the budgets that were presented and the programs
23 that were presented would be approved and would be
24 carried. That's clearly the assumption.

25 **Q.** Okay. And then time's gone on, where do

1 **you stand relative to that submission now?**

2 A. What do you mean? Like what specifically
3 are you talking about?

4 **Q. So that was a year ago.**

5 A. More than a year ago.

6 **Q. Yeah. In general terms, where do you**
7 **stand relative to what you proposed at that point?**

8 A. Okay. I need a more specific question to
9 be able to answer your -- you're just asking -- I'm
10 sorry, I'm not --

11 **Q. In your proposed programs that were**
12 **underlying that submission, are you on track with**
13 **what you submitted then, generally behind, or going**
14 **faster?**

15 A. I wouldn't make a general statement
16 overall because it depends on each metric.

17 Overall, LUMA has been performing, in
18 our estimation, well. There are some areas in which
19 we've done very well. There are some areas in which
20 we have been able to reach the targets. There have
21 been some areas we have been below target.

22 **Q. Can you talk about -- I mean there are**
23 **three broad categories. Can you summarize by the**
24 **three different categories in the submission?**

25 A. Well, in general --

1 MS. MERCADO: Margarita Mercado for
2 the record.

3 I just want to clarify: Is the
4 question about current LUMA performance?
5 Particularly at what time period?

6 MR. GRIFFIN: I'm talking about --
7 I'm asking about the extent of the implementation of
8 the plans that were underlying the target submitted
9 with the second revision. And since that was
10 almost, as you said, more than a year ago, where
11 does that stand? Where do you stand today?

12 MS. MERCADO: I just want to -- for
13 the record, I don't want to keep interrupting. I
14 would just lay out LUMA's legal position, that
15 current performance in LUMA is being tracked in a
16 separate proceeding, that the performance of PREPA,
17 in my 2019007, and we do understand that although
18 that information is available for the Bureau and for
19 the public as well, and it's available for review,
20 it's not in itself a subject of the controversies or
21 issues that have been laid out to be adjudicated
22 precisely in these proceedings where it has been
23 laid out.

24 The filings have certain dates,
25 August/September 2021 and in October 2022, we know

1 that time has passed and that LUMA has been
2 operating.

3 But it's our request and position
4 that a particular adjudication of performance and
5 some other metrics, it's not what we understand are
6 the orders that the Energy Bureau issued on the
7 matters to be adjudicated and LUMA does have
8 reservations or arguments on due process and fair
9 notice of whether current performance and
10 performance in fiscal year 2022, and thereafter,
11 service commencement will be a separate matter to
12 adjudicate and we would respectfully oppose that.

13 COMMISSIONER MATEO: Attorney
14 Mercado, that's not what our consultant is asking
15 about. I think that he has been very clear.

16 We're not going through the
17 performance of 2022 here. He's asking if your
18 assumptions used for the targets that you're
19 proposing are still valid a year after.

20 MS. MERCADO: Okay. That's fine.

21 COMMISSIONER MATEO: Because time has
22 elapsed and things may change. That's what he's
23 talking about.

24 No one is speaking of LUMA's past
25 performance or any specific metric. And I think

1 he's been very accommodating to your witness. This
2 is a very informal process; it's an administrative
3 process. This is not a penal case or a criminal
4 case.

5 So I think that the witness should
6 answer. The question has been asked three different
7 ways. And we're still struggling to get an answer.

8 And there's nothing confusing or out
9 of the scope of this case in that question.

10 MS. MERCADO: Thank you for the
11 clarification. I didn't raise an argument on
12 confidentiality. But thank you for the
13 clarification on the scope.

14 MR. SEILHAMER: The witness may
15 answer the question.

16 THE WITNESS: Could you repeat your
17 question, please. I'm not -- I mean, it's a very
18 broad.

19 COMMISSIONER MATEO: It's clear that
20 you need to repeat the question, so --

21 BY MR. GRIFFIN:

22 Q. For the performance targets that were
23 submitted in the second submission, I think we've
24 established it was in your testimony that there were
25 a set of programs in place that were assumed to

1 underlie that.

2 And what I asked was: Generally, are you
3 ahead of progress on that, on pace or behind?

4 A. I wouldn't be -- I'm sorry, go ahead.

5 Q. It would be even better if you could cite
6 specific topics and say if you would like more
7 specificity, if you could cite the different areas
8 you were responsible for and provide an answer.

9 A. Yeah, I think that if you want specific
10 answers on programs, those people that are in charge
11 of those programs should be talking about that.

12 So I would ask that if that's going to be
13 something you should cover with the people that are
14 in charge of those programs and can speak to those
15 programs and those metrics specifically.

16 In general, I think we have been able to
17 make substantial progress; in some cases things have
18 worked out a bit differently than we expected. I
19 think that's clear from our quarterly reports and
20 other reports that LUMA has put on the record. And
21 in some areas things have been better or we have
22 been able to make progress more quickly.

23 But I'm not comfortable making a broad,
24 general statement about -- that encompasses all of
25 our metrics and all of our programs.

1 **Q. Okay. But you're responsible for all of**
2 **it.**

3 A. No, I'm not. I'm responsible for the
4 preparation of the documents and submission to the
5 regulatory -- for the Bureau. And responsible for,
6 in general, about the performance metric related to
7 any of my testimony.

8 But I'm not responsible for the attainment
9 of all of the metrics and the carrying out of all of
10 the different improvement programs.

11 **Q. Okay. But do the leads of those different**
12 **programs report to you on their progress?**

13 A. Mario Hurtado for the record.

14 The different programs are tracked,
15 especially -- and they are regularly reported on, on
16 those that are coincident with the metrics that are
17 reported in the 0007 docket and those are public and
18 are on the record.

19 **Q. Okay. Let's move on to the next --**

20 COMMISSIONER MATEO: This is
21 Commissioner Mateo for the record --

22 MR. SEILHAMER: Can we have a
23 two-minute recess?

24 [Whereupon, a recess transpired from 10:39
25 a.m. until 10:42 a.m.]

1 MR. SEILHAMER: We're ready to resume
2 the hearing.

3 MR. GRIFFIN: Thank you, Mr. Hurtado.
4 BY MR. GRIFFIN:

5 Q. I'm going to go right to point here. You
6 submitted your targets with the second revision in
7 what year?

8 A. 2021 -- Mario Hurtado for the record,
9 2021.

10 Q. As you said, they were based on the
11 programs that you were projecting at the time?

12 A. That's what it says, yes.

13 Q. Can the Bureau still use that information
14 to set the targets?

15 A. I think that -- Mario Hurtado for the
16 record.

17 I think that there are a number of things
18 that are at issue. One is what are the metrics that
19 LUMA would be measured by.

20 Q. Well, your proposal. We've looking at
21 what you proposed.

22 A. If you let me finish.

23 And so, right, that still has to be
24 determined. And the targets that were set are based
25 on that data. So there's a direct relationship

1 between the data that was there, the programs, and
2 the targets now.

3 As I said in my testimony, and as it's in
4 Annex IX, we think it's appropriate with the passage
5 of time and new information to be able to submit new
6 information to the Bureau and to inform them to set
7 appropriate targets at the appropriate time.

8 In the context of where we are today,
9 a lot of time has passed. So there's much more
10 information. And there's also uncertainty as to
11 when these metrics will start to apply to LUMA,
12 because the key condition precedent for that is
13 PREPA exiting Title 3, in addition to the approval
14 of the metrics themselves.

15 So LUMA would propose that there be a
16 determination on which metrics are going to be
17 applied to LUMA, and that when there's more
18 information about the exit from Title 3 or at least
19 closer to what that date is, LUMA can provide
20 updated data.

21 Because certainly there's a lot of time
22 that's passed and there's a lot of information so
23 that the Bureau can take that into account and
24 decide whether these targets should be adjusted or
25 the baseline should be adjusted based on the data

1 being presented.

2 COMMISSIONER MATEO: This is
3 Commissioner Mateo, for the record.

4 Are the assumptions good or not today
5 compared to when you submitted them?

6 Aside from the fact of when they are
7 going to apply, if we have to make a decision today,
8 are your assumptions good or have they changed
9 significantly so that they are not good to make a
10 decision?

11 THE WITNESS: Commissioner, Mario
12 Hurtado for the record.

13 I can't make a broad statement about
14 all of the assumptions. The assumptions that we
15 utilize for these targets, we're comfortable that
16 these targets are consistent with that information
17 and the programs that we had at the time to put
18 together.

19 We think these are still the metrics
20 that should be pursued. And we think that in terms
21 of the actual targets, that there should be an
22 opportunity to update and provide further
23 information to the Bureau, once a determination has
24 been made on what the metrics are that will be
25 applied to LUMA.

1 And we think that that's appropriate
2 and it's in line with Regulation 9137 and it's also
3 in line with Annex IX and the ability to provide
4 further information. That's --

5 COMMISSIONER MATEO: When you talk
6 about updating, do you mean progressively during the
7 years or do you mean that when the Bureau makes a
8 decision, then you're going to submit updated
9 information?

10 What are you referring to?

11 THE WITNESS: What I'm referring to
12 in this particular case, Commissioner -- Mario
13 Hurtado for the record -- excuse me, is that once we
14 have a determination of what the metrics are that
15 are going to be applied to LUMA, and there is a
16 higher degree of certainty about when PREPA will
17 exit Title 3, at that point, we can bring forth all
18 of the more updated data and be able to inform the
19 Bureau at that time to make sure that there doesn't
20 need to be or whether there needs to be any
21 adjustments in the targets or the baselines based on
22 the updated data.

23 COMMISSIONER MATEO: This is a
24 adjudicative procedure. What you mean is that we
25 need to open the procedure again and go through this

1 process again?

2 THE WITNESS: Mario Hurtado for
3 record.

4 No. It would be simply -- I believe
5 Regulation 9137, Annex IX, provides for the ability
6 to update data and for the Bureau to take that into
7 account.

8 So we're not asking to open all of
9 the issues. We're asking -- we think it's
10 appropriate for there to be an opportunity to update
11 the data. We think it would benefit the Bureau in
12 consideration of what the appropriate baseline and
13 the targets are.

14 We recognize that time has passed and
15 that that's something that would be appropriate once
16 we know when these metrics would be applied, and
17 then it would be the benefit all of that data.

18 COMMISSIONER MATEO: Okay. Thank
19 you.

20 MR. HURTADO: Yes, ma'am.

21 BY MR. GRIFFIN:

22 Q. I want to follow up. If I follow your --
23 the Bureau did make a determination on the metrics,
24 how long would you anticipate it to take to do that
25 updating under the terms that you're talking about?

1 A. Mario Hurtado for the record.

2 We have to look specifically, but I would
3 guess it would take a couple of months.

4 Q. A couple months.

5 And then what -- how would you address the
6 timing of the exit from bankruptcy? You said that
7 was a key factor that may influence.

8 So in that the time frame, may that
9 increase time or does it need to happen before or
10 after?

11 A. Mario Hurtado for the record.

12 My reference to the exit from bankruptcy
13 was that that's the major condition precedent in
14 addition to the establishment of the metrics
15 themselves, to be able to apply the metrics to LUMA.

16 So obviously when that happens indicates a
17 starting point. And there's a legal process
18 underway which is public, and there's a fair amount
19 of information on it in terms of a possible plan of
20 adjustment, or there would be a determination by the
21 court of what that plan will look like, including
22 effective date.

23 And so my understanding of that process is
24 that there will be some visibility about that date
25 sometime before it happens, and so that would be

1 indicative of when.

2 And LUMA would then be able to gather the
3 data up until that point so that the Bureau can have
4 the benefit and all the other parties and
5 stakeholders of updated data and to be able to
6 determine whether there's any adjustments that need
7 to be made to the target, to the baselines.

8 Q. Okay. Thank you. That's been helpful.

9 I'm going to come back to the timing on
10 the initial contracts here. I think that will tie
11 into this a little bit. But that's helpful.

12 I want to move a little bit further down
13 your direct testimony at lines 117 to line 130.

14 A [Witness complies.]

15 Q. Back to Exhibit 1, specifically line 118
16 and 119. You were asked a question:

17 "What are the components of LUMA's
18 proposed metric targets?"

19 A. Um-hmm.

20 Q. And lines 118 and 119, it says:

21 "The proposed baseline target and minimum
22 performance levels for certain performance
23 metrics, key performance metrics, major outage
24 event."

25 I just want to talk about -- I just want

1 to understand that within the targets there are
2 actually tiers as well; is that correct?

3 A. I'm not sure what you are referring to.

4 Q. Well, you have incentive tiers:
5 25 percent, 50 percent, 100, 125, 150; is that
6 correct?

7 A. Yes, that is how it's set up.

8 Q. Okay. That's included as a component for
9 the overall proposal that you have.

10 A. That's part of Annex IX since the time of
11 the RFP, proposals for the private operator.

12 Q. Okay.

13 A. And it continues to be in Annex IX.

14 Q. Can you explain how these work?

15 A. How what works?

16 Q. The different incentive tiers.

17 A. Oh, okay. In general, there are targets
18 that are set up -- well -- if you -- I'll do it from
19 memory.

20 MS. MERCADO: This is Margarita
21 Mercado. We marked that as identification 2031 for
22 LUMA in the October 28, 2022 filing. It's in the
23 record.

24 We're fine if at this time the Bureau
25 wants to consider the ID as an exhibit for the

1 witness to refer to it. We can mark it as Exhibit
2 11.

3 MR. GRIFFIN: Okay. This is your
4 Annex IX?

5 MS. MERCADO: Yes, revised as of
6 October.

7 MR. SEILHAMER: We are going to mark
8 it as Exhibit Number 11 and hand a copy to
9 Mr. Hurtado.

10 [Exhibit Number 11 was marked for
11 identification.]

12 MR. HURTADO: So each of the metrics,
13 you know, have a baseline, a target minimum
14 threshold, and then there's attainment levels, that
15 you called them tiers, based on whether 100 percent
16 of the target is met, 25 percent, zero, 150 percent.

17 And so depending on the attainment of
18 what the actual result is as compared to that
19 target, then there would be a different amount of
20 base points assigned for the attainment of that
21 metric.

22 BY MR. GRIFFIN:

23 Q. Thank you.

24 A. And that's laid out in Annex IX.

25 Q. Okay. Thank you.

1 And in setting the target values that
2 each -- sorry. I've been using the term "tiers."
3 Do you have a different preferred one?

4 A. No, now I understand what you are
5 referring to.

6 Q. We're on the same page. Okay.

7 So for each of these levels of tiers,
8 levels of attainment, you also identified specific
9 numeric targets that delineate to most of the
10 metrics.

11 Can you explain your overall approach in
12 setting the numeric targets at each of the tiers?

13 A. So in -- Mario Hurtado for the record.

14 In general, and if you had a specific
15 question about a specific metric, then the expert on
16 that metric should really answer that question.

17 But in general, for those metrics that are
18 not binary, because there are certain metrics that
19 are binary, it was a baseline that was established
20 based on the data and the observations that there
21 was a target that was established based on the
22 baseline and then the program, and the term, the
23 three different years and what would be accomplished
24 during that time.

25 And then in general the different levels,

1 it's just a math formula. If it's 50 percent higher
2 than the target, then it's 150; if it's 50 percent
3 lower, then it's the 50 percent.

4 That in general is how it's set up. I
5 believe there might be some targets that have some
6 very specific ways they were set up. But that
7 would -- that's in general how it worked.

8 Q. Okay. And I think you just mentioned
9 this, but I want to just double-check.

10 I believe that you said in your
11 testimony -- you said that this -- the levels of the
12 different tiers here was -- in the RFP for the OMA
13 itself, was based in the OMA.

14 A. Well, Annex IX was part of the -- let me
15 back up. Mario Hurtado for the record.

16 The request for proposals and then
17 that's -- that competitive process had a draft OMA
18 agreement, operation and maintenance agreement, and
19 the Annex IX was part of that. And then when it --
20 the agreement was executed, Annex IX was part of
21 that as well.

22 And then obviously we've talked about the
23 progress that it's gone through during the front-end
24 transition in order to make revisions and then have
25 a submittal to the Energy Bureau.

1 **Q. Okay. Thank you for that.**

2 MR. GRIFFIN: I would like to make
3 reference to these upcoming questions to two
4 exhibits that the Bureau has put forth. One is
5 Regulation 9137. This is the regulation on the
6 performance incentive mechanisms, specifically
7 Section 71 titled, "Relationships for Establishing
8 Performance Incentive Mechanisms" and --

9 MS. MERCADO: Margarita Mercado for
10 the record. I don't think the witness has a copy of
11 that regulation.

12 MR. GRIFFIN: We have it in our
13 binder here. Can we pull it up?

14 The second reference that refers to
15 the opening order of this docket, specifically just
16 five and six where the Bureau itself lays out a
17 number of principles related to the design of the
18 performance metrics in this document.

19 So we have copies of both.

20 MR. SEILHAMER: Just a minute to see
21 if we can identify a copy.

22 MR. GRIFFIN: If we can share it with
23 the witness.

24 MR. MURTHY: We're looking for 7.1.

25 MR. GRIFFIN: It should be 7.1, page

1 14 and 15.

2 MR. MURTHY: Okay, thanks.

3 MR. GRIFFIN: I can share my copy, if
4 you want.

5 MS. MERCADO: Mine is marked so I
6 wouldn't -- that is for different purposes so I
7 can't show you mine.

8 MR. GRIFFIN: Sure.

9 MS. MERCADO: Can you clarify, is it
10 December 23, 2020?

11 MR. GRIFFIN: This is a regulation of
12 the citation for the opening order.

13 MS. MERCADO: Could you clarify --

14 THE WITNESS: Could you clarify the
15 order, what the date is?

16 MR. SEILHAMER: Before we go, we are
17 going to mark it as an exhibit.

18 MR. HURTADO: These are the pages --
19 the regulations.

20 MR. SEILHAMER: We are going to mark
21 as Exhibit Number 11, Regulation --

22 MS. MERCADO: It's 12. It should be
23 12.

24 COMMISSIONER MATEO: It's 12.

25 MR. SEILHAMER: Correct, 12.

1 Regulation 9137, which it's
2 regulations for performance incentive mechanism.

3 [Exhibit Number 12 was marked for
4 identification.]

5 MR. HURTADO: Thank you.

6 MR. SEILHAMER: The previous exhibit,
7 Your Honor, Exhibit 11, that's the December 23,
8 2020, order from the Energy Bureau?

9 COMMISSIONER MATEO: No, revised.

10 MS. MERCADO: Revised Annex IX of
11 October 28, 2020.

12 MR. SEILHAMER: Revised performance
13 metrics target in compliance with Energy Bureau
14 Resolution and Order of 178-2122.

15 MR. MURTHY: Okay. Sorry, I
16 misunderstood it. There was an Energy Bureau order
17 that we're going to look at today as well; is that
18 right?

19 MR. SEILHAMER: I think he's going to
20 talk first about the regulation and then the order.

21 MR. MURTHY: Thank you.

22 MR. SEILHAMER: Once he attaches on
23 the order, we'll mark it as an exhibit.

24 MR. GRIFFIN: Sorry. What was the
25 order of the two?

1 MR. SEILHAMER: We are going to start
2 with the regulation and once you're done, then we'll
3 go to the order.

4 BY MR. GRIFFIN:

5 Q. Okay. Do you have them before you?

6 A. I have the regulation before me.

7 Q. Can you go to page 14.

8 A. Yes.

9 Q. And you read the first sentence states
10 that:

11 "Energy Bureau shall apply the following
12 principles in establishing performance
13 incentive mechanisms."

14 Is that correct?

15 A. Mario Hurtado for the record.

16 That's what it says.

17 Q. Okay. And then after that, you'll find a
18 list of different outcomes -- policy goals and
19 outcomes, and then a set of principles; is that
20 correct?

21 A [No audible response.]

22 Q. I'm talking about letters A through G; and
23 under A, there's ten different policy goals and
24 desired outcomes.

25 A. Right. The goals and desired outcomes are

1 there, sure.

2 Q. Okay. And in LUMA developing and
3 submitting the incentive tiers, did you review these
4 principles and apply them?

5 A. The incentive tiers, as I stated before in
6 my answer, principally, it's math from the target
7 to, you know, mathematically, 50 percent improvement
8 and -- or 50 percent below that attainment, or
9 50 percent on top of that attainment.

10 They have to do with the programs that
11 were established in the different levels based on
12 where the subject-matter experts based on their work
13 thought that the target would be and then what
14 attainment would be above that at 150 percent or
15 50 percent or below it.

16 Q. Okay. So did LUMA review these at any
17 point in the development of the targets with each of
18 those incentive levels?

19 A. Mario Hurtado for the record.

20 LUMA reviewed the -- certainly LUMA
21 reviewed Regulation 9137 in terms of confidential
22 context and guidance for which metrics to propose,
23 and some of the characteristics of those metrics,
24 and how those metrics aligned with public policy and
25 customer benefits.

1 Q. Okay. Do you agree that the first
2 sentence here says that:

3 "Energy Bureau shall apply the following
4 principles in establishing performance and
5 incentive mechanisms"?

6 A. Yes, that's what it says.

7 Q. Okay. Thank you.

8 MR. GRIFFIN: We can move on to the
9 order.

10 MR. SEILHAMER: Before we move to the
11 order, do we have a copy for the witness so we can
12 mark it as Exhibit 13?

13 If you could clarify the order to be
14 sure I have a copy.

15 MR. SEILHAMER: Regulation 9137 is
16 going to be --

17 MS. MERCADO: The order.

18 MR. GRIFFIN: This is the opening
19 order to the docket.

20 MS. MERCADO: If you could identify
21 the caption and the date.

22 MR. SEILHAMER: Sure. Once I have a
23 copy, I will do so.

24 We are going to mark Exhibit 13, a
25 Resolution and Order dated December 23, 2020.

1 MS. MERCADO: Just to clarify, is the
2 subject of the order "Commencement of Proceedings
3 for the Establishment of Performance-Based Incentive
4 Mechanisms target"?

5 MR. SEILHAMER: That's correct.

6 MS. MERCADO: Sure.

7 [Exhibit Number 13 was marked for
8 identification.]

9 BY MR. GRIFFIN:

10 Q. Mr. Hurtado, can you turn to pages 5
11 and 6?

12 A [Witness complies.]

13 Q. The introduction of the section says:
14 "Request for establishment of PIMS
15 Required Under Section 4.27 of the OMA shall be
16 aligned with principles beneficial to the
17 public interest, including, but not limited to,
18 the following."

19 Is that correct?

20 A. Mario Hurtado for the record.

21 Yes, that's what it says.

22 Q. Okay. And did LUMA review these
23 principles in developing the incentive tiers and the
24 targets submitted in the different filings?

25 A. LUMA reviewed -- certainly reviewed this

1 order and the principles in developing -- in further
2 developing Annex IX and the submission to the Bureau
3 of Annex IX.

4 Q. Okay. Do you agree that the statement
5 says, "Request for establishment of PIMS required
6 under Section 4.27 of the OMA shall be aligned with
7 principles beneficial to the public interest,
8 including but not limited to the following."

9 A. No. It says, "The Request of the
10 Establishment of the PIMS Section 4.2F of the OMA."
11 I just read what it says.

12 Q. Okay. And you agree that this is what the
13 Bureau has established that these are the principles
14 guiding the development and approval of the PIMS?

15 A. That's what the order says.

16 Q. Thank you.

17 Can we move to lines 223 --

18 MS. MERCADO: For the record,
19 Margarita Mercado.

20 If it helps, I request that the
21 Energy Bureau consider the submittal of the revised
22 Annex IX, the order, and it was discussed in the
23 motions submitting the revised Annex IX, it is the
24 motion of February 25, 2021 and the one of
25 August 2021, those principles were discussed, if it

1 helps.

2 MR. GRIFFIN: Thank you.

3 MR. HURTADO: Actually, the
4 promotions go through each one of the principles and
5 how they relate to the submission of the Annex IX.
6 That's what I was referring to.

7 COMMISSIONER MATEO: This is
8 Commissioner Mateo for the record.

9 Even though it is already in the
10 record doesn't mean that we can't ask questions
11 about it. And for the benefit of the public
12 watching the hearings, it is very worth it to ask
13 these questions.

14 So even if they are in the motions,
15 they are open to questions.

16 BY MR. GRIFFIN:

17 Q. I wanted to talk about sections in your
18 testimony, lines 223 to 254. It is talking about
19 the review cycle that you proposed. I wanted to
20 clarify a few things.

21 Do you have the reference open?

22 A. I'm looking at the page. This starts at
23 line 223.

24 Q. Yeah. Are you ready?

25 A. Yes.

1 Q. Okay. So can you briefly describe -- the
2 three-year cycle that you've laid out for the
3 performance term and then the review in the third
4 year moving into the subsequent year.

5 Can you generally describe that for the
6 Bureau and the public here?

7 A. Sure. Mario Hurtado for the record.

8 So when the submission of the metrics,
9 which again originally was in February of 2021, the
10 expectation was that there would be a review of the
11 metrics.

12 One of the conditions precedent for LUMA
13 starting operations was establishment of these
14 metrics; another condition precedent was PREPA
15 exiting Title 3.

16 Neither of those happened when LUMA was
17 ready to take over in June of 2021. So those were
18 waived conditionally and LUMA did take over.

19 But the concept, in general, was that the
20 metrics would be established with these targets and
21 baselines with whatever revisions ultimately were
22 made by the Energy Bureau and then approved and they
23 would be applied during the succeeding three
24 contract years, which would roughly start in June of
25 2021.

1 And then these would apply for that
2 initial three-year period. And there would be a
3 general revision of the targets based on those
4 initial three years of operation, all of the
5 learnings, all of the data that was acquired in
6 order to look at the appropriate targets and
7 baselines moving forward after the initial
8 three-year period.

9 In the OMA, Annex IX initial period was
10 five years. And based on the data we looked at --
11 and again, a fair degree of uncertainty attached to
12 some of the areas. And we thought three years was
13 more appropriate.

14 And so that is what we proposed and what
15 was accepted by the government of Puerto Rico, the
16 Public and Private Partnership Authority, in our
17 submission to them, and then subsequently, the
18 submission to the Bureau.

19 **Q. Okay. That's all very -- that's very**
20 **helpful. Thanks for clarifying and explaining how**
21 **you see that going forward.**

22 **Can you talk more -- this is on lines 238**
23 **to 244 -- how you anticipated in that third year,**
24 **from what I'm understanding, is that another**
25 **holistic review of -- instead of performance metrics**

1 **and then a potential updating to them; is that a**
2 **fair characterization?**

3 A. Mario Hurtado for the record.

4 Generally that's what's being talked about
5 there. I would note also that several of the
6 metrics, there were metrics that were initially in
7 the draft Annex IX at the time of the execution of
8 the OMA, which we asked to be deferred, and others
9 based on lack of data or inability to really
10 establish a baseline at the time.

11 And not because LUMA didn't think that
12 they were appropriate metrics in general, but that
13 in the current condition of where we were taking
14 over and starting, you couldn't establish objective
15 quantitative measures that would fit the needs of
16 robust performance metrics.

17 So there were some objectives in general,
18 but the concept was, as I laid out: Salvage three
19 years, go through three years, have a revision.
20 Under Regulation 9137 the Bureau has the ability, if
21 they want, to more often change or make other
22 modifications, they can certainly do that.

23 And, in general, as stated I in my
24 testimony, it's important that there are -- that the
25 metrics, you know, have a direct relation to the

1 state of the utility and the current conditions.

2 So if there were major events that
3 happened or major changes, there's always an
4 opportunity to request a change in accordance with
5 the impacts that that change might have had on the
6 metrics.

7 And think the general concept is that you
8 want metrics that are attainable and drive the
9 necessary change in the different areas that will
10 benefit customers and align with Puerto Rican Public
11 Energy policy.

12 Q. Okay. That's all very helpful.

13 I think it's a better understanding how
14 you characterize how that review would happen.

15 So an opportunity to reassess how those
16 metrics were working. It's helpful you alluded to
17 that there are other potential metrics that would be
18 tracked that has become right to include in an
19 incentive scheme at a later time when more
20 information is valuable.

21 Is that consistent with what you're
22 talking about?

23 A. Mario Hurtado for the record.

24 Yes. And there are other metrics that are
25 tracked. I mean, it gets confusing to talk about

1 those metrics.

2 But there are other statistics and
3 business operation statistics that are tracked in
4 the 007 docket, which are not, strictly speaking,
5 performance metrics that are within a performance
6 incentive scheme or a model, but that are important
7 to track and to provide that information to the
8 Energy Bureau and to the public and the customers.

9 And so those are where they are being
10 tracked and reported on as well.

11 **Q. Okay. That's helpful.**

12 **The one area I did not see mentioned or**
13 **discussed in that three-year review is the**
14 **consideration of penalties; is that correct?**

15 **You didn't include any discussion of that.**

16 A. No, there's not a consideration of
17 penalties discussed in my testimony. That is not a
18 concept that is part of the OMA and of the structure
19 that was set up in the OMA.

20 The attainment or the performance on the
21 different performance incentive metrics ties
22 directly to the calculation of the incentive fee
23 portion of the service fee for LUMA as the operator
24 of the T&D OMA and that was not designed with a
25 penalty.

1 **Q.** So even if this future three-year broad
2 review, it's LUMA's position that the OMA would
3 preclude the Bureau from considering penalties as
4 part of the overall scheme at that point?

5 A. LUMA's position is that the incentive fee
6 provides the opportunity for the operator to earn
7 additional -- an additional fee above the fixed-fee
8 component. And that the attainment of the metrics
9 calculates whether that's zero or 100 percent of
10 that potential incentive fee.

11 **Q.** And under your discussion there, that is
12 the -- it's your -- that's your position for the
13 life of the contract.

14 A. Under the current terms of the contract,
15 that is how it's laid out.

16 **Q.** And your interpretation of that, there's
17 never the opportunity to include an incentive
18 mechanism that offers both the opportunity to earn a
19 reward or a penalty for not attaining a certain
20 level of achievement?

21 A. So LUMA's position is that the incentive
22 fee was set up in a particular way in the OMA and
23 it's part of the risk-and-reward equation that's
24 represented in the OMA and that the ability to earn
25 the incentive fee generally under the terms that are

1 represented there is an important part of that. And
2 we think that that has -- we think that's an
3 important part of the contract and that has been
4 established there.

5 We also recognize the contract has other
6 measures that would penalize LUMA for not attaining
7 certain metrics and certain minimum performance
8 thresholds for those metrics.

9 There's key performance metrics. And
10 under certain conditions a result that's below the
11 minimum threshold on key performance metrics would
12 give the right to the governor of Puerto Rico to
13 cancel the contract under certain condition.

14 And that's an important penalty that's
15 contained. More broadly, the Energy Bureau has
16 broad jurisdiction over electric service companies,
17 of which LUMA is one. And certainly the Energy
18 Bureau has the ability to penalize LUMA for not --
19 for noncompliance with specific orders or specific
20 measures or attainment that they are ordering. And
21 that's -- that's not something that's, I think, at
22 issue at all.

23 **Q. Okay. Just to clarify it, the three-year**
24 **review mark when the Bureau is considering, you**
25 **know, a potential new set of metrics, revisions to**

1 existing ones, I think you said your position is
2 that penalties would be inappropriate?

3 A. Our position -- Mario Hurtado for the
4 record.

5 Our position is that the incentive fee and
6 the calculation of the incentive fee is specified
7 under the OMA and that the inclusion or noninclusion
8 of certain metrics is certainly up for question.
9 There's lots of other things.

10 But that having metrics which have
11 specific penalties within the context of the
12 incentive fee goes outside the bounds of what was
13 agreed to in the OMA and is a fundamental change to
14 the terms of the OMA.

15 Q. Okay. Thank you.

16 COMMISSIONER MATEO: I'm sorry, Mr.
17 Griffin. This is Commissioner Mateo for the record.

18 Mr. Hurtado, you are aware of the
19 content of Section 20.17 of the OMA that establishes
20 that the Energy Bureau is not precluded or prevented
21 by the OMA from regulating LUMA.

22 MR. HURTADO: Commissioner Mateo,
23 Mario Hurtado for the record.

24 Yes, certainly, I am.

25

1 COMMISSIONER MATEO: Are you aware
2 and is it your understanding that in that sense, not
3 only is Annex IX a guide or an example of the OMA
4 itself establishes, but that it's not binding for
5 the Bureau?

6 MS. MERCADO: Margarita Mercado for
7 the record.

8 I think that the question is asking
9 for a legal conclusion.

10 MR. MURTHY: What's that?

11 MS. MERCADO: It seeks a legal
12 conclusion and not a factual statement.

13 MR. MURTHY: Your Honor, if I could
14 respond for LECO, Raghu Murthy.

15 The witness has testified as to the
16 Operation Management Agreement extensively in his
17 testimony. And LUMA's witnesses testified as to the
18 Operation Management Agreement and whether penalties
19 are part of it or not part of it.

20 So I think the witness has already
21 testified as to this and can answer that question.

22 MR. SEILHAMER: Objection is denied.
23 We are going to allow the Commissioner to ask the
24 question and receive an answer.

25 COMMISSIONER MATEO: So the OMA is

1 not binding for the Bureau.

2 MR. HURTADO: Mario Hurtado for the
3 record.

4 The Puerto Rico Energy Bureau is not
5 a party to the OMA.

6 COMMISSIONER MATEO: So it's not
7 binding for us.

8 MR. HURTADO: The OMA is an agreement
9 that was entered into under a Public-Private
10 Partnership structure for which there are
11 specific -- there's a specific legal framework in
12 Puerto Rico.

13 There are commitments that the
14 government of Puerto Rico has made under that OMA.
15 And there are certainly commitments and
16 responsibilities that LUMA is held to under that
17 OMA.

18 And at least from LUMA's position, we
19 expect the OMA to be enforced and the different
20 parts of the OMA to be followed by the government of
21 Puerto Rico.

22 COMMISSIONER MATEO: That is all
23 fine. You haven't answered my question.

24 In terms of regulation, the Bureau as
25 regulator is not bound by OMA, right, under 2017?

1 MR. HURTADO: Commissioner Mateo, I'm
2 not an attorney, but my understanding is that the
3 Bureau is not bound because the Bureau is not a
4 party to the OMA.

5 COMMISSIONER MATEO: Thank you.

6 MR. HURTADO: I will say the parties
7 to the OMA are obviously bound by the terms of the
8 OMA.

9 MR. SEILHAMER: Thank you. You can
10 go on.

11 BY MR. GRIFFIN:

12 Q. Can I just clarify a point on that?

13 You have made revisions to Annex IX two
14 times since -- well, three submissions, two
15 revisions -- so you said yourself there were --
16 based on the data available, there were updates to
17 it.

18 And so how -- help me understand, LUMA
19 proposed those revisions to the targets based on
20 changed circumstances. How is that different?

21 A. Different than what?

22 Q. Different than saying there are terms in
23 your answer on penalties.

24 A. Mario Hurtado for the record.

25 Because the calculation of the incentive

1 fee, the fact that there's a fee, the relationship
2 of the fee to the responsibilities and the risks
3 that LUMA must assume under the OMA are contained
4 within -- are fairly broad within the OMA and they
5 are not restricted to what's in Annex IX.

6 Annex IX is specifically about the
7 performance metrics and what performance metrics
8 need to be there, but there are several -- certainly
9 the ability for LUMA to earn and have a fair
10 opportunity to earn the incentive fee. And the
11 general concept of the incentive fee and how it's
12 structured go beyond what's in Annex IX.

13 Q. Okay. The next section I'd like to ask
14 you about is the end of your direct testimony, it's
15 line 265.

16 The question here is -- the question that
17 you were asked in the testimony:

18 "How did the proposed performance metrics
19 targets protect the public interest?"

20 And specifically your response on lines
21 266, 267, it says:

22 "Establishing a robust set of performance
23 metrics will enable transparency, reverse
24 negative performance trends and will further
25 align LUMA with public policy," correct?

1 A. Mario Hurtado for the record.

2 That's pretty much what it says in that
3 line.

4 **Q. Okay.**

5 MR. GRIFFIN: I would like -- this is
6 on our exhibit list. This is Resolution Order,
7 subject June -- this is in Case Number
8 NEPR-MI-2019-000007. This is a 12-month metric
9 summary.

10 MR. SEILHAMER: Resolution and order
11 dated August 18, 2022. We are going to hand a copy
12 to the witness, and we are going to mark it as
13 Exhibit 14. We are going to give him the resolution
14 and order and also the appendix that is attached --

15 MR. GRIFFIN: Specifically that
16 questions on the appendix.

17 [Exhibit Number 14 was marked for
18 identification.]

19 BY MR. GRIFFIN:

20 **Q. Mr. Hurtado, are you familiar with this**
21 **order?**

22 A. Mario Hurtado for the record.

23 Generally speaking, I have not studied it
24 for this as part of my testimony.

25 **Q. That's fine. We are going to look at some**

1 figures in one table. So if you open Appendix A and
2 go to Metric 76.

3 A [Witness complies.]

4 MS. MERCADO: This is Margarita
5 Mercado, for the record.

6 I incorporate the arguments that I
7 issued earlier on -- I believe this is data in the
8 separate proceeding, the 007, on LUMA's performance
9 in fiscal year '22, which it's our position it is
10 not in itself an issue for adjudication.

11 So that would be our objection to --
12 I will do a standing objection.

13 MR. SEILHAMER: We know the
14 objection, but it's already been received.

15 MS. MERCADO: I'm just stating it for
16 the record. It applies here, also. Thank you.

17 MR. SEILHAMER: That's fine.

18 BY MR. GRIFFIN:

19 Q. Do you have the table and the reference?

20 A. I think you said it was Number 76. I can
21 see Number 76.

22 Q. Okay. Which metric is that referring to?

23 A. SAIDI.

24 Q. Okay. Can you just describe what SAIDI is
25 for the broad audience here?

1 A. Sure. I'm not an expert or an electrical
2 engineer on this subject, but broadly speaking, it's
3 the System Average Interruption Duration Index.

4 I forgot what "A" stood for, sorry. But
5 basically it's the --

6 **Q. It's just an Average Interruption**
7 **Duration --**

8 A. It's just an Average Interruption Duration
9 Index. So it's an index of the average duration of
10 interruption for the system calculated according to
11 specific standards.

12 **Q. Okay. And these are broadly accepted**
13 **international standards. And the metric that has**
14 **been proposed here to include in the performance**
15 **metrics -- targets.**

16 A. There's a specific standard that's issued
17 by the IEEE. And that's what our -- that's what
18 LUMA follows in terms of applying the -- and
19 recording on this metric.

20 **Q. Okay. Can we look at the column that says**
21 **"Fiscal year 2022 Average."**

22 A. Yes.

23 **Q. Okay. And what's the number there?**

24 A. The number on there?

25 **Q. For Metric 76 for SAIDI?**

1 A. Yeah, it's 1,649.

2 **Q. Okay. And then what was the baseline that**
3 **LUMA has proposed for this metric?**

4 MS. MERCADO: This is Margarita
5 Mercado, for the record. It's outside what
6 he submitted in --

7 THE WITNESS: I have to look at
8 Annex IX again to confirm. I think it is the same
9 as what it says on benchmark here, but I would have
10 to look at Annex IX.

11 Thank you.

12 For SAIDI, the baseline proposed on
13 Annex IX is 1,243, so it's...

14 And then the value for -- it's the
15 same as the column that says "Up Line 2020
16 Baseline."

17 BY MR. GRIFFIN:

18 **Q. So the baseline performance, which was**
19 **established off of past historical performance and**
20 **what was in your proposal 1243; is that correct?**

21 A. That's the baseline.

22 **Q. And the data reported here in this filing**
23 **was 600 -- 1,649.**

24 A. That's what this table says. I would have
25 to check if that one was correct. Because there are

1 several of these that had mistakes and LUMA had
2 several filings in response to this order, so we
3 have to check.

4 I don't know off the top of my head if
5 that's the correct number or not.

6 **Q. Okay.**

7 A. But assuming that's the correct number,
8 yes.

9 **Q. And then this metric is higher -- which**
10 **direction relative to the baseline is better**
11 **performance or would have --**

12 A. 1,649 is --

13 Mario Hurtado for the record.

14 1,649 is worth [phonetic] performance than
15 the baseline as -- you know, following these
16 numbers, if they are correct, yeah, that would be
17 worth performance.

18 **Q. Okay. So based on the information**
19 **reported first-year performance was higher than**
20 **prior baseline and the baseline that you proposed in**
21 **your submissions for Annex IX?**

22 MS. MERCADO: This is Margarita
23 Mercado.

24 So just to state the clarification
25 that the witness has not been able -- as he said,

1 I'm not putting words into his mouth -- as he said:
2 He hasn't been able to check that the numbers are
3 correct.

4 COMMISSIONER MATEO: He already said
5 that for the record.

6 MS. MERCADO: Correct, but there's
7 another question asked, and I want the record to be
8 clear.

9 MR. SEILHAMER: The question is to
10 the best of your knowledge. He already stated that
11 he doesn't know if that's the correct number. He
12 already stated that for the record.

13 BY MR. GRIFFIN:

14 Q. Okay. Mr. Hurtado, I'd like to go back to
15 your statement at the end of the testimony here. It
16 says:

17 "The robust performance metrics will
18 reverse negative performance trends."

19 And so what are the protections built into
20 this agreement that will help reverse this trend?

21 A. Can you explain what you mean by
22 "protections"?

23 Q. What elements of the Annex IX can address
24 this reliability performance trend?

25 A. Mario Hurtado for record.

1 Well, Annex IX, there's a specific target
2 that's been set. There's a minimum performance
3 level. And so it would be no -- assuming that those
4 were the correct numbers, which I don't know if they
5 are or not, that specific metric would get scored in
6 accordance with Annex IX and that result would go
7 into the calculation of whether and what level of
8 incentive fee was applicable to that year.

9 In addition, the SAIDI is a key
10 performance metric. So non-attainment of SAIDI
11 under certain circumstances and with other things
12 happening would allow for the counter-parties to
13 cancel the contract with LUMA, the [inaudible] and
14 he OMA.

15 Q. I did want to get into that. This is
16 contained in the Events of Default provision,
17 correct? As you referred to as one of the key
18 performance metrics, if you're below the minimum
19 performance level, but I do want to talk more about
20 that.

21 But it would not directly trigger that; is
22 that correct?

23 A. On its own for one year? My understanding
24 is that it would not.

25 Q. Okay. So what would be the consequences

1 to LUMA if in a year like this were to repeat
2 itself, the reliability was higher than the baseline
3 under your proposal?

4 A. LUMA would not be assigned any points for
5 that metric. And that would go into the overall
6 calculation of the incentive fee.

7 So it would tend to lower the incentive
8 fee and especially if it's a zero, that means it's
9 zero points assigned.

10 Q. So on that one you get zero; is that
11 correct?

12 A. If that were the numbers, yes.

13 Q. Okay. Is it possible in other categories
14 if you earned over the 100 percent that there would
15 be an offset of the loss -- or the missed
16 opportunity for the incentive payment?

17 A. There's -- Mario Hurtado for the record.

18 The calculation is laid out in Annex IX.
19 And if you attain above 100 in set areas, you can
20 score more points. And then you add the results for
21 all the different metrics. And that's how you get
22 the results of the different points assigned, and
23 then from that. You would calculate the incentive
24 fee.

25 Q. Okay. Let's go back to the discussion on

1 Events of Default.

2 Can you broadly explain for folks how that
3 works under the proposal? I believe it's the
4 language in the OMA itself.

5 A. Are you referring to the key performance
6 metrics?

7 Q. I'm referring to the provision and Events
8 of Default based on missing those key performance
9 metrics.

10 How does overall -- you alluded to this
11 would be one conduct, but how does it work in
12 totality?

13 A. I believe I referred to it in my testimony
14 so I'd would have to -- but generally speaking, the
15 key performance metrics non-attainment of -- or
16 attainment below the minimum performance level on
17 three consecutive years of three key performance
18 metrics would result in the right of the government
19 of Puerto Rico to cancel the contract or to
20 terminate the contract with LUMA.

21 Q. Okay. So you would have to miss three
22 times in a row?

23 A. That's what the contract says.

24 Q. There's other provisions in there for
25 Force Majeure, other -- other aspects you could seek

1 to not have those clauses triggered.

2 MS. MERCADO: Margarita Mercado for
3 the record. Can you specify which clauses you're
4 referring to, for clarity of the record?

5 MR. GRIFFIN: If you want to go
6 straight to the section of the OMA itself and have
7 the witness read.

8 MR. SEILHAMER: He's asking a general
9 question. If he doesn't have the answer, he can
10 state so. If he does, then he can answer it.

11 BY MR. GRIFFIN:

12 Q. Are there -- is it a straight -- whether
13 your performance is below it's a trigger, or are
14 there other provisions that LUMA can seek --

15 Well, is there a force majeure clause
16 related to that?

17 A. Mario Hurtado for the record.

18 There's a force majeure clause in the T&D
19 OMA for sure, like every operation contract I've
20 ever seen.

21 Q. Okay.

22 MR. GRIFFIN: Your Honor, that's all
23 the questions that I have for the witness.

24 MR. HURTADO: By the way -- sorry.
25 Force majeure applies to all the counterparties.

1 It's not just applied to LUMA. Force majeure
2 applies to actions by the P3A or by PREPA as well
3 depending on what it is.

4 So it's not a unilateral application
5 by any means. And it's a broad commercial concept
6 that's applied throughout different contracts.

7 MR. GRIFFIN: Okay. Thank you.

8 COMMISSIONER MATEO: Commissioner
9 Mateo for the record.

10 I have a question for Mr. Hurtado
11 regarding the fact that the Annex IX proposed
12 doesn't have penalties, there was -- there were
13 questions and answers establishing that there are
14 provisions in the OMA for the termination of the
15 contract if certain circumstances take place
16 regarding nonperformance.

17 How many times would LUMA have to be
18 in default or not performing as expected in order
19 for the termination clauses to kick in?

20 MR. HURTADO: Commission Mateo,
21 thanks for that question.

22 Generally speaking, the way that the
23 key performance metrics work is that non-attainment
24 in three years consecutively of three key
25 performance metrics would trigger the ability for

1 the contract to be terminated by the other parties.

2 That's my understanding.

3 COMMISSIONER MATEO: So in a
4 hypothetical, you could have -- you could not
5 achieve performance two years, do it in the third,
6 and the contract clause is out of the window because
7 they have to be consecutive. And that cycle can
8 repeat itself and you would never be under
9 termination threat, if you will, because it has to
10 be consecutive.

11 THE WITNESS: Mario Hurtado for the
12 record.

13 For the key performance metrics, in
14 particular, that's my understanding of how it works.
15 Obviously there would be other -- depending on what
16 it is and other circumstances, there are other
17 consequences under the contract.

18 And, again, broadly subject to the
19 Energy Bureau's regulation, so we would be subject
20 to whatever else Energy Bureau has put in place or
21 has ordered in relation to reliability, in
22 particular, with this metric, but with whatever
23 other measures or policies are being enforced.

24 COMMISSIONER MATEO: So it would be
25 consecutive and in your view the Bureau would -- in

1 your proposal, the penalty is out of the equation in
2 your proposal, the Bureau would have to resort to
3 other mechanisms in order to penalize its
4 nonperformance in the situation that we are
5 encountered with.

6 So in your proposal, the penalty is
7 not getting the money, if you will.

8 MR. HURTADO: Commissioner -- Mario
9 Hurtado for the record.

10 As it relates to the performance
11 metrics, that's probably correct. But, again, the
12 Energy Bureau has broad jurisdiction and ability and
13 enforcement mechanisms that obviously go beyond the
14 performance incentive metrics in Annex IX.

15 So I would generally say that that's
16 right.

17 COMMISSIONER MATEO: In your view of
18 the penalties subject, all of the penalties are not
19 in your proposal, if you do not perform in
20 reliability; for example, the Bureau can penalize
21 you through another mechanism.

22 MR. HURTADO: A good question --
23 Mario Hurtado for the record.

24 I think it would depend on the
25 particular circumstances and what the Bureau has

1 established.

2 It's hard for me to say or to
3 speculate without more of it. But the Bureau has
4 broad jurisdiction and with the proper processes and
5 going through the same way that the Bureau
6 establishes other orders or other measures, the
7 Bureau, as I said, has a broad jurisdiction and can
8 establish other mechanisms as well.

9 COMMISSIONER MATEO: So it's -- the
10 mechanism that the Bureau would have to resort to is
11 penalizing even for that same metric for the lack of
12 performance on that aspect which, by the way, is
13 tied to public policy compliance, would have to do
14 it outside of this set of incentives, because your
15 proposal is structured in a manner that it doesn't
16 have both mechanisms, incentives and penalties.

17 So it would be out of this box, if
18 you will.

19 MR. HURTADO: The way that Annex IX
20 and the overall OMA is structured would not conclude
21 penalties -- imposition of penalties for
22 non-attainment of specific levels under the
23 incentive performance metrics.

24 COMMISSIONER MATEO: Thank you.

25 COMMISSIONER TORRES: This is

1 Commissioner Torres. I have some questions for
2 Mario Hurtado.

3 Mr. Mario Hurtado, you mentioned --
4 you made a statement saying that once the metrics
5 were used for the incentives then the charges would
6 be analyzed or modified -- analyzed or modified.

7 And my question is: Let's say the
8 Bureau does select one of the metrics that you have,
9 for example, average speed of answer, they have a
10 target threshold for your own Number 9.

11 Are you saying that number should not
12 be used?

13 MR. HURTADO: No. I'm saying that
14 once there's more clarity -- excuse me, Mario
15 Hurtado for the record.

16 Commissioner, what I'm saying is that
17 under -- with the passage of time and different
18 events as contained in Regulation 9137, as I just
19 talked about in my testimony, and as taken into
20 account in several clauses in the OMA, it's
21 appropriate to review the targets and baselines.
22 And in particular in this case because of the
23 passage of time, because we haven't actually started
24 applying them, we believe and LUMA would propose
25 that there be a quorum and an ability to process to

1 be able to provide further data and updated data to
2 the Bureau. And that that would allow for updating
3 a baseline and target in line with that data.

4 COMMISSIONER TORRES: Okay. Thank
5 you.

6 MR. HURTADO: Yes, sir.

7 MR. GRIFFIN: Done with this witness.

8 COMMISSIONER MATEO: This is
9 Commissioner Mateo for the record.

10 When you mentioned adjusting
11 baselines and targets, you are aware that the
12 baselines that the Bureau is using are the ones in
13 the docket where we established the metrics.

14 So are you talking about adjusting
15 targets or -- because I'm kind of confused by your
16 statement because the baseline is the baseline.
17 It's where we started with PREPA, the situation that
18 PREPA had.

19 And in the beginning, we were clear
20 that this is your point of -- your starting point.
21 And the benchmarks are where a good system is
22 supposed to be. So that's the role.

23 When you talk about updates, please
24 confirm whether -- because our regulations
25 establishes a process in which the metrics are going

1 to evolve. In the same way that you are achieving
2 compliance, the target is going to move or either we
3 are going to change to other metrics to incentivize
4 other behavior and performance.

5 So I'm confused about the timing and
6 the nature of the update because this process is
7 about establishing the target and the metrics for
8 the incentive and the legal nature of this procedure
9 gives it some sort of finality, if you will.

10 If we open the box again for changes,
11 the parties are here would like to chime in and say:
12 I am not in favor; I'm opposing this or that.

13 But certainly the regulation
14 establishes that from time to time we can open this
15 procedure again and say, Well, these metrics are not
16 good anymore. We have more data, and/or we should
17 move to other metrics.

18 So are you referring to that process
19 that these metrics are not there forever and the
20 targets are not going to remain with those forever?
21 Or what are we really talking about, because my
22 concern is whether you have the perception that once
23 this hearing is finished and we make our
24 determination, LUMA is going to come up with an
25 update for changing terminations.

1 The way I see this and the way it's
2 spelled out in the regulations, it's similar to
3 IRP -- from time to time we will review them to
4 capture what you say, changes.

5 But it's not like I'll send you this
6 update, this changed the metrics. It's not that
7 easy because of the nature of this process that is
8 different from MI or another type of case that we
9 usually handle.

10 So can you clarify that for me,
11 please?

12 MR. HURTADO: That you Commissioner
13 for the question. Mario Hurtado for the record.

14 I think what we're trying to wrestle
15 with is the reality that there has been passage of
16 some significant time, obviously there's additional
17 data and there is additional time that's passed.

18 And the appropriate targets -- and
19 maybe I didn't use the term "baseline" as carefully
20 as I should have. But primarily what we would be
21 focused on is the targets and the minimum
22 performance levels so that they are in line with the
23 current system as it stands closer to the start of
24 the application of the metrics.

25 The concern that we have, which we

1 think is a normal concern that lots of people would
2 have is, okay, we're talking about things that
3 happened during the front-end transition, data that
4 was established in some cases in 2019.

5 And so it's a natural question of,
6 Well, do those targets make sense? There is lots of
7 things that have happened since then, particularly
8 because we're talking about the beginning of an
9 operation.

10 I think if we were talking about a
11 utility that had already been operating for a number
12 of years, the situation would be different.

13 But we're faced with a starting point
14 and a particular set of metrics. And we think it's
15 appropriate to be able to update those.

16 The manner of which to do that
17 obviously is something that the Bureau would have to
18 determine or not.

19 I certainly have no intent to
20 re-litigate, if I can use that word, or re-argue all
21 of the different aspects. But in our view, it's
22 appropriate to -- and obviously there's a
23 controversy now: What is the right metric? Should
24 that metric not be there? Or should it be a
25 different metric and there are other questions that

1 are overall that we have been talking about.

2 But what's the right target based on
3 the current system and what LUMA has been able to do
4 seems like something that is subject to new data and
5 new information that the Bureau can take into
6 account in order to have the most appropriate
7 metrics.

8 In some cases LUMA has -- you know --
9 has -- you know, gone way over what some of the
10 baselines or targets are, right?

11 In some other cases that performance
12 hasn't been there. There's a lot of new data that
13 we think is appropriate and it's not -- it's not a
14 one -- in our view this isn't about shifting things
15 so that LUMA has a particular advantage or that it's
16 particularly more harsh or particularly harder to
17 attain or easier to attain.

18 It's a question of updating and
19 recognizing that some time has passed. And if we
20 were starting today instead of saying in three
21 months we are going to have metrics, we would be
22 using the most up-to-date data we could.

23 And we think that in order to avoid a
24 large gap between what's in the targets and already
25 the knowledge that we have of how performance is

1 going and the current state of the system, it would
2 make sense to update -- update those targets in
3 particular.

4 But I'm not proposing that we redo
5 all of the process, because we recognize there's
6 been -- and we have invested a substantial amount of
7 time and effort. And many of the parties have and
8 it's important to move forward with this process and
9 have similar certainty about what the metrics are.

10 And it's also important for those
11 metrics to -- as well as they can -- reflect the
12 current state of the system, and where LUMA is today
13 and where it needs to be in the next three years to
14 attain the results for the best interest of
15 customers and for policy.

16 So that's the general -- that's the
17 proposal that I would have.

18 COMMISSIONER MATEO: Thank you.

19 MR. HURTADO: Yes, ma'am.

20 MR. SEILHAMER: If there's no -- with
21 no other questions I think -- do we have another
22 question?

23 BY COMMISSIONER UGARTE:

24 Q. I just want to clarify. You said at the
25 beginning of your statement that in February then in

1 August and then October of 2022.

2 Can you clarify the date of submission of
3 October 2022? What was the difference from the
4 August to October 1?

5 MR. HURTADO: Thank you,
6 commissioner.

7 Mario Hurtado for the record.

8 The main difference was the addition
9 of four additional metrics as a result of the
10 resolution order from that Bureau to add metrics and
11 to propose metrics in specific areas.

12 And so LUMA proposed a metric and
13 vegetation management to metrics -- one metric
14 having to do with energy efficiency, one metric
15 having to do with demand response, and then another
16 metric on the interconnection of distributive
17 generation.

18 COMMISSIONER UGARTE: Did you have
19 the possibility to update the data from the other
20 metrics in that submission?

21 MR. HURTADO: Mario Hurtado for the
22 record.

23 We did not update the data for the
24 other metrics in that -- in that submission.

25

1 COMMISSIONER UGARTE: The revision or
2 what at that time was necessary?

3 MR. HURTADO: We didn't update --
4 Mario Hurtado for the record.

5 Commissioner, we didn't update the
6 metrics or the data behind the metrics because we
7 saw it as a specific revision in reaction and in
8 compliance with the order that was issued by the
9 Bureau to add those metrics.

10 And the record and testimony that had
11 already been part of the record had been subject to
12 rebuttal, discovery, and all the different actions
13 that the parties have taken was done with a specific
14 set of metrics for the establishment of this
15 Annex IX.

16 So we did not think it was
17 appropriate.

18 COMMISSIONER UGARTE: Okay. Thank
19 you.

20 MR. HURTADO: Yes, ma'am.

21 CHAIRMAN AVILES: The idea is that
22 you are the person in charge of this process. If
23 you have a feeling that something has to be changed,
24 this was an opportunity to (inaudible) the changes.

25 MR. HURTADO: I'm sorry,

1 Mr. Chairman.

2 CHAIRMAN AVILES: Going back to
3 Commissioner Ugarte's question.

4 You said you revised the (inaudible)
5 for the metrics. The reality was if you feel that
6 something (inaudible), it was an opportunity for
7 you, LUMA, to submit the revision?

8 A. Respectfully -- Mario Hurtado for the
9 record.

10 That's not the way that we saw it. We saw
11 it as an addition of those four metrics.

12 I believe there are some minor corrections
13 that were made for like typos. And I think some of
14 the wording in the major outage event metrics,
15 specifically having to do with interaction with
16 municipalities because of the structure of the Preb
17 (phonetic) so that that metric would reflect how
18 those communications actually happened during an
19 emergency, that was changed.

20 Off the top of my head those are the ones
21 that I remember that we changed.

22 **Q. But, nevertheless, again in the revision**
23 **you could have revised and updated the metrics.**

24 A. We did not see that as an option given
25 where the process was and that testimony and all of

1 the work that was already done on the metrics and
2 what was already in Annex IX.

3 That was our view.

4 CHAIRMAN AVILES: Thank you.

5 MR. HURTADO: Yes, sir.

6 MR. SEILHAMER: If we don't have any
7 other questions, I think this would be a good time
8 to break for lunch and be back and 1:00 in the
9 afternoon.

10 MS. MERCADO: Thank you.

11 [Whereupon, the proceedings were adjourned
12 at 11:58 a.m. for luncheon recess.]
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1 - AFTERNOON SESSION - 1:12 P.M. -

2 MR. SEILHAMER: We are going to
3 continue with the session. I want to remind all the
4 witnesses that you are still under oath.

5 The consultants for the Bureau are
6 going to now cross-examine the LECO witnesses. So
7 give you floor. They are under oath already.

8 BY MR. GRIFFIN:

9 **Q. I would first like to cross-examine Mr. --**

10 MR. HURTADO: Do you want us to
11 switch seats?

12 MR. SEILHAMER: No.

13 MR. GRIFFIN: The Chair said we're
14 good where we are.

15 AGUSTÍN IRIZARRY RIVERA,
16 having been previously duly sworn, was examined and
17 testified as follows:

18 EXAMINATION

19 BY MR. SEILHAMER:

20 **Q. Can you please state your name and**
21 **position for the record.**

22 A. Agustín Irizarry Rivera.

23 **Q. Can you describe your role in this**
24 **proceeding?**

25 A. (In Spanish.)

1 Q. In reviewing the testimony you provide two
2 recommendations; is that correct?

3 A. Sí, señor.

4 Q. Can you please describe your process for
5 developing the conclusions and recommendations?

6 A. (In Spanish.)

7 Q. Okay.

8 MR. SEILHAMER: Thank you very much
9 for that. I would first like to discuss your
10 conclusions.

11 Do you have your direct testimony in
12 front of you?

13 A. No.

14 Q. Would you like to have your testimony in
15 front of you?

16 A. Sí.

17 Q. I'm going to ask you about pages six
18 through nine, just referencing off your conclusions
19 and recommendations.

20 MR. SEILHAMER: Let the record
21 reflect that we gave Mr. Irizarry Exhibit 7 and
22 Exhibit 9, which are two direct testimonies that he
23 provided the Bureau.

24 BY MR. GRIFFIN:

25 Q. Can you open to page 6, please? Page 6,

1 please.

2 Okay. Can you summarize your first
3 conclusion?

4 A. (In Spanish.)

5 Q. Okay. Great. That's how I understood and
6 interpreted your conclusion.

7 Can you cite which of your recommendations
8 follow from that conclusion?

9 A. (In Spanish.)

10 Q. Okay. Thank you very much. I am
11 following clearly from that. And if you look at
12 recommendation one, is this your primary
13 recommendation focused on that conclusion?

14 A. (In Spanish.)

15 Q. Can we talk about the -- are you aware of
16 the additional metrics that the Bureau ordered in
17 the December 20, 2022 -- 2022 - 2021 order,
18 additional performance targets?

19 A. [In Spanish.]

20 Q. Do you believe that's vegetative
21 management?

22 A. Sí. (In Spanish.)

23 Q. And if the Bureau were to include these
24 incentive mechanisms in a final order, would that be
25 consistent with your recommendation?

1 A. (In Spanish.)

2 Q. So I think that's a good segue to your
3 second conclusion. Can you summarize your
4 conclusion here?

5 A. [In Spanish.]

6 Q. Sir, I --

7 A. (In Spanish.)

8 Q. Sir, I was asking about your second
9 conclusion. It's on page 6, going to page 7. I
10 apologize if I misspoke.

11 A. (In Spanish.)

12 Q. And just to clarify, you're aware that
13 there are provisions that will prevent a default?

14 A. [In Spanish.]

15 Q. Okay. Thank you for that explanation.
16 Can we turn to your recommendation Number
17 4 now? Can you please summarize your recommendation
18 here?

19 A. (In Spanish.)

20 Q. Thank you for that.

21 Can we turn to Number 7 now?

22 A. (In Spanish.)

23 Q. Okay. Thank you for that. Thank you for
24 your explanation.

25 Can we turn to Number 8 now? And I want

1 to ask you a specific question on this.

2 A. (In Spanish.)

3 Q. You're at Number 8?

4 A. [In Spanish.]

5 Q. You heard the testimony this morning about
6 the (inaudible) penalties; are you contemplating
7 this is something different than that, your
8 recommendation Number 8?

9 A. [In Spanish.]

10 Q. Thank you for your explanation. I have no
11 further questions.

12 Commissioners?

13 COMMISSIONER MATEO: No.

14 COMMISSIONER TORRES: This is
15 Commissioner Torres, I have a question.

16 When you mentioned recommendation
17 Number 7, Metrics, which metrics would you recommend
18 should be considered gating metrics?

19 I'm talking about Annex IX, limited to
20 that document.

21 A. (In Spanish.)

22 COMMISSIONER TORRES: I believe it's
23 Exhibit 11, or -- it's Exhibit 11.

24 THE WITNESS: (In Spanish.)

25 COMMISSIONER TORRES: Thank you.

1 CHAIRMAN AVILES: (In Spanish.)

2 THE WITNESS: (In Spanish.)

3 Q. (In Spanish.)

4 A. (In Spanish.)

5 CHAIRMAN AVILES: That's all that I
6 have.

7 COMMISSIONER UGARTE: (In Spanish.)

8 THE WITNESS: (In Spanish.)

9 COMMISSIONER UGARTE: (In Spanish.)

10 THE WITNESS: (In Spanish.)

11 COMMISSIONER UGARTE: (In Spanish.)

12 THE WITNESS: (In Spanish.)

13 MR. SEILHAMER: If there's no more
14 questions for Mr. Irizarry then we are going to
15 go --

16 MR. GRIFFIN: The next LECO witness.

17 MR. SEILHAMER: We are then going to
18 start the proffer of Mr. Alameda.

19 JOSÉ ALAMEDA

20 having been previously duly sworn, was examined and
21 testified as follows:

22 EXAMINATION

23 BY MR. GRIFFIN:

24 Q. Thank you, Mr. Alameda.

25 Would you please state your name and

1 position for the record?

2 A. (In Spanish.) Sí.

3 (In Spanish.)

4 Q. Thank you.

5 Can you describe your role in the
6 proceeding -- your role in the proceeding.

7 A. Okay. (In Spanish.)

8 Q. Thank you for that summary.

9 Can we turn to your direct testimony now,
10 page 5?

11 A. Page 5?

12 Q. Can we turn to page 5 please?

13 A. (Witness complies.)

14 Q. On lines eight through 11, if I understand
15 it, you basically made two recommendations to the
16 commission?

17 A. (In English) Line eight to 11 -- line --
18 you said line.

19 MR. SEILHAMER: Repeat the question.

20 BY MR. GRIFFIN:

21 Q. What lines are you referring to?

22 A. Eight to ten.

23 Q. Eight to ten. You recommended two, you
24 made two recommendations to the Commission.

25 A. Okay.

1 Q. Can you summarize your reward-and-penalty
2 scheme that you recommend?

3 A. (In Spanish.) Sí.

4 (In Spanish.)

5 Q. Okay. Can you -- in your review you
6 believe that the proposal in Annex IX would not meet
7 your reward/penalty scheme?

8 A. (In Spanish.)

9 Q. Sure. In your review of LUMA's proposal
10 it's not consistent with your first recommendation.

11 A. (In Spanish.)

12 Q. Okay. On line 16, same page "I conclude
13 and recommend that reward-and-penalty scheme."

14 Do you have any more specific
15 recommendations on how the Bureau should do that?

16 A. (In Spanish.)

17 Q. Thank you for your explanation. No
18 further questions.

19 COMMISSIONER UGARTE: (In Spanish.)

20 MR. ALAMEDA: (In Spanish.)

21 COMMISSIONER UGARTE: (In Spanish.)

22 CHAIRMAN AVILES: (In Spanish.)

23 MR. ALAMEDA: (In Spanish.)

24 CHAIRMAN AVILES: (In Spanish.)

25 MR. ALAMEDA: (In Spanish.)

1 COMMISSIONER UGARTE: (In Spanish.)

2 MR. ALAMEDA: (In Spanish.)

3 CHAIRMAN AVILES: (In Spanish.)

4 MR. ALAMEDA: (In Spanish.)

5 CHAIRMAN AVILES: (In Spanish.)

6 MR. ALAMEDA: (In Spanish.)

7 COMMISSIONER TORRES: (In Spanish.)

8 MR. ALAMEDA: (In Spanish.)

9 MR. SEILHAMER: If there are no more
10 questions, we are going to proceed with the next
11 line of questioning.

12 COURT REPORTER: Can I have a
13 five-minute equipment break?

14 (Recess taken.)

15 MR. SEILHAMER: We are going to
16 resume with the hearing. Our consultants are going
17 to ask questions to LUMA's -- go ahead.

18 MR. GRIFFIN: First, I have a
19 question.

20 MR. SEILHAMER: I want to remind
21 everyone that you're still under oath.

22 DONALD HALL
23 having been previously duly sworn, was examined and
24 testified as follows:

25

1 EXAMINATION OF DONALD HALL

2 BY MR. GRIFFIN:

3 Q. First question for Mr. Hall.

4 A. Yes, sir.

5 Q. Can you state your name and position for
6 the record.

7 A. My name is Donald Hall and I'm lead
8 performance metrics.

9 Q. Thank you.

10 Can you state -- can you state your role
11 as a witness in relation to the others on behalf of
12 LUMA.

13 A. Yes. My role has been supporting the
14 witnesses, supporting regulatory, supporting the
15 technical areas of LUMA as well as rebutting some of
16 the claims of Dr. Irizarry. That's what's in my
17 rebuttal testimony.

18 Q. Maybe let's move to your rebuttal
19 testimony.

20 Do you have that available in front of
21 you?

22 A. No, I don't.

23 Q. Would you like -- do you want to take the
24 time to have it?

25 A. Yeah, that would probably be helpful.

1 **Q. Sure.**

2 A. Thank you, sir.

3 MR. SEILHAMER: Mr. Hall, can you get
4 closer to the microphone?

5 MR. HALL: Sure. I'm ready.

6 BY MR. GRIFFIN:

7 **Q. Great. Thank you.**

8 I would like to kind of ask a broad
9 question and then one more specific.

10 So in my review of your testimony, you
11 generally have gone point by point to Mr. Irizarry's
12 testimony and offered response and rebuttal; is that
13 correct?

14 A. That's correct.

15 **Q. Can you summarize that for us, your**
16 **responses?**

17 A. Well, they cover a few different topics.
18 Should I go topic by topic?

19 **Q. Sure.**

20 A. The first topic concerns the 20th century
21 utility versus the 21st century utility like a grid.

22 **Q. Okay.**

23 A. And before one can start building a 21st
24 or expanding into a 21st century electric grid, you
25 first have to have a 20th century electric grid

1 that's reliable and a robust platform.

2 The electric system that LUMA inherited
3 was extremely fragile, has been improved upon, but
4 remains extremely fragile as well as the business
5 processes internally that support various functions
6 of the company.

7 Then there's a suggestion that raw data --
8 raw outage data be publicly provided from LUMA. And
9 our position is that that's not a good idea. The
10 raw data can be misleading to people that are not
11 versed in the raw data.

12 The reliability calculations are based on
13 IEEE 1366, which requires statistical analysis to
14 arrive at the indices.

15 The energy board and P3A can examine the
16 processes and results at any time they wish, and I
17 understand that's been done recently perhaps by a
18 representative of the commission. So, therefore, I
19 don't support that.

20 As far as the gating metrics and the
21 performance metrics that are now in place in the
22 contract between LIPA and PSE&G, one has to
23 understand the history behind this.

24 The gating performance metrics and the
25 default performance metrics were just recently

1 included in the renegotiated contract and are just
2 now being implemented.

3 The history behind LIPA is that LILCO, the
4 original electric company, got into trouble with a
5 nuclear plant they were trying to build, which led
6 them to do many things, one of which was to bring in
7 a private operator in an attempt to save money.

8 The first operator was Key Span, the
9 second was National Grid, and then the third was
10 PSE&G.

11 National Grid and PSE&G are mature
12 utilities and no help to operate and maintain the
13 system.

14 So the LILCO system has been in fairly
15 good shape -- good shape -- for a 20th century
16 utility, since the private operators have been in
17 place.

18 No comparison to the Puerto Rico electric
19 system. As a matter of fact, I have never seen a
20 comparison to the Puerto Rican electric system. And
21 I have worked with many US utilities and some
22 overseas.

23 One of the reasons these metrics came to
24 being was that PSE&G had a problem with a severe
25 storm that came in and took out much of the LIPA

1 electric system.

2 Issa -- Issa, (phonetic) I believe,
3 pronounced something like that, was the name of the
4 storm. And significant problems were uncovered with
5 the way PSE&G was trying to operate the LIPA system.
6 And, therefore, LIPA insisted on renegotiating a
7 contract and putting harsher potential penalties and
8 performance metrics into the contract.

9 So they have had a lot of experience
10 operating a mature utility as compared to LUMA with
11 the Puerto Rican electric system.

12 There's another contention that you should
13 consider existing work proposed, metrics in other
14 jurisdictions such as Illinois, Hawaii, the United
15 Kingdom and California.

16 And in developing performance metrics and
17 benchmarking performance metrics, the benchmark
18 utilities should be as close to the utility doing
19 the benchmarking as possible in design, in
20 atmospheric conditions, environmental conditions,
21 the maturity of the utilities.

22 And I can say that there's a lot of
23 difference between Illinois. The United Kingdom
24 uses a completely different distribution system and
25 design than North America.

1 California is faced with many problems
2 that Puerto Rico is not, one of them being
3 wildfires.

4 And Hawaii is, in my mind, on the cusp.
5 The larger island, Oahu, has -- I believe it's about
6 a third of the number of customers as Puerto Rico
7 does. Plus Hawaii doesn't experience any
8 hurricanes. No hurricanes. I've researched this.
9 I did a benchmarking study that was submitted to the
10 commission, it was rejected.

11 But they don't have hurricanes. They have
12 storms, but they don't have hurricanes. They are
13 below the belt -- or above or below, I can't
14 remember.

15 **Q. Are you aware that I live there?**

16 **A. Pardon?**

17 **Q. Are you aware that I live there?**

18 **A. No. Did you have hurricanes because what**
19 **I read said they don't.**

20 **Q. We'll get -- we had a near miss with**
21 **Hurricane Lane a few years ago, Category 5, came**
22 **90 miles within Oahu and veered off.**

23 **Hurricane Iwa catastrophically damaged**
24 **Hawaii. We did have a hurricane pass over Maui**
25 **around 20- -- I believe it was in 2019.**

1 A. Okay. I'll withdraw that statement, then.
2 That was based on weather research that I did.

3 And there are a lot of other utilities
4 that are closer to the conditions that Puerto Rico
5 suffers, Entergy in Illinois, for one, from a
6 weather perspective.

7 So my point is when benchmarking, in
8 looking at data from other utilities, one has to
9 consider the state of the system that is being
10 benchmarked. For instance, a mature utility in the
11 United States would have a SAIDI value up around 100
12 minutes to 200 minutes because they are a good 20th
13 century utility operating reliability -- reliably --
14 that has maintained their infrastructure; all of the
15 equipment on the system is working appropriately.
16 And that must be considered when doing benchmarking.

17 And the last point was, again, Hawaii.
18 And we suggested that EEI, of the Edison Electric
19 Institute data be used for benchmarking since most
20 of the larger US utilities, of which PREPA is a
21 large utility, participate in.

22 **Q. Does that conclude the overall summary?**

23 A. Yes.

24 **Q. Thanks.**

25 **I think I actually just have two follow-up**

1 questions. On the first point talking about the
2 transition to the 20th century to the 21st century,
3 are you saying that that was really mutually
4 exclusive? You have to do one, it has to happen in
5 sequence, they are not elements that happen in
6 parallel?

7 A. There are some things that cannot
8 happen -- that have to happen in sequence. The
9 Puerto Rican electric system is in very bad shape.
10 They have improved, but it's in very bad shape.

11 And if you apply some of the 21st century
12 principles of modernization, at least reliability
13 will suffer -- and if you take a look at the
14 programs that exist in the US at various utilities,
15 modernization efforts typically are laid out with a
16 20- to 30-year roadmap. They just don't happen
17 overnight.

18 And LUMA is interconnecting many solar
19 installations and improved a lot in that area, and
20 also have begun installing automation on the
21 distribution feeders.

22 Q. So in the context of the proposal
23 presented to the Bureau, particularly the -- I think
24 the second revision where there's the set of metrics
25 were proposed was the additional ones that the

1 Bureau asked for, you made a comment that working --
2 there's potentially a trade-off with reliability.

3 I just want to be clear: Are you saying
4 some of the metrics proposed there and the word
5 processes to either interconnect or distributive
6 generation focus on energy efficiency ER, that those
7 potentially come at a trade-off or -- well, I'll
8 just ask that.

9 Were you referring to that specifically or
10 was that some generalized statement?

11 A. That was a generalized statement.

12 Q. Okay. And then if the proposal to include
13 reliability metrics that you have to meet benchmarks
14 for as well, plus some of these other
15 transformational ones, is that something that will
16 hopefully align the transformation with the
17 rebuilding of the system?

18 A. One would hope so, but my 42 years of
19 experience tells me that it won't. You need a
20 strong, robust 20th century electric system before
21 you can do much new technology, apply new technology
22 and have everything operate reliably.

23 Q. And I think we heard this morning, I think
24 it was the testimony that the targets were based on
25 the plans that have been submitted by LUMA to do

1 much of that work.

2 So, again, would the specific work that
3 you are proposing and the metrics that you proposed,
4 are they aligned or are they working at odds with
5 each other?

6 A. The work that's currently ongoing and the
7 metrics that we proposed in the submission?

8 Q. Correct.

9 A. Generally aligned, I believe.

10 Q. Okay. Generally aligned? Or I mean, is
11 there an area that the Bureau should be concerned
12 about, I guess, is the fair way to ask?

13 A. No, not that I am aware of.

14 Q. Okay. Next area that I want to talk about
15 is your testimony on lines 220 to 222 of your
16 rebuttal testimony, page 11.

17 A. Um-hmm.

18 Q. And this is in reference to -- I think the
19 section -- it's your response to the recommendations
20 for the -- like the default provisions. And your
21 statement here -- I'm just directly reading -- do
22 you have it in front of you:

23 "The remedies provided under the T&D made
24 for failure to meet key performance metrics are
25 more drastic than those in the LIPA contract.

1 **Thus, Mr. Irizarry's recommendation is**
2 **redundant given the language of the T&D**
3 **involvement."**

4 **Can you expand on or clarify what you mean**
5 **by "more drastic" --**

6 A. Yes.

7 **Q. -- in relation to these two different**
8 **agreements?**

9 A. Yes. The default metrics in the LIPA
10 contract, they have three. In the LUMA contract
11 there's ten potential default metrics.

12 LUMA has much more to focus on to stay out
13 of default than PSE&G does with LIPA. And,
14 therefore, in my mind, that makes the situation more
15 severe for LIPA.

16 Plus LIPA is, like I said -- not to repeat
17 myself -- but LIPA's electric system is in much
18 poorer shape than the electric system owned by LIPA.

19 **Q. I think you meant LUMA's.**

20 MR. LARA: You said LIPA twice.

21 THE WITNESS: I'm sorry, LUMA, the
22 LUMA system --

23 MR. GRIFFIN: I understood what you
24 meant. Maybe you need to clarify the record --

25 THE WITNESS: The LUMA system is in

1 much worse shape than the LIPA system from the
2 condition of the assets to business processes, just
3 about everything that a utility does.

4 BY MR. GRIFFIN:

5 Q. Okay. And if I'm understanding, when you
6 use the word in context "more drastic" in relation
7 to the concept that you explained, key performance
8 metrics, that parts of the events of default here
9 that are the potential trigger so that there's more
10 indicators that could lead to triggering that
11 provision; is that correct?

12 A. That's correct.

13 Q. Was there -- is that inclusive -- when
14 you're saying "default metrics" in the LIPA
15 agreement, was that in combination with some of the
16 other -- there's gating metrics in there as well,
17 was that taking that into kind of total
18 consideration?

19 A. No. I looked at the gating metrics and
20 the default metrics separately.

21 Q. Separately. Okay.

22 A. The gating metrics, my understanding is
23 that they do not result in default. They result in
24 a reduction of the variable opinion.

25 Q. That's my understanding as well.

1 And then just as a point of comparison,
2 there's -- your testimony is there's a broader set
3 of key performance metrics, but the structure is in
4 three years.

5 A. Correct.

6 Q. Is that consistent with the LIPA
7 agreement? Do they have different provisions on it
8 that can be triggered by one single event?

9 A. Yes. Yes, they do.

10 Q. Okay.

11 A. They only had three metrics.

12 Q. Do you know those off the top of your
13 head?

14 A. I can't recall them.

15 Q. Is the kind of the frequency of triggering
16 then the same in making that comparison? You said
17 there's more metrics that potentially could trigger
18 it in your agreement, but it has to be three times
19 in a row.

20 Is that -- you used the term "drastic," so
21 there's a few dimensions there, I think you used the
22 totality, but I'm trying to think of the bar to
23 trigger the event to default.

24 Do you see those as comparable?

25 A. I'm not sure that I understand the

1 question.

2 What I will say is that I think LIPA will
3 have an easier go of avoiding default than LUMA
4 will, especially with all of the uncertainty that
5 LUMA is faced with as they gain experience operating
6 the grid.

7 **Q. You're saying that in the context of them**
8 **having to renegotiate the agreement as a result of**
9 **the strong performance --**

10 A. Yes.

11 **Q. -- they will have an easier go now?**

12 A. Sorry?

13 **Q. They will have an easier go after the**
14 **renegotiation and the new terms of the contract?**

15 A. LIPA?

16 **Q. Yes.**

17 A. Yes, LIPA will.

18 **Q. Okay.**

19 A. Compared to LUMA, yes.

20 **Q. That's your testimony?**

21 A. Yes.

22 MR. GRIFFIN: No further questions.

23 MR. SEILHAMER: Any questions?

24 EXAMINATION BY THE PANEL

25 BY COMMISSIONER UGARTE:

1 **Q.** Hello. At the beginning of your testimony
2 you said that to be aware of more data because it
3 could be misled or be misunderstood. And for
4 clarification to the public, if you could give us an
5 example how that could happen. Very simple.

6 A. Okay.

7 **Q.** Nothing difficult.

8 A. The raw data is that the columns of the
9 data are labeled as to what the data is, but a lot
10 of the data, like cause code and especially the
11 notes that are in the spreadsheet that relate to the
12 outage or the event, someone with utility knowledge
13 could understand them.

14 I don't think anybody without utility
15 knowledge could understand what they are saying.

16 Plus calculating the SAIDI and SAIFI
17 values is complex. When you file the 1366, it's a
18 statistical analysis that has to be done to come up
19 with the same number. And you could use the raw
20 data and do the calculation without knowing how to
21 do the statistical aspect of the calculation and
22 come up with very different numbers.

23 **Q.** Okay.

24 A. There's one other point I could make.
25 Recently in the news Duke Power has had sabotage

1 occur to some of their distribution substations.

2 Yesterday in Baltimore the FBI arrested
3 four people that were just about ready to sabotage
4 distribution substations, amongst other things.

5 And if you have a volume of this outage
6 data, someone that is experienced, but has nefarious
7 objectives, could mine this data and potentially use
8 the results for staging sabotage.

9 Distribution data hasn't been looked at
10 like transmission data, the CEII, and whatever have
11 you. And personal information, it has. But what
12 distribution data can provide saboteurs hasn't
13 really been examined in the industry.

14 I think it will be now.

15 COMMISSIONER UGARTE: Thank you.

16 COMMISSIONER MATEO: I have a
17 question. Commissioner Mateo for the record.

18 BY COMMISSIONER MATEO:

19 Q. You were talking about having a 20th
20 century system before we move into the 21st century.

21 You talked about some things that need to
22 be in sequence and that LUMA inherited a system that
23 is fragile. Those are the facts.

24 A. Um-hmm.

25 Q. And that's what, you know, LUMA got when

1 they entered contract. So there's nothing we can do
2 about that. It is what it is and we don't have the
3 time to go from one century and then the other. We
4 don't have time. The need for the system to catch
5 up is very dire and urgent.

6 But there are baselines. So we know what
7 the system is. We can debate whether the baselines
8 were as good as they should have been and whether
9 the data is the best one we could have.

10 But this is being done with the best
11 information available, possible, and it is the best
12 that can be done with the data that PREPA had at
13 that time.

14 Do you think that with that situation that
15 we can't wait until we get from the 20th to go to
16 the 21st -- with that perception that you have, is
17 LUMA going to have issues to achieve the metrics
18 that they are proposing or is that just an opinion
19 that would be convenient?

20 A. The metrics that we proposed can be
21 reached. And there are some things that are
22 happening in parallel. For instance, as the system
23 is being rebuilt, distribution automation is being
24 added, for instance, which is a 21st century
25 technology.

1 So some things can be in parallel; some
2 things cannot, until additional pieces of the system
3 are rebuilt and brought up to 20th century
4 standards.

5 **Q. So it's feasible to do most of the work,**
6 **some maybe in sequence, but it's not impossible --**

7 A. Some of it is --

8 **Q. -- to do the work in parallel?**

9 A. Yes. I apologize if I misspoke, but, yes.

10 **Q. And improve the system. Thank you.**

11 COMMISSIONER TORRES: This is
12 Commissioner Torres, I'm going to reference lines
13 192 to 199 from your rebuttal testimony.

14 THE WITNESS: Um-hmm.

15 BY COMMISSIONER TORRES:

16 **Q. You mentioned that it would be premature**
17 **to apply to LUMA that the gating metrics as a**
18 **default metrics.**

19 Wouldn't that also apply to -- it would be
20 **premature to apply incentives, and if not, why not?**

21 A. I don't believe so. I believe that you
22 want to incent improvement to the system and you
23 have that improvements to be very aggressive, which
24 is part of the reason -- my understanding -- part of
25 the reasons for the metrics, to have aggressive

1 goals -- aggressive targets, I should say.

2 COMMISSIONER TORRES: Okay. Thank
3 you.

4 THE WITNESS: Yes.

5 MR. SEILHAMER: Thank you very much.
6 No more questions, sir.

7 We are going to go to the next
8 witness.

9 MR. GRIFFIN: Yeah, we'll go on.

10 Mr. Terzic. Please state your name
11 and position for the record.

12 BRANKO TERZIC

13 having been previously duly sworn, was examined and
14 testified as follows:

15 THE WITNESS: Yes. My name is Branko
16 Terzic and I'm here on behalf of LUMA as an
17 independent consultant.

18 EXAMINATION

19 BY MR. GRIFFIN:

20 Q. Okay. Can you just state your role in
21 relation to the others in preparing your testimony
22 and your normal role on the panel?

23 A. Yes. I was asked to look at testimony
24 which had to do with performance-based rate making
25 with the use of performance indices separately and

1 also to talk about modern regulation and modern
2 electric systems.

3 **Q. Okay. Thank you.**

4 **And it's going to be a similar pattern.**

5 A lot of your testimony or rebuttal testimony
6 responded to the points of the intervenors. Can you
7 summarize that for us?

8 A. Yes. I have a summary, Commissioners, on
9 my last few pages, you might want to take a look at
10 that.

11 I went to the fundamental question of,
12 What is this contract about and how does it fit in
13 utility regulation that you are doing?

14 And this is a management contract, which
15 in a rate case or in a development of a revenue
16 requirement, would be in the operating and
17 maintenance expense.

18 And so you have here one component of the
19 revenue requirement. I looked at the 2019 published
20 annual report of PREPA and I see that in 2019 the
21 revenue was 3.6 billion.

22 And so you as commissioners in the next
23 rate case are going to be looking at setting rates
24 to raise 3 to 4 billion -- I don't know what the
25 current requirement is -- but it's a huge task, a

1 difficult task, and it will require a revenue
2 requirement, a cost of service and a rate design.

3 The O&M component of PREPA, which is only
4 the transmission and distribution, is 70 million
5 base with a \$13 million potential high, potential
6 100 percent payout.

7 So we're talking in the first year,
8 83 million that you're looking at out of a 3.6 or so
9 billion revenue requirement, so to put that in
10 context.

11 There was testimony in the case,
12 well-researched testimony, about incentive rate
13 making and performance-based rate making.

14 Neither one is applicable either to PREPA
15 or to -- or to LUMA. And I chaired the Federal
16 Energy Regulatory Commission task force on incentive
17 rate making. I've spoken on incentive rate making.
18 One of the magazines called me the "silver mouth
19 commissioner," for being an advocate of incentive
20 rate making, which I am, and continue to be.

21 But incentive rate making is designed for
22 for-profit utilities, which are monopolies and which
23 have as their main goal profit maximization.

24 And as the professors have pointed out in
25 the documents and papers, the profit maximization

1 comes from two steps: One, overinvesting in rate
2 base, because as you know, under our regulatory
3 formula your return for a profit utility is rate
4 base times rate of return.

5 So clearly there's what's called the
6 average Johnson effect by economists where a utility
7 given no control will overinvest gold plate and rate
8 base to raise its profit.

9 And the second charge against investors on
10 utilities is they will push for sales. They will
11 push for higher revenues, which given the current
12 rate base, will also -- higher revenues than what
13 was in the rate making, in the billing
14 determinant -- they will push for higher sales in
15 order to maximize revenues to increase higher
16 profit.

17 And in the testimony of my esteemed
18 colleagues sitting behind me, most of them pointed
19 out that this propensity to increase profits
20 requires regulation, and the notion -- the problem,
21 of course, is that neither PREPA nor -- PREPA can't
22 do incentive rate making because PREPA doesn't have
23 profit maximization as its goal.

24 I looked in the statutes establishing
25 PREPA; I looked through the language. Nowhere is --

1 the goal is low-cost electric service, reliable
2 service, it is not maximizing profit.

3 Now, it could maximize profit, and the
4 nice thing there is that profit would go to the
5 citizens of Puerto Rico.

6 But PREPA is not maximizing profit and so
7 there is no concern that PREPA would maximize
8 profit; therefore, incentive rate making doesn't
9 work.

10 PREPA also does not have the -- because it
11 doesn't have the profit maximization, it also is not
12 pushing for higher sales because of not having a
13 profit doesn't mean higher sales, it wants the sales
14 that customers need.

15 So incentive rate making does not work for
16 PREPA.

17 For LUMA, the traditional
18 performance-based rate making, incentive rate making
19 doesn't work because LUMA doesn't own assets. And
20 LUMA does not make a higher profit if PREPA's asset
21 basin creases.

22 There is no tie-in with the size of -- if
23 PREPA were to double its asset base, there's no
24 indicator that increases the profit to PREPA.

25 Secondly, if there are increased sales by

1 themselves, even if more revenue is gotten, that
2 revenue goes to the citizens of Puerto Rico.

3 Yes?

4 CHAIRMAN AVILES: Still, the
5 3.6 billion budget is based on cost-of-service
6 regulations, right?

7 THE WITNESS: That's correct. That's
8 correct.

9 CHAIRMAN AVILES: Thank you.

10 THE WITNESS: My understanding is
11 this board and its predecessors have done
12 cost-of-service regulations where they develop the
13 revenue requirement -- and my understanding of
14 regulation -- and I've been in it 50 years as a
15 state and federal regulator, spent five years as CEO
16 of a New York Stock Exchange listed regulated
17 utility -- my understanding is that the O&M expense
18 in this contract will be part of the rate case that
19 you come up with next.

20 I also understand that an RFP was
21 issued by PREPA, by P3, I believe, by the financial
22 oversight committee and that RFP had within it the
23 OMA contract and the performance indicators that
24 PREPA believed needed to be addressed.

25 So the three or four companies that

1 bid for this O&M contract were told: Here is our
2 contract and here is what we, the people of Puerto
3 Rico, the owners of PREPA, the financial gurus now
4 at PPP and -- this is what we believe needs to be
5 addressed.

6 So all three of the bidders bid
7 against the metrics that we're talking about now
8 substantially. That's my understanding. That those
9 metrics were provided by PREPA.

10 So PREPA decided -- LUMA didn't
11 decide what PREPA needed to do or -- the people of
12 Puerto Rico decided what needed to be fixed and in
13 what order.

14 And my understanding is that those
15 metrics were given to the bidders for them to
16 understand what would be required of them if they
17 won the bid.

18 And the contract was then signed.

19 MR. GRIFFIN: I was hoping for a
20 summary.

21 MR. TURZIC: I will let the
22 Commissioners determine if they want me to continue
23 or not.

24 MR. GRIFFIN: I mean, I think the
25 focus summary on the responses to the people

1 witnesses --

2 MR. SEILHAMER: Can we have a
3 one-minute recess.

4 [Whereupon, a recess transpired from 3:02
5 p.m. until 3:03 p.m.]

6 MR. SEILHAMER: Let's resume.

7 BY MR. GRIFFIN:

8 Q. I cut you off at the recess.

9 So does that complete your summary?

10 A. Just one further comment and that is, my
11 understanding is this board or its predecessor has
12 been requiring PREPA to provide 117 different
13 benchmarks or indicators prior to this contract.

14 Now we have with the contract an
15 additional 30. I understand there's some overlap.
16 I can come up with another hundred indicators. At
17 one time, my commission in the 1930s, the Wisconsin
18 Service Commission, had 300 indicators. They were
19 worried about construction, and construction
20 overtime and construction costs.

21 And so there were many construction
22 indicators -- I'm not sure that you have those --
23 but, in any event, you can always have a lot of
24 indicators.

25 For a commission that's regulating a

1 for-profit utility, what do you do with those
2 indicators?

3 Well, one thing you can do is reduce the
4 profit to the owners of the system, to the profit
5 monopolists. We have a slightly different situation
6 here where LUMA doesn't own the system; once again,
7 has a different cash flow. Its cash flow is based
8 on a fixed contract, plus an opportunity to earn
9 slightly more money. So we have a slightly
10 different position.

11 My overall recommendation is it seemed to
12 be reasonable that if the people of Puerto Rico
13 through PPP and through PREPA had determined what
14 their priorities were, and had given the bidders the
15 metrics that they wanted them to operate on, that
16 would be a good place for this commission to start.

17 And then later, as was pointed out, this
18 commission has full authority for the other
19 indicators or for any other reason to issue
20 penalties on nonperformance because it doesn't
21 regulate PREPA on a for-profit basis.

22 **Q. Yeah, but aside from profit, we can use**
23 **metrics to reduce the cost of service to**
24 **efficiencies and we can do that as a regulator.**

25 **A. Yes, you can do that for a state-owned**

1 enterprise or for a private company. If you do it
2 for the state-owned enterprise, then there may be
3 cost shortages or something.

4 It's a different -- it's a slightly
5 different system when you're -- I regulated 500
6 municipal utilities in Wisconsin. You get a very
7 different relationship with the mayor of the town
8 and his board than you do with an investor of a
9 utility. So it is slightly different.

10 What you have here is the opportunity to
11 measure the performance of LUMA. Initially, later,
12 as was pointed out, you can change, modify or add
13 your own decision as to what the board believes is
14 the priority based on taking evidence, as you've
15 doing now, and other places.

16 So I think that would be answer.

17 BY MR. GRIFFIN:

18 Q. Can I clarify a few points that you made.
19 Let's be specific about this function and this
20 contract.

21 A. Okay.

22 Q. You spoke a lot about overall regulatory
23 scheme.

24 But very clear on this, it's a maintenance
25 contract, as you said.

1 A. Okay. And the question is?

2 **Q. Well, in the context of applying**
3 **performance incentive mechanisms to that contractual**
4 **structure, that's what we're talking about here.**

5 A. Yes. And what's the specific question?

6 **Q. I'm trying to clarify the summary comments**
7 **that you made, which contemplate lots of different**
8 **regulatory schemes. But the discussion here is**
9 **focused on what is being proposed for LUMA given**
10 **this contract structure, trying to incent certain**
11 **types of performance outcomes using the performance**
12 **incentives.**

13 **That's what's been requested, that's**
14 **what's been proposed, correct?**

15 A. Yes. I think for an initial start, the
16 contract signed by LUMA and the various parties that
17 signed it, PPP, PREPA, the financial board, the
18 Governor might have been involved, from what I saw
19 from the details.

20 The initial contract seemed to me based on
21 where it came from, how it was developed, to be in a
22 good place to start and with experience and with
23 additional hearings, I don't see anything wrong with
24 taking another look at it.

25 **Q. And the concept is to apply these**

1 incentives to produce certain types of behavior, and
2 achieve certain policy outcomes that Puerto Rico is
3 looking for, correct?

4 A. Yeah. Are you testifying or you're asking
5 me a question?

6 Q. I'm asking you: Is that consistent with
7 the regulatory practice that you were talking about?

8 A. I believe this contract will advance
9 public policy and will give the opportunity
10 hopefully, of course, successful performance and
11 improvement in service here in Puerto Rico.

12 Q. And then the use of incentives on that is
13 another way to advance those types of outcomes.

14 A. The use of incentives is the only way this
15 contract advances that, right? There's no --

16 Q. But I believe there's a whole set of
17 responsibilities inherent in the contract that LUMA
18 is supposed to live up to.

19 A. Yes, but the measures are in the metrics.

20 Q. Okay. I just have a couple clarifying
21 questions in areas of your rebuttal testimony.

22 If we look at lines 344 through 346.

23 Do you have it in front of you?

24 A. Hold on.

25 Okay.

1 **Q. So your statement here in response to**
2 **question:**

3 **"Yes, I do. Firstly, this recommendation**
4 **calls for the addition of penalties, which I**
5 **believe already exist in the OMA. They may**
6 **have been overlooked as they are in the**
7 **contract section titled, 'Events of Default.'"**

8 **You're equating -- are you in this case**
9 **equating penalties with the events of default?**

10 **A. If I fail to perform, according to the**
11 **contract, I fail to perform based on three out of**
12 **the ten indicators, three years in a row, the**
13 **contract is in default and there's a huge**
14 **multimillion-dollar penalty that could be paid as**
15 **well.**

16 **So, yeah, I think that's a penalty.**

17 **Q. Okay. Got it. No further questions.**

18 **MR. SEILHAMER: Any other questions?**

19 **COMMISSIONER MATEO: Yes, I have one**
20 **question.**

21 **EXAMINATION OF MR. TERZIC BY THE PANEL**
22 **BY COMMISSIONER MATEO:**

23 **Q. Are you aware that the regulator can**
24 **foster or force or suggest changes in behavior on**
25 **performance through other mechanisms aside from**

1 these incentives?

2 A. I'm sorry --

3 Q. Because as a regulator, if LUMA is not
4 complying with public policy, even if it's not in
5 these metrics, these metrics don't cover everything
6 that public policy calls for. We can impose
7 penalties or other sanctions to incentivize that way
8 with negative consequences, behavior.

9 Because you mentioned that this is the
10 only way to incentivize behavior in the contract.
11 So that's kind of contradictory with what we
12 discussed this morning and what Mr. Hurtado
13 testified this morning.

14 A. I think the answer is yes, because I heard
15 the Chairman earlier very specifically state the law
16 and that was a terrific law. And I think we had a
17 similar one in Wisconsin when I was on the
18 commission.

19 So I don't have any quibble with that. I
20 think that I do understand that and I believe LUMA
21 does as well.

22 COMMISSIONER MATEO: Okay. Thank
23 you.

24 BY COMMISSIONER RAMOS:

25 Q. Mr. Terzic, hi.

1 You tried putting into context or stating
2 that LUMA is not an IOU.

3 A. Correct.

4 Q. And, therefore, the regular metrics or
5 incentives don't apply or not as efficient or
6 wouldn't --

7 A. Incentive regulation doesn't apply as
8 incentive regulation is established to curtail
9 excess profits and to induce efficiency.

10 Q. Correct.

11 A. And so because you're not profit driven,
12 the efficiency induction isn't there for a nonprofit
13 entity.

14 Q. Understood. And then you tried putting
15 into context LUMA's fee and incentive fee together
16 with the entire revenue requirement.

17 A. That it was a part of it, yes -- or could
18 be. That's your decision. It's going to be your
19 decision when you set rates.

20 Q. Okay. The portion of LUMA's fee that
21 will -- the incentive fee is -- I think you
22 mentioned 13 million the first year of contract.

23 How do you compare that to a regular IOU
24 utility's incentive fee in terms of market average.

25 A. Yeah. Keep in mind that the mechanism for

1 an industrial utility would be the adjustment of the
2 return on equity at the end.

3 Many commissions will go through a full
4 rate case, they will receive testimony from
5 rate-of-return witnesses as what a utility of this
6 risk ought to earn, generally given a range.

7 And they will have multiple witnesses, so
8 they will have consumer advocates, industrial
9 advocates, the staff of the commission frequently
10 testify.

11 So you'll have a range of returns and
12 frequently the commissions will say: We'll go to
13 the high or low end of the range based on our
14 impression of, Is this a well-run, efficient utility
15 or not?

16 And our evidence for that will be
17 information in the record about performance
18 indicators.

19 And so they will use it to adjust return
20 up or down. I've seen IO commission go up, go down
21 half a percentage point, whatever. So that's
22 generally how it's used.

23 **Q. That's for the return that's going to be**
24 **implicit in the design, in the reg design.**

25 **A. Right.**

1 Q. But I'm talking about incentive fees,
2 these companies also -- it's now more common that
3 they have ways of getting incentivized or winning
4 bonuses.

5 I'm trying to compare what --

6 A. I didn't see anything in the record --
7 it's not the norm I don't think, that 50 states --
8 I'm not sure -- 35 of them or 30 do this. They are
9 using the incentives more to make adjustments for:
10 Is this a well or not well-run utility?

11 There are sometimes explicit fees added or
12 subtracted to reach certain goals. But that
13 generally allows you -- it's between rate cases and
14 it might allow you to keep a slightly higher return
15 if you earn it.

16 So it does get a little complex.

17 COMMISSIONER RAMOS: All right.

18 Thank you.

19 MR. SEILHAMER: All right. Any other
20 questions.

21 (No response.)

22 MR. SEILHAMER: Let's move on to the
23 next witness.

24 JUAN LARA

25 having been previously duly sworn, was examined and

1 testified as follows:

2 EXAMINATION

3 BY MR. GRIFFIN:

4 Q. Mr. Lara, please state your full name and
5 position for the record.

6 A. My name is Juan Lara, I'm an economist and
7 I'm testifying as an expert witness for LUMA.

8 Q. Can you explain your role in relation to
9 LUMA's other witnesses?

10 A. Basically I was asked to read
11 Dr. Alameda's testimony and to provide an opinion on
12 that.

13 Q. And can we open up your testimony?

14 A. I don't have it -- oh --

15 MR. SEILHAMER: It's right there.

16 THE WITNESS: Oh.

17 MS. MERCADO: For the record, I think
18 it's Exhibit 6.

19 MR. SEILHAMER: Correct. We put in
20 that tag.

21 THE WITNESS: Yes, it is, six.

22 BY MR. GRIFFIN:

23 Q. Can you open those to page 3?

24 A. Yes.

25 Q. So on lines 34 to 60, you provide your key

1 **findings and conclusions here?**

2 A. Right.

3 **Q. Can you summarize those for the Bureau?**

4 A. Yes. Well, basically Dr. Alameda is an
5 economist, as I am. And he testifies that there's a
6 need for incentive-based regulations for LUMA and
7 PREPA, but basically talking about LUMA.

8 And he uses economic theory and economic
9 literature to argue that point. And my key finding
10 is that he doesn't really make a case for what he's
11 advocating. He doesn't do it with the literature
12 and he doesn't do it with the economic theory,
13 either.

14 And to begin with, he assumes that the
15 agreement between LUMA and PREPA and the Puerto Rico
16 P3 Authority is faulty because it doesn't -- it
17 doesn't take care of the necessary incentives to get
18 the regulated entity to behave in a way that is
19 required or needed by the government of Puerto Rico
20 and the people of Puerto Rico.

21 And he just assumes that. He doesn't talk
22 at all about what the incentives are in that
23 agreement. And he doesn't say anything based on
24 either economic theory or economic analysis of why
25 he assumes that the contract doesn't provide

1 adequate incentives for the purposes of the
2 regulator and PREPA and the people of Puerto Rico.
3 So he just assumes that.

4 But he does say that there's a need for a
5 system that includes both rewards and penalties and
6 he proposes a couple of formulas for that that he
7 essentially derives from one of the pieces of
8 literature that he consulted.

9 And he appeals to concepts in economics
10 that are not properly applied here. He never really
11 makes the connection between those concepts and what
12 he is proposing.

13 So when you look at the overall analysis
14 he performs, what I conclude is that he's
15 essentially proposing an idea for the regulators to
16 consider without any real foundation either in data
17 or analysis or economic theory.

18 Q. Okay. Thank you for that summary.

19 Now, just to follow up, if I understood
20 what you're saying -- I believe I heard you say he
21 didn't make his case either based on economic theory
22 or analysis, just to understand it.

23 So do you mean by that his proposal, at
24 least one of them, was for more penalty schemes, so
25 opportunity for rewards and penalties.

1 **And so are you saying there is no economic**
2 **theoretical basis to support that approach?**

3 A. None that he provides in his testimony.

4 **Q. You're just saying his testimony didn't**
5 **provide --**

6 A. Yes, for example, he cites literature that
7 is not applicable for Puerto Rico. He cites
8 literature for Italy and for the United Kingdom and
9 other places that talks about a price gap mechanism
10 that's not the type of regulating system that we
11 have in Puerto Rico. That's not applicable to the
12 type of utility that operates in Puerto Rico, the
13 electric system.

14 So you're using as references for your
15 analysis and your recommendations literature that
16 really doesn't apply. It's not meant for this kind
17 of environment.

18 **Q. Okay. Thank you.**

19 **And so the -- it's non-applicable mostly**
20 **because these were case studies or applications,**
21 **different locations with different specific factors**
22 **in Europe that don't apply here?**

23 A. Yeah. For example, in the case of the
24 paper by a couple of Italian economists about
25 regulations in Italy, he makes a statement about how

1 price gap mechanisms can improve efficiency in a
2 privatized for-profit utility.

3 That's not what we're talking about here.
4 So, you know, why bring that up? Why use that
5 literature to bring up a case for an incentive
6 system that is not the one that they have in Italy,
7 either, not any of the formulas that he mentioned,
8 and it's not what we're talking about in Puerto
9 Rico. It's not what LUMA ought to be facing from
10 the regulators.

11 MR. GRIFFIN: Okay. No further
12 questions.

13 [EXAMINATION BY THE PANEL]

14 CHAIRMAN AVILES: (In Spanish.)

15 THE WITNESS: (In Spanish.)

16 CHAIRMAN AVILES: (In Spanish.)

17 THE WITNESS: (In Spanish.)

18 CHAIRMAN AVILES: (In Spanish.)

19 THE WITNESS: (In Spanish.)

20 CHAIRMAN AVILES: (In Spanish.)

21 THE WITNESS: (In Spanish.)

22 CHAIRMAN AVILES: (In Spanish.)

23 THE WITNESS: (In Spanish.)

24 MR. SEILHAMER: If there are no
25 further questions, then -- no questions?

1 (No response.)

2 MR. SEILHAMER: Then we are going to
3 start with the intervenors. We are going to give
4 them a limit for questions.

5 We are going to start with (In
6 Spanish.) Then we are going to go with LECO.

7 I don't know if PREPA has questions.

8 So then we are going to go (In
9 Spanish) and LECO; is there something that LUMA --

10 MS. MERCADO: Just to be clear, we
11 are going to start with Hurtado, cross-examining
12 Hurtado?

13 MR. SEILHAMER: With cross, yes, but
14 if they have any questions -- they might have
15 questions for the rebuttal also. And we might do it
16 in this time space, also.

17 We are not going to do two rounds of
18 questions.

19 So if they also have for the
20 rebuttal, they should do it now.

21 MS. MERCADO: Okay.

22 MR. SEILHAMER: And in the case of
23 OIPC, not only do they have LUMA's witnesses, they
24 also have LECO's witnesses that they can question.

25 Go ahead.

1 MR. VAZQUEZ: (In Spanish.)

2 MR. HURTADO: (In Spanish.)

3 (EXAMINATION of MR. HURTADO BY
4 MR. VÁZQUEZ.)

5 Q. (In Spanish.)

6 A. (In Spanish.)

7 MS. MERCADO: I would request that
8 the document be shown and I believe he was answering
9 in English, so just for clarity of the record.

10 MR. SEILHAMER: Can you clarify the
11 objection?

12 MS. MERCADO: Yeah, there's a
13 question being asked about a prior statement issued
14 by the witness for him to be shown, and I'm just
15 finding out it's also in English.

16 COMMISSIONER MATEO: They are
17 speaking both in Spanish. The witness hasn't asked
18 for the document in order to answer the question.
19 So let him ask the attorney.

20 Let's not stop his testimony for
21 something that is not even an objection.

22 MS. MERCADO: It is an objection on
23 process for the --

24 COMMISSIONER MATEO: Express it as an
25 objection and wait for the objection to be ruled.

1 Do not argue --

2 MR. SEILHAMER: In terms of the
3 language, the objection is denied. At the beginning
4 with the guidelines we established that even though
5 the hearing was going to be in English, the parties
6 could either ask questions or answer questions in
7 whatever language they preferred.

8 So in this case, contrary to the
9 questioning from our consultant, which she answered
10 in English, he decided to answer the question in
11 Spanish.

12 So I don't see anything out of the
13 ordinary with that. So --

14 MS. MERCADO: Just to clarify, it is
15 just on procedure. What I meant on the language is
16 that the attorney is translating an English
17 original -- a document that was written in English.

18 For clarity of the record, he
19 provided a translation to an answer that was
20 provided by Mr. Hurtado in English.

21 That was my --

22 MR. SEILHAMER: And that's fine and
23 if the witness thinks that the translation wasn't
24 correct, he can answer and correct whatever he
25 thinks was mistakenly stated.

1 MS. MERCADO: If the witness doesn't
2 have the document, it will be very difficult.

3 MR. SEILHAMER: The witness has the
4 document, but also if he needs the document to
5 answer a question, he can request the document and
6 we'll facilitate it. It's at the witness's table.

7 BY MR. VAZQUEZ:

8 Q. Señor Hurtado (in Spanish.)

9 A. (In Spanish.)

10 Q. (In Spanish.)

11 A. (In Spanish.)

12 MR. SEILHAMER: Now I got confused.
13 If you can make a reference to the contact page so
14 he can go, and at the same time we'll save time.

15 MS. MERCADO: It's not a document
16 admitted into evidence. So it's not a document that
17 he has before him.

18 MR. VAZQUEZ: Okay. (In Spanish.)

19 COMMISSIONER MATEO: No, you have to
20 introduce it. Remember that this morning we
21 admitted into evidence a series of activities.
22 Later, other people asking questions introduced
23 several others.

24 If that document that you're
25 referencing is not in that group, you need to

1 introduce it and you need to provide a copy so we
2 mark it and this witness can have it available to
3 take a look at it.

4 So you need to do that first in order
5 for him to answer.

6 MR. VAZQUEZ: (In Spanish.)

7 COMMISSIONER MATEO: Where is a copy
8 of the document?

9 MR. VAZQUEZ: (In Spanish.)

10 MR. SEILHAMER: But then the question
11 is has that document has been marked as an exhibit?

12 MR. VAZQUEZ: (In Spanish.)

13 COMMISSIONER MATEO: That's not going
14 to work, Mr. Vázquez. We need to figure something
15 for you to do the things in the same way the other
16 people here are doing it because if somebody hasn't
17 submitted it, you have to submit it.

18 I understand that if it's already
19 marked, you don't have to submit it again, but --

20 MR. SEILHAMER: Can we have a
21 one-minute recess so I can consult with the
22 Commission?

23 [Whereupon, a recess transpired from 3:33
24 p.m. until 3:40 p.m.]

25 COMMISSIONER MATEO: Just for the

1 record of all of the parties, we all exchanged the
2 documents that each party intended to use in this
3 proceeding. That doesn't mean that the Bureau will
4 print copies for anybody.

5 Everybody was supposed to bring their
6 copies for this type of situation in which you're
7 asking a question, making a reference to a specific
8 document, and showing it to the witness, and/or if
9 you want for it to be admitted in evidence.

10 So for tomorrow, anybody that doesn't
11 have their documents, please either make sure that
12 the document has already been admitted so we have a
13 copy, and it's already marked as an exhibit, or
14 bring your copy.

15 Because exchanging the documents in
16 the original format was a convenience for everybody
17 to know. And in case this hearing was going to be
18 mutual, because we have to have the electronic
19 copies to show it. But that's not the case. We're
20 all here so please be prepared for that tomorrow.

21 MR. VAZQUEZ: Just to clarify our
22 position, basically we thought that if there's any
23 evidence or any documentation that has already been
24 provided by any other parties, we should be able to
25 make reference to that --

1 COMMISSIONER MATEO: The evidence has
2 not been provided. We're dealing with documents are
3 either admitted as exhibits or they are in
4 everybody's corner or in the administrative record.

5 If they are -- and remember otherwise
6 they are not part of the administrative record.

7 So that's why everybody -- and just
8 for example, we said we were going to use this
9 document. And we are not anymore. You didn't bring
10 your copy, I don't have to give you a copy. So
11 that's why everybody has to be prepared.

12 For other proceedings the Bureau has
13 seen the complications that this may cause us. We
14 may stipulate exhibits for another case to simplify
15 things, but we didn't do that. Nobody proposed it.
16 So we have to do what we have in front.

17 So, please, let's avoid any other
18 further delays.

19 MR. SEILHAMER: So we are going to
20 allow counselor to continue his line of questioning.
21 BY MR. VAZQUEZ:

22 Q. So, Mr. Hurtado, before the break, we were
23 talking about the goals of the incentive performance
24 metrics.

25 A. Yes, sir.

1 Q. (In Spanish.)

2 A. Sí.

3 Q. (In Spanish.)

4 MS. MERCADO: (In Spanish.)

5 MR. SEILHAMER: When you have an
6 objection, just state the basis without going into
7 details.

8 MS. MERCADO: (In Spanish.)

9 MR. SEILHAMER: And I know this and
10 I'm going to instruct all of the witnesses and I
11 don't doubt your integrity, but as part of the
12 guidelines, it was established that no one can have
13 anything on the table other than their pads.

14 So if you have cell phones or
15 whatever other devices, please just wait until
16 recess to use it or as soon as you are dismissed for
17 today's panel. I will appreciate that. Thank you.

18 Counsel, go ahead, can you rephrase
19 your question?

20 (EXAMINATION OF MR. HURTADO)

21 BY MR. VAZQUEZ:

22 Q. (In Spanish.)

23 A. (In Spanish.)

24 Q. (In Spanish.)

25 A. (In Spanish.)

1 Q. (In Spanish.)
2 A. (In Spanish.)
3 Q. (In Spanish.)
4 A. (In Spanish.)
5 Q. (In Spanish.)
6 A. (In Spanish.)
7 Q. (In Spanish.)
8 A. (In Spanish.)
9 Q. (In Spanish.)
10 A. (In Spanish.)
11 Q. (In Spanish.)
12 A. (In Spanish.)
13 Q. (In Spanish.)
14 A. (In Spanish.)
15 Q. (In Spanish.)
16 A. (In Spanish.)
17 Q. (In Spanish.)
18 A. (In Spanish.)
19 Q. (In Spanish.)
20 A. (In Spanish.)
21 Q. (In Spanish.)
22 A. (In Spanish.)
23 Q. (In Spanish.)
24 A. (In Spanish.)
25 Q. (In Spanish.)

1 A. (In Spanish.)

2 Q. (In Spanish.)

3 A. (In Spanish.)

4 Q. (In Spanish.)

5 A. (In Spanish.)

6 Q. (In Spanish.)

7 A. (In Spanish.)

8 Q. (In Spanish.)

9 A. (In Spanish.)

10 Q. (In Spanish.)

11 A. (In Spanish.)

12 Q. (In Spanish.)

13 A. (In Spanish.)

14 Q. (In Spanish.)

15 A. (In Spanish.)

16 Q. (In Spanish.)

17 A. (In Spanish.)

18 Q. (In Spanish.)

19 A. (In Spanish.)

20 MR. SEILHAMER: Counsel, can we wrap
21 up? We're way past time. We have been lenient, but
22 we need to start wrapping up your questions.

23 MR. VAZQUEZ: (In Spanish.)

24 BY MR. VAZQUEZ:

25 Q. (In Spanish.)

1 A. (In Spanish.)

2 **Q. (In Spanish.)**

3 A. (In Spanish.)

4 **Q. (In Spanish.)**

5 A. (In Spanish.)

6 **Q. (In Spanish.)**

7 A. (In Spanish.)

8 MR. SEILHAMER: One last question.

9 THE WITNESS: (In Spanish.)

10 BY MR. VAZQUEZ:

11 **Q. (In Spanish.)**

12 A. (In Spanish.)

13 MR. SEILHAMER: It's ten minutes
14 applied to everyone on the panel. Not only LUMA,
15 but we are going to give you time for two more
16 questions, and then we need to move on.

17 BY MR. VAZQUEZ:

18 **Q. (In Spanish.)**

19 A. (In Spanish.)

20 **Q. (In Spanish.)**

21 A. (In Spanish.)

22 **Q. (In Spanish.)**

23 A. (In Spanish.)

24 **Q. (In Spanish.)**

25 A. (In Spanish.)

1 Q. "Indicating that he agreed to which
2 progress has been made in relation to the current
3 state of the system, alignment with public policy
4 and the customer needs and (indecipherable) the
5 position (indecipherable)"; okay?

6 (In Spanish.)

7 A. (In Spanish.)

8 MR. SEILHAMER: One last question,
9 Counselor.

10 BY MR. VAZQUEZ:

11 Q. (In Spanish.)

12 A. (In Spanish.)

13 Q. (In Spanish.)

14 A. (In Spanish.)

15 Q. (In Spanish.)

16 A. (In Spanish.)

17 Q. (In Spanish.)

18 A. (In Spanish.)

19 Q. (In Spanish.)

20 A. (In Spanish.)

21 Q. (In Spanish.)

22 A. (In Spanish.)

23 Q. (In Spanish.)

24 A. (In Spanish.)

25 Q. (In Spanish.)

1 A. (In Spanish.)

2 MR. SEILHAMER: Thank you.

3 LECO.

4 MR. MURTHY: Thank you. I'll start
5 with Mr. Hurtado.

6 Good afternoon, Mr. Hurtado.

7 THE WITNESS: Good afternoon.

8 BY MR. MURTHY:

9 **Q. You were the senior LUMA employee**
10 **testifying at this hearing; is that right?**

11 A. Mario Hurtado for the record.

12 Yes, I am.

13 **Q. Earlier this morning, you mentioned that**
14 **LUMA was looking for -- you used the phrase, "a fair**
15 **opportunity to earn the incentive fee."**

16 **Do you remember that?**

17 A. Yes, I think that's what I said. I mean,
18 in general the contract says that the operator has
19 to have an opportunity to earn the incentive fee.
20 And I think it's in a couple different places in the
21 contract.

22 **Q. Okay. When LUMA signed the operation**
23 **management agreement in 2020, the draft as it stood**
24 **at that time, did LUMA have an expectation that it**
25 **would earn the full incentive fee?**

1 A. Mario Hurtado for the record.

2 Not necessarily. I think there was a
3 recognition that there needs to be a process during
4 the front-end transition to look at the real data
5 and see where the real performance of the utility
6 lay, what the budget would be attributable to the
7 activities that would help in reaching those goals
8 and those targets. And then the time frames. And
9 then take into account other competing priorities
10 and how the operations were going to go.

11 There were a lot of question marks about
12 exactly how things would go and specifics,
13 especially when you get to one specific area and how
14 that was going to go.

15 I mean in general the goal and the
16 expectation was improving, which we have. But I
17 think when you get very specific there was a fair
18 degree of uncertainty because of the lack of data
19 and lack of visibility, which, you know, was just
20 part of what we encountered.

21 **Q. Sitting here today with the data that you**
22 **have now, and metrics and targets set in October of**
23 **2022, does LUMA have an expectation that you'll earn**
24 **the full incentive fee?**

25 A. Not necessarily.

1 **Q. Is your level of uncertainty --**

2 A. I mean that's certainly our goal. That's
3 certainly -- that's our target, to do the absolute
4 best we can in every area.

5 But, you know, I don't think we know
6 whether we are going to be able to do that or not.

7 **Q. There was a lot of discussion this morning**
8 **and just now about LUMA updating the performance**
9 **data that underlined the targets.**

10 Is there a set formula or set method that
11 LUMA would employ to use that data and update the
12 target based on new data?

13 A. I don't quite understand the question in
14 terms of formula. I think it would be a question of
15 determining what the last -- you know, the period
16 and the most recent data. And then presenting that
17 to the Bureau and they would be able to have the
18 benefit of that to see what the actual
19 characteristics have been of the different metrics
20 and any additional information on the current state
21 of the system that would -- that effects those
22 specific metrics and those specific activities.

23 **Q. So once the Bureau receives its updated**
24 **performance data, it will be up to the Bureau and**
25 **stakeholders to determine the new targets.**

1 A. Well, it's up to the Bureau to determine
2 the targets.

3 Q. Okay. Do you expect at this point that an
4 update of the performance data would just be raising
5 targets to reflect higher performance standards or
6 is it possible that LUMA would be seeking to lower
7 certain targets to reflect lower performance
8 standards?

9 A. I don't prejudge. I think it depends on
10 the different metrics and that's why we have to go
11 through the data.

12 I think as I've said in general, we've
13 done well. But we haven't hit the target on every
14 one. And the characteristics of the system, you
15 know, they are what they are now.

16 And we've learned a lot more about the
17 operations, so I think that all of that experience
18 and all of those learnings are worthwhile to bring
19 to bear in trying to set targets for the initial
20 three-year period that are attainable. And also
21 meet the goals that the Energy Bureau has set in
22 91.37 and in the different orders.

23 Q. So it is possible that updated performance
24 data from LUMA -- that LUMA would say that updated
25 performance data would require lowering of certain

1 **targets?**

2 A. Yeah, I'm not going to judge what it would
3 say or not. We need to do it based on the data and
4 based on what we're able to present at the time.

5 **Q. My Hurtado, my question is whether it's**
6 **possible or not possible.**

7 A. It's possible, sure. It's possible that
8 some of the metrics would have higher targets. It's
9 possible that some of the metrics would have lower
10 targets.

11 But none of that is determinant. And it's
12 going to depend on the data and obviously that will
13 ultimately be up to the Bureau to make decisions
14 about that.

15 **Q. We have been discussing updates of**
16 **performance data. Would it also make sense for LUMA**
17 **to update targets based on updates to its**
18 **improvement programs, updates to budgets and updates**
19 **to the federal funding that's available?**

20 A. Those are factors that could be taken into
21 account. I think you'll see in Annex IX and the
22 testimony -- I mean, there's a connection, as I
23 discussed this morning with Mr. Griffin, there's a
24 connection between the budgets, the resources that
25 are going to be expended and the activities that are

1 going to be done, and the attainment of certain
2 levels for different metrics.

3 Q. I would like to look at the October 20,
4 2022, Annex IX. This is Exhibit 11.

5 Great. I would like to take a look at
6 page 11.

7 A [Witness complies.]

8 Q. So starting on this page you'll see the
9 Table 2.4, the Summary of Performance Metrics"; is
10 that right?

11 A. That's Table 2.2, Summary of Performance
12 Metrics. That's the title.

13 Q. Right. Okay.

14 So here we have each performance metric
15 that LUMA proposes listed in this table; is that
16 right?

17 A. Yes. Yes.

18 Q. We have the effective --

19 A. For the regular performance metrics.

20 Q. Sorry?

21 A. The major outage events metrics are in
22 another table.

23 Q. Okay. And we have the effective weight of
24 each of these metrics in the last column here.

25 A. The proposed weight, yes.

1 **Q. Okay. Do these effective weights**
2 **correspond to the importance that LUMA places on**
3 **each of these metrics?**

4 A. I think there are a couple of things that
5 influence weight. One was what was the weight that
6 was in the original OMA, in the draft, Annex IX.

7 And then in some cases there were
8 discussions specifically about the weight with the
9 P3 Authority, about what was appropriate weighting,
10 given the state of the utility in that area that we
11 had found, and the information that we gathered
12 during the front-end transition or the programs that
13 we were planning to put into our budgets moving
14 forward.

15 **Q. So strictly speaking, these effective**
16 **weights don't match up to exactly how LUMA weighted**
17 **each of these metrics.**

18 A. These effective weights are the effective
19 weights that we're proposing for Annex IX.

20 **Q. Okay. One of LUMA's key goals is to**
21 **prioritize safety; is that right?**

22 A. Yeah, we have several key goals and that's
23 one of the -- that's certainly at the top.

24 **Q. The decision to prioritize safety over**
25 **other concerns, is that something that LUMA**

1 incorporated when you created the proposed metrics?

2 A. I don't know what you mean by
3 "incorporated" in this context.

4 Q. Do the weights of these proposed metrics
5 and effective weights of these metrics reflect
6 LUMA's key goal to prioritize safety?

7 A. The inclusion of the metrics is part of
8 it. But the weighting assigned for each one doesn't
9 necessarily reflect that we think that one is more
10 important than the other.

11 I mean, there's a lot of goals that as a
12 utility we have to try to attain. As I said, the
13 effective weight is a result of a process based on
14 the data. And then -- excuse me -- based on the
15 discussions and the feedback and revisions that we
16 received from the P3.

17 Q. So, Mr. Hurtado, if we were to look at the
18 effective weights and we were to see that OSHA
19 metrics have a lower effective weight than other
20 metrics like, say, how quickly LUMA picks up the
21 phone, when you abandon the ring or are on a phone
22 call; how can you reconcile that with LUMA's goal to
23 prioritize safety?

24 Is LUMA really prioritizing safety over
25 picking up the phone if the effective weight of the

1 OSHA metrics is lower than picking up the phone's
2 metric?

3 A. No. It has to do with math. So there is
4 30 base points for customer service; 50 for the
5 technical, safety and regulatory; and 33 for
6 finance.

7 So there's more metrics in the technical,
8 safety and regulatory. And so the weighting is a
9 result -- it has to add up to the 60.

10 And so it's not necessarily a reflection,
11 as I mentioned already, that we think that safety is
12 less important than the J.D. Power customer survey
13 for residential, for example. That's not the case.

14 Q. If LUMA could earn a bigger incentive by
15 improving -- sorry.

16 If LUMA could earn a bigger incentive by
17 improving average speed of answer or improving
18 abandonment for phone calls, as opposed to improving
19 performance on work-related fatalities, or another
20 OSHA metric, how would that impact LUMA's decision
21 on how to prioritize resources?

22 A. If LUMA could -- I'm sorry. Are you
23 saying if there was a larger reward for abandonment
24 than safety?

25 Q. Correct.

1 A. I think that we would look at that. I
2 think we have to be conscious of it, but safety
3 really has to be the number 1 priority and is
4 something that we put a very big emphasis on.

5 It impacts the operations of the utility.
6 And it's also very important to the workforce and to
7 all of the LUMA family to make sure that they work
8 safely.

9 Typically utilities that have better
10 safety performance are better operated, have higher
11 performance. And plus you're talking about people's
12 lives. And so that's very important.

13 So it wouldn't necessarily make it less
14 important.

15 **Q. Between improving the metric as an**
16 **incentive or improving safety, then how is LUMA to**
17 **reconcile those two opposing concerns?**

18 A. I'm sorry, could you repeat the question?

19 **Q. Sure.**

20 **If LUMA could improve safety, but would**
21 **lose out on some part of the incentive, how would**
22 **LUMA reconcile that?**

23 A. I think that's a hypothetical that doesn't
24 exist, so I'm not going to speculate on it.

25 **Q. I wanted to --**

1 A. Safety is supremely important to
2 everything we do. And we are not going to take
3 shortcuts based on the attainment of other things.

4 Like I said, there are many goals that we
5 have to attain as a utility, as a utility operator,
6 and we have to keep all of those in mind, but safety
7 is always at the top.

8 **Q. LUMA includes a target for each of these**
9 **metrics; is that right?**

10 A. There's a target assigned, yes.

11 **Q. Okay. I wanted to go back to the Energy**
12 **Bureau's December 2020 order, which is something we**
13 **were discussing this morning, and I want to look**
14 **specifically at the last one. It's entitled**
15 **"Incentives, Reward, Difficult Tasks."**

16 A. Um-hmm.

17 **Q. Does LUMA believe that the target assigned**
18 **to each metric represents a difficult task?**

19 A. Without looking at the specific language
20 in the resolution, I am familiar with the topic in
21 general and I think that I have some testimony on
22 that.

23 I mean, running the electric utility in
24 Puerto Rico and making progress is a difficult task.

25 Individually making substantial progress

1 in different areas towards the different goals that
2 we have, prioritizing safety, having a more
3 resilient system, rebuilding the grid as we make it
4 more resilient, modernizing the system, and putting
5 in more effective business operations, and then
6 making sure that all of that is done while we're
7 also building a more sustainable energy -- energy
8 eco system -- and having more renewable energy and
9 all those things. Those are all important and they
10 all have their challenges.

11 All of it together especially is quite
12 difficult because you have a lot of goals at the
13 same time and a tremendous amount of change at the
14 same time.

15 And as we've established, we're starting
16 from a starting point which, in most cases, is
17 basically the worst in North America in terms of a
18 starting point.

19 **Q. Getting back to the targets in these**
20 **metrics, did LUMA try to find a typical task when it**
21 **assigns these target? How did LUMA come up with**
22 **these targets and was the difficulty of it a factor?**

23 A. Well, the difficulty has to do with what
24 the metric is, right? Most of these metrics were
25 established in what the government of Puerto Rico

1 said they wanted to accomplish for the system.
2 That's why they were in the Annex IX when we
3 executed the contract.

4 So we largely took those and then looked
5 at the reality of what was going on in the utility
6 and in some cases, as I mentioned, it wasn't a
7 practical way because of the data or because of
8 timing where the utility was to be able to utilize
9 that metric.

10 And so some of those were deferred, but in
11 general, we went with what already was in there
12 and -- but it depended on looking at the current
13 state of the utility and what was, practically
14 speaking, we were going to be able to track
15 effectively and report on.

16 **Q. The government of Puerto Rico proposed**
17 **certain metrics. You brought that up and you said**
18 **you largely accepted those; you generally accepted**
19 **those.**

20 **But there was part of what the government**
21 **of Puerto Rico suggested in terms of metrics that**
22 **you rejected; is that right?**

23 **A. Well, we deferred certain metrics after**
24 **looking at the data, and the way that those methods**
25 **would have to evolve. Where the system was, in some**

1 cases, the technology was just not there to be able
2 to do some of the things that you need to for some
3 of those metrics.

4 That was part of the process that that
5 committee during the front-end transition looked at
6 and discussed and came up with the proposal.

7 And then we had discussions about that and
8 we got feedback and revisions from the P3 Authority
9 and their consultants on Annex IX. And we took
10 those into account, and then submitted it in
11 February of 2021 to the Bureau.

12 So, I mean, it's the same process, right?

13 **Q. The government of Puerto Rico initially**
14 **suggested penalties as part of this as well, did**
15 **they not?**

16 A. I'm not aware of that.

17 In terms of the performance metrics and
18 the scoring of the performance metrics --

19 **Q. Right.**

20 A. -- I don't remember specifically. I know
21 that the metrics were in some form in the RFP and
22 then they were in the contract and then through the
23 competitive process and in negotiation of the
24 contract, the structure of the fee was arrived at as
25 part of negotiation and competitive process with

1 multiple aspects being -- come to between the
2 parties.

3 Q. So penalties were originally part of the
4 government's proposal for these metrics --

5 A. I'm not sure. I actually don't remember
6 that. That's not how I remember it. But I would
7 have to go and look at the RFP and see if they were
8 actually there or not.

9 I know that when we signed the contract,
10 that's -- there were not penalties in the
11 performance metrics. There were certainly, as we've
12 discussed, other penalties and other consequences
13 for not attaining things in the contract.

14 Q. I would like to go over a concept that
15 Mr. Griffin discussed in the morning, a concept of
16 tiers.

17 So I would like to look at a page in the
18 performance metrics targets that goes over these
19 tiers. I thought we could use an example to
20 understand that a little better.

21 Why don't we look at page 16?

22 A. Okay. I'm on page 16.

23 Q. Does that have the performance metrics
24 table with the -- with each of the metrics and the
25 target threshold and minimum performance level and

1 tiers?

2 A. Yes, it does, Table 23, Summary of
3 Performance metrics based on (inaudible) targets.
4 It has a target threshold, minimum performance level
5 and then 150, 125, 100, 50 and 25 percent of the
6 target for each of them.

7 Q. Okay. Can you help us understand here,
8 LUMA has a target threshold here, but LUMA doesn't
9 need to hit that target threshold to earn points
10 toward the incentive; is that right?

11 A. The target threshold establishes the
12 hundred percent mark on the metric. That's how it's
13 designed.

14 Q. LUMA earns points towards the performance
15 incentive for any performance above the minimum
16 performance level; is that right?

17 A. Putting aside the binary metrics?

18 Q. Right.

19 A. If there's a performance above the minimum
20 performance level, then that would be above zero.
21 And as stated in the testimony, that would be
22 25 percent times the base points assigned to that
23 metric.

24 Q. Okay. Let me try to use an example here
25 and then maybe that will help us --

1 MR. SEILHAMER: Try wrapping up your
2 questions.

3 MR. MURTHY: Okay. Sure.

4 BY MR. MURTHY:

5 Q. Let's look at the J.D. Power Customer
6 Satisfaction Survey for residential customers. For
7 Year 1, you can see the minimum performance level is
8 398, right?

9 A. Yes, that's correct.

10 Q. So if LUMA earns a 399 on the survey, LUMA
11 would earn points towards an incentive; is that
12 right?

13 A. That's how the scoring works.

14 Q. Okay. And, in fact, LUMA could even score
15 below 398, the baseline, and still be eligible to
16 earn its full performance incentive for the year; is
17 that right?

18 A. It would have zero points for this metric.
19 Whether or not it earned the fee, that exactly would
20 depend on the calculation of the points.

21 Q. So, Mr. Hurtado, Witness Terzic discussed
22 executive compensation packages for executives at
23 utilities. And I wanted to ask you about that
24 topic.

25 Does LUMA have that kind of package for

1 **its own executives, a compensation package --**

2 MS. MERCADO: I am going to object.
3 Outside the scope of the proceedings.

4 MR. MURTHY: Your Honor, this is
5 something that Mr. Terzic himself testified as to an
6 analogized to this performance entry.

7 MS. MERCADO: No.

8 MR. SEILHAMER: Well, it wasn't part
9 of Mr. Hurtado's testimony, as you are stating here.
10 So if it's not part of the direct
11 testimony, and he didn't make any reference, you can
12 ask the other witness about it, but not Mr. Hurtado.

13 MR. MURTHY: Okay. I'll move on.

14 MR. SEILHAMER: Okay.

15 BY MR. MURTHY:

16 Q. **After the initial draft and design was**
17 **submitted in June 2020, you be submitted three**
18 **further --**

19 A. I'm sorry. February 2021. Are you
20 talking about when the contract was signed?

21 Q. **Yes. So the initial one was created in**
22 **June 2020; is that correct?**

23 A. It was an Annex IX as part of the
24 effective contract of June 2020, yes.

25 Q. **And there were three further Annex IX**

1 submissions after that, that was February 21,
2 September 21 and October 25?

3 A. Roughly speaking, yes.

4 Q. Earlier today, you testified those changes
5 in those submissions did not include any changes to
6 the methodology; is that right?

7 A. I think -- yes, I think that's right.
8 Between the first and the second one, there was some
9 updated data from the front-end transition period.
10 And then between the second and the third one there
11 was an addition of the three -- well, four
12 additional metrics ordered by the Bureau?

13 And there were some corrections or some
14 changes that were presented as part of the redline
15 of Annex IX. I think I gave one example, it had to
16 do with an MOE. I think there were some typos and
17 corrections that had to be done in different
18 versions. But, basically, it's those three.

19 Q. In response to a question from the
20 Chairman, you stated:

21 "There were no major data updates"; is
22 that right?

23 A. I'm not aware from the time of the
24 submission -- you know, that between the February
25 and the August one, there's additional data. I

1 can't think of whether there was any others, but I
2 can't say there were no other changes, but I'm not
3 aware right now.

4 MR. SEILHAMER: One last question.

5 BY MR. MURTHY:

6 Q. So let's start with June 2020, the
7 Annex IX that existed in June 2020. The Energy
8 Bureau issued this December 2020 order with these
9 six criteria: Go above and beyond, further
10 compliance with public policy, et cetera.

11 Did LUMA make any changes to the Annex IX
12 to address the criteria set forth by the Energy
13 Bureau in that December 2020 order?

14 A. LUMA looked at the order obviously and
15 took it into account in terms of finalizing the
16 Annex IX that was submitted to the P3.

17 In particular we looked at what metrics
18 fit different parts of the criteria that were set up
19 in that order. So we took it into account.

20 I don't know of any specific change that
21 we made because of that order.

22 Q. So you cannot identify any specific change
23 LUMA made to the Annex IX to satisfy the Energy
24 Bureau's order?

25 MS. MERCADO: Asked and answered.

1 THE WITNESS: Yeah, I think I
2 answered it. We took it into account. We looked at
3 what the different metrics were. We saw how there
4 was alignment, generally.

5 In some very specific areas, there's
6 some metrics that specifically address some specific
7 principles.

8 There's a lot of that in the
9 different motions. In fact, the motion that
10 presented the Annex IX goes through that in some
11 detail; how the Annex IX submitted in February 2021
12 aligns with the order from December of 2020.

13 MR. SEILHAMER: Counselor, we've had
14 the last question three questions ago.

15 MR. MURTHY: Thank you.

16 MR. SEILHAMER: LUMA?

17 MS. MERCADO: Okay.

18 MR. SEILHAMER: So it's going to be
19 LECO's witnesses.

20 MS. MERCADO: Okay. I understand.

21 EXAMINATION AGUSTÍN IRIZARRY RIVERA
22 BY MS. MERCADO:

23 Q. (In Spanish.)

24 MR. MURTHY: Your Honor, I'm going to
25 object to that question as beyond the scope of this

1 proceeding.

2 MS. MERCADO: (In Spanish.)

3 MR. SEILHAMER: If it's part of the
4 direct testimony, then, yes, it's within the scope
5 of the --

6 MR. MURTHY: Your Honor, it's not
7 part of his direct testimony.

8 MS. MERCADO: (In Spanish.)

9 MR. SEILHAMER: If the part -- if it
10 is part of the -- we'll allow the question.

11 MS. MERCADO: Sí. (In Spanish.)

12 MR. SEILHAMER: It has been ruled, if
13 it's part of the direct testimony of the --

14 MR. MURTHY: Okay. Your Honor, I
15 would ask to identify a line where it's in the prior
16 testimony.

17 MR. SEILHAMER: Can you make
18 reference in the direct?

19 MS. MERCADO: (In Spanish.)

20 MR. SEILHAMER: Before you make the
21 question, just make reference to where in the direct
22 or the attachment it makes reference to --

23 BY MS. MERCADO:

24 Q. (In Spanish.)

25

1 Q. "Expert witness."

2 (In Spanish.)

3 A. "Expert witness on behalf of local
4 environmental organization."

5 Q. (In Spanish.)

6 A. (In Spanish.)

7 Q. (In Spanish.)

8 A. (In Spanish.)

9 Q. (In Spanish.)

10 A. (In Spanish.)

11 Q. (In Spanish.)

12 A. (In Spanish.)

13 Q. (In Spanish.)

14 A. (In Spanish.)

15 Q. (In Spanish.)

16 A. (In Spanish.)

17 Q. (In Spanish.)

18 A. (In Spanish.)

19 Q. (In Spanish.)

20 MR. MURTHY: Your Honor, I'm going to
21 object. This is way beyond the scope of the
22 testimony.

23 MS. MERCADO: No. (In Spanish.)

24 MR. SEILHAMER: If there is some --
25 some word in the document that he says that he has

1 done those functions?

2 MS. MERCADO: (In Spanish.)

3 MR. SEILHAMER: Go ahead.

4 MR. MURTHY: Your Honor, these
5 questions were raised already in a Motion to Strike.
6 Part of Dr. Irizarry's testimony. And it's been
7 overruled.

8 MR. SEILHAMER: This is
9 cross-examination. She can impeach the witness and
10 that's what she's doing. And part of the questions
11 have been related to documents attached to his
12 direct testimony.

13 MS. MERCADO: (In Spanish.)

14 THE WITNESS: (In Spanish.)

15 BY MS. MERCADO:

16 Q. (In Spanish.)

17 A. (In Spanish.)

18 Q. (In Spanish.)

19 A. (In Spanish.)

20 Q. (In Spanish.)

21 A. (In Spanish.)

22 MS. ARROYO: Sorry. I have to
23 interrupt. I am Laura Arroyo, counsel for LECO.

24 She is continually asking questions
25 in Spanish. The person that is here in the hearing,

1 he's going to hear the translation and he sees the
2 attorney that is assigned for this panel.

3 So I will suggest that when she
4 speaks, she speaks slowly so he can hear completely.

5 MR. SEILHAMER: If the objection is
6 to allow for the transmission to -- that's fine. If
7 that's -- that's fine.

8 Counselor --

9 MS. MERCADO: (In Spanish.)

10 MR. SEILHAMER: You have to delay the
11 timing to allow him to listen.

12 MS. ARROYO: To object --

13 MR. SEILHAMER: Sustained. We'll
14 instruct the attorney to do so.

15 MS. MERCADO: Okay.

16 CHAIRMAN AVILES: (In Spanish.)

17 BY MS. MERCADO:

18 Q. (In Spanish.)

19 MR. SEILHAMER: Asked and answered.
20 He just answered the question to the Chairman.

21 MS. MERCADO: Okay.

22 MR. SEILHAMER: Can I have it so I
23 can see it and mark it as an exhibit and then give
24 it back?

25 MS. MERCADO: (Tendering document.)

1 MR. SEILHAMER: Perfecto. It's
2 Exhibit 15.

3 We are going to mark it as an
4 exhibit. Once you're done with the witness, can we
5 please get the document so we can have it for the
6 record.

7 MS. MERCADO: Okay.

8 [Exhibit Number 15 was marked for
9 identification.]

10 BY MS. MERCADO:

11 Q. (In Spanish.)

12 MR. SEILHAMER: Counsel, you've asked
13 the question three times. He's already answered
14 regarding the \$12,000.

15 MS. MERCADO: (In Spanish.)

16 MR. SEILHAMER: Okay. If it's
17 efficient, go ahead.

18 BY MS. MERCADO:

19 Q. (In Spanish.)

20 A. (In Spanish.)

21 Q. (In Spanish.)

22 A. (In Spanish.)

23 Q. (In Spanish.)

24 A. (In Spanish.)

25 Q. (In Spanish.)

1 A. (In Spanish.)
2 **Q. (In Spanish.)**
3 A. (In Spanish.)
4 **Q. (In Spanish.)**
5 A. (In Spanish.)
6 **Q. (In Spanish.)**
7 A. (In Spanish.)
8 **Q. (In Spanish.)**
9 A. (In Spanish.)
10 **Q. (In Spanish.)**
11 A. (In Spanish.)
12 **Q. (In Spanish.)**
13 A. (In Spanish.)
14 **Q. (In Spanish.)**
15 A. (In Spanish.)
16 **Q. (In Spanish.)**
17 A. (In Spanish.)
18 **Q. (In Spanish.)**
19 A. (In Spanish.)
20 **Q. (In Spanish.)**
21 A. (In Spanish.)
22 **Q. (In Spanish.)**
23 A. (In Spanish.)
24 **Q. (In Spanish.)**
25 MS. MERCADO: (In Spanish.)

1 MR. SEILHAMER: The decision that the
2 Bureau has made in terms of documents, any documents
3 that we are going to use with a witness we are going
4 to mark it as an exhibit.

5 MS. MERCADO: Okay.

6 MS. ARROYO: Which document?

7 MS. MERCADO: "LUMA Performance
8 Incentive Mechanism, a Handbook for Regulators."

9 MR. SEILHAMER: Once you're done, I
10 need a clean copy to mark it and it will be Exhibit
11 16.

12 [Exhibit Number 16 was marked for
13 identification.]

14 BY MS. MERCADO:

15 Q. (In Spanish.)

16 A. (In Spanish.)

17 MR. SEILHAMER: This is LUMA exhibit,
18 which one?

19 MR. MURTHY: For identification,
20 47-1.

21 MR. SEILHAMER: Forty-seven.

22 BY MS. MERCADO:

23 Q. (In Spanish.)

24 A. (In Spanish.)

25 Q. (In Spanish.)

1 A. (In Spanish.)

2 **Q. (In Spanish.)**

3 A. (In Spanish.)

4 Q. (In Spanish.)

5 A. (In Spanish.)

6 **Q. (In Spanish.)**

7 A. (In Spanish.)

8 **Q. (In Spanish.)**

9 A. (In Spanish.)

10 **Q. (In Spanish.)**

11 A. (In Spanish.)

12 **Q. Examples of analysis performance methods.**

13 A. (In Spanish.)

14 **Q. "Peak load production"?**

15 A. (In Spanish.)

16 **Q. "Stakeholder engagement" --**

17 A. Sí.

18 **Q. (In Spanish.)**

19 A. (In Spanish.)

20 MS. ARROYO: What page?

21 MS. MERCADO: (In Spanish.)

22 BY MS. MERCADO:

23 **Q. (In Spanish.)**

24 A. Proposed Performance Metric.

25 MS. MERCADO: (In Spanish.)

1 THE WITNESS: (In Spanish.)

2 BY MS. MERCADO:

3 Q. (In Spanish.)

4 A. (In Spanish.)

5 Q. (In Spanish.)

6 A. (In Spanish.)

7 Q. (In Spanish.)

8 A. (In Spanish.)

9 Q. (In Spanish.)

10 A. (In Spanish.)

11 Q. (In Spanish.)

12 A. (In Spanish.)

13 Q. Examples of metrics to achieve a
14 sustainable energy system --

15 A. (In Spanish.)

16 Q. (In Spanish.)

17 A. (In Spanish.)

18 Q. (In Spanish.)

19 A. (In Spanish.)

20 Q. (In Spanish.)

21 A. (In Spanish.)

22 Q. (In Spanish.)

23 A. (In Spanish.)

24 Q. (In Spanish.)

25 A. (In Spanish.)

1 Q. (In Spanish.)
2 A. (In Spanish.)
3 Q. (In Spanish.)
4 A. (In Spanish.)
5 Q. (In Spanish.)
6 A. (In Spanish.)
7 Q. (In Spanish.)
8 A. (In Spanish.)
9 Q. (In Spanish.)
10 A. (In Spanish.)
11 Q. (In Spanish.)
12 A. (In Spanish.)
13 Q. (In Spanish.)
14 A. (In Spanish.)
15 Q. (In Spanish.)
16 A. (In Spanish.)
17 Q. (In Spanish.)
18 A. (In Spanish.)
19 Q. (In Spanish.)
20 A. (In Spanish.)
21 Q. (In Spanish.)
22 A. (In Spanish.)
23 Q. (In Spanish.)
24 A. (In Spanish.)
25 Q. (In Spanish.)

1 A. (In Spanish.)

2 Q. (In Spanish.)

3 A. (In Spanish.)

4 Q. (In Spanish.)

5 A. (In Spanish.)

6 Q. (In Spanish.)

7 MR. SEILHAMER: Counselor, we need to
8 start wrapping up your questions.

9 MS. MERCADO: (In Spanish.)

10 MR. SEILHAMER: It has to be a fair
11 game for everyone else.

12 MS. MERCADO: (In Spanish.)

13 MR. SEILHAMER: So noted.

14 CHAIRMAN AVILES: (In Spanish.)

15 MS. MERCADO: (In Spanish.)

16 MS. ARROYO: We need more next time,
17 yes.

18 COMMISSIONER MATEO: (In Spanish.)

19 MS. ARROYO: Sorry, Counsel Laura
20 Arroyo, they already met our time. How many more
21 times are they given then?

22 COMMISSIONER MATEO: Fifteen minutes.
23 So you're going to have 15 minutes and they are
24 going to have 15 minutes. So we're all staying
25 because of these questions because tomorrow we are

1 going to start with something else. We finish this
2 today.

3 MR. SEILHAMER: What do you mean
4 there's other witnesses?

5 MS. MERCADO: (In Spanish.)

6 MR. SEILHAMER: The 15 minutes is to
7 finish. But we need to clarify this because
8 15 minutes to finish a line of questioning. It's
9 not to start with a new witness.

10 MS. MERCADO: (In Spanish.)

11 MR. SEILHAMER: One-minute recess.

12 [Whereupon, a recess transpired from 4:59
13 p.m. until 5:03 p.m.]

14 MR. SEILHAMER: So everyone is aware,
15 we are going to give you 25 more minutes, 15 for the
16 witness that you have right now and ten minutes for
17 the next witness.

18 If you want to play with the 25
19 minutes, you can play with them and use five and 20,
20 that's going to be 25 minutes. And we are going to
21 give both parties 25 additional minutes for your
22 questions.

23 MS. MERCADO: So for the record, I
24 don't think that it's a limitation on time to
25 cross-examine too many witnesses. I think it should

1 take more time and it should not be imposed. That's
2 not going to be able to fully cross-examine these
3 witnesses.

4 And, secondly, to clarify, are you
5 adding 25 minutes for all of the witnesses?

6 MR. SEILHAMER: For every witness.

7 MS. MERCADO: For all of the
8 witnesses.

9 MR. SEILHAMER: For all of the
10 witnesses.

11 CHAIRMAN AVILES: (In Spanish.)

12 MS. ARROYO: (In Spanish.)

13 MS. MERCADO: I'm not opposed for
14 them to have additional time for each witness that
15 didn't speak.

16 COMMISSIONER MATEO: (In Spanish.)

17 (EXAMINATION OF Mr. IRIZARRY CONTINUED)

18 BY MS. MERCADO:

19 Q. (In Spanish.)

20 A. (In Spanish.)

21 Q. (In Spanish.)

22 A. (In Spanish.)

23 Q. (In Spanish.)

24 A. (In Spanish.)

25 Q. (In Spanish.)

1 A. (In Spanish.)

2 **Q. (In Spanish.)**

3 A. (In Spanish.)

4 **Q. (In Spanish.)**

5 A. (In Spanish.)

6 **Q. (In Spanish.)**

7 A. (In Spanish.)

8 **Q. (In Spanish.)**

9 A. (In Spanish.)

10 **Q. (In Spanish.)**

11 A. (In Spanish.)

12 **Q. (In Spanish.)**

13 A. (In Spanish.)

14 MS. ARROYO: (In Spanish.)

15 MR. SEILHAMER: (In Spanish.)

16 CHAIRMAN AVILES: Sí.

17 BY MS. MERCADO:

18 **Q. (In Spanish.)**

19 A. (In Spanish.)

20 **Q. (In Spanish.)**

21 A. (In Spanish.)

22 **Q. (In Spanish.)**

23 A. (In Spanish.)

24 **Q. (In Spanish.)**

25 A. (In Spanish.)

1 Q. (In Spanish.)

2 A. (In Spanish.)

3 Q. (In Spanish.)

4 A. (In Spanish.)

5 Q. (In Spanish.)

6 A. (In Spanish.)

7 Q. (In Spanish.)

8 A. (In Spanish.)

9 Q. (In Spanish.)

10 A. (In Spanish.)

11 Q. (In Spanish.)

12 A. (In Spanish.)

13 Q. (In Spanish.)

14 A. [In Spanish.)

15 MS. ARROYO: (In Spanish.)

16 MR. SEILHAMER: The question is if he
17 incorporated that information in the -- in his
18 report. So if he didn't, then he can answer no.

19 BY MS. MERCADO:

20 Q. (In Spanish.)

21 A. (In Spanish.)

22 Q. (In Spanish.)

23 A. (In Spanish.)

24 Q. (In Spanish.)

25 A. (In Spanish.)

1 Q. (In Spanish.)

2 A. (In Spanish.)

3 Q. (In Spanish.)

4 A. (In Spanish.)

5 Q. (In Spanish.)

6 A. (In Spanish.)

7 Q. (In Spanish.)

8 A. (In Spanish.)

9 Q. (In Spanish.)

10 A. (In Spanish.)

11 Q. (In Spanish.)

12 A. (In Spanish.)

13 MS. ARROYO: (In Spanish.)

14 MR. SEILHAMER: Denied. She's asking

15 if --

16 MS. ARROYO: (In Spanish.)

17 MS. MERCADO: (In Spanish.)

18 MR. SEILHAMER: Objection denied.

19 Answer the question.

20 BY MS. MERCADO:

21 Q. (In Spanish.)

22 A. (In Spanish.)

23 Q. (In Spanish.)

24 A. (In Spanish.)

25 Q. (In Spanish.)

1 A. (In Spanish.)

2 Q. (In Spanish.)

3 A. (In Spanish.)

4 Q. (In Spanish.)

5 A. (In Spanish.)

6 Q. (In Spanish.)

7 A. (In Spanish.)

8 Q. (In Spanish.)

9 A. (In Spanish.)

10 Q. (In Spanish.)

11 CHAIRMAN AVILES: (In Spanish.)

12 BY MS. MERCADO:

13 Q. (In Spanish.)

14 A. (In Spanish.)

15 Q. (In Spanish.)

16 A. (In Spanish.)

17 Q. (In Spanish.)

18 A. (In Spanish.)

19 Q. (In Spanish.)

20 A. (In Spanish.)

21 Q. (In Spanish.)

22 A. (In Spanish.)

23 Q. (In Spanish.)

24 A. (In Spanish.)

25 Q. (In Spanish.)

1 A. (In Spanish.)
2 **Q. (In Spanish.)**
3 A. In Spanish.)
4 **Q. (In Spanish.)**
5 A. (In Spanish.)
6 **Q. (In Spanish.)**
7 A. (In Spanish.)
8 **Q. (In Spanish.)**
9 A. (In Spanish.)
10 **Q. (In Spanish.)**
11 A. (In Spanish.)
12 **Q. (In Spanish.)**
13 A. (In Spanish.)
14 **Q. (In Spanish.)**
15 A. (In Spanish.)
16 **Q. (In Spanish.)**
17 A. (In Spanish.)
18 **Q. (In Spanish.)**
19 A. (In Spanish.)
20 **Q. (In Spanish.)**
21 A. (In Spanish.)
22 **Q. (In Spanish.)**
23 A. (In Spanish.)
24 **Q. (In Spanish.)**
25 A. (In Spanish.)

1 MR. MURTHY: Your Honor, I'm going to
2 object to that question. Dr. Irizarry, his
3 testimony didn't discuss any differences between
4 performance-based regulation versus
5 performance-intensive mechanisms.

6 MR. SEILHAMER: Sustained.

7 BY MS. MERCADO:

8 Q. (In Spanish.)

9 A. (In Spanish.)

10 Q. (In Spanish.)

11 A. (In Spanish.)

12 Q. (In Spanish.)

13 A. (In Spanish.)

14 Q. (In Spanish.)

15 A. (In Spanish.)

16 Q. (In Spanish.)

17 MR. SEILHAMER: Is that the document
18 we marked as Exhibit 16? Can I have 16? Can you
19 provide the document?

20 MR. MURTHY: It's in the binder for
21 convenience, so you can mark it there.

22 MR. SEILHAMER: That's fine.

23 BY MS. MERCADO:

24 Q. (In Spanish.)

25 A. (In Spanish.)

1 **Q. (In Spanish.)**
2 A. (In Spanish.)
3 **Q. (In Spanish.)**
4 A. (In Spanish.)
5 **Q. (In Spanish.)**
6 A. (In Spanish.)
7 **Q. (In Spanish.)**
8 A. (In Spanish.)
9 **Q. (In Spanish.)**
10 A. (In Spanish.)
11 **Q. (In Spanish.)**
12 A. (In Spanish.)
13 **Q. (In Spanish.)**
14 A. (In Spanish.)
15 **Q. (In Spanish.)**
16 A. (In Spanish.)
17 **Q. (In Spanish.)**
18 A. (In Spanish.)
19 **Q. (In Spanish.)**
20 A. (In Spanish.)
21 **Q. (In Spanish.)**
22 A. (In Spanish.)
23 **Q. In Spanish.)**
24 A. (In Spanish.)
25 **Q. (In Spanish.)**

1 A. (In Spanish.)

2 Q. (In Spanish.)

3 A. (In Spanish.)

4 Q. (In Spanish.)

5 A. (In Spanish.)

6 Q. (In Spanish.)

7 A. (In Spanish.)

8 Q. (In Spanish.)

9 A. (In Spanish.)

10 Q. (In Spanish.)

11 MR. SEILHAMER: Counselor, so you're
12 aware, we're already past his 15 minutes. So you've
13 taking time from our other witnesses. It's your
14 time.

15 MS. MERCADO: (In Spanish.)

16 MR. SEILHAMER: The petition has been
17 denied.

18 BY MS. MERCADO:

19 MR. SEILHAMER: Exhibit 18.

20 MR. MURTHY: Which document is this?

21 MR. SEILHAMER: You'll provide --

22 MR. MURTHY: Right. Which document
23 was it in the document that you provided to --

24 MS. MERCADO: We believe that you
25 included the contract, but we do have a copy to

1 facilitate. And I think it's the main document that
2 we've discussing here.

3 MR. SEILHAMER: Correct. It's been
4 the subject of every direct testimony, the contract
5 with LUMA, and it's been talked about extensively by
6 other witnesses.

7 MS. MERCADO: I can show it to you to
8 verify. If you want to, I'm happy to.

9 MR. SEILHAMER: That's fine.

10 MS. MERCADO: It's not marked --
11 Number 1 on the list of documents, Number 1.

12 I'm showing him Article 14.

13 MR. MURTHY: We are looking at
14 Article 15.

15 MS. MERCADO: Article 14.

16 MR. MURTHY: Article 14, okay.

17 MR. VAZQUEZ: Excuse me, Your Honor.
18 We're marking it as an exhibit?

19 MR. SEILHAMER: It's being marked as
20 Exhibit 18.

21 [Exhibit Number 18 was marked for
22 identification.]

23 MR. VAZQUEZ: Thank you.

24 BY MS. MERCADO:

25 Q. (In Spanish.)

1 A. (In Spanish.)

2 Q. [Reading:]

3 "Failure to meet minimum performance
4 threshold, operator fails to meet the minimum
5 performance threshold."

6 Correct? Failure to meet minimum
7 performance threshold.

8 A. (In Spanish.)

9 Q. [Reading:]

10 "Operator shall fail to meet the minimum
11 performance threshold."

12 A. [Reading:]

13 "For three or more consecutive contract
14 years."

15 Q. (In Spanish.)

16 A. (In Spanish.)

17 Q. (In Spanish.)

18 A. (In Spanish.)

19 MS. MERCADO: (In Spanish directed to
20 Chairman.)

21 CHAIRMAN AVILES: (In Spanish.)

22 MR. SEILHAMER: Go ahead. It's your
23 time that's running.

24 MR. MURTHY: Alameda, A-L-A-M-E-D-A.

25

1 BY MS. MERCADO:

2 Q. (In Spanish.)

3 A. (In Spanish.)

4 MR. SEILHAMER: Exhibit 8?

5 MS. MERCADO: Exhibit 8.

6 BY MS. MERCADO:

7 Q. (In Spanish.)

8 A. (In Spanish.)

9 Q. (In Spanish.)

10 A. (In Spanish.)

11 Q. (In Spanish.)

12 A. (In Spanish.)

13 Q. (In Spanish.)

14 A. (In Spanish.)

15 Q. (In Spanish.)

16 A. (In Spanish.)

17 Q. (In Spanish.)

18 A. (In Spanish.)

19 Q. (In Spanish.)

20 A. (In Spanish.)

21 Q. (In Spanish.)

22 A. (In Spanish.)

23 Q. (In Spanish.)

24 A. (In Spanish.)

25 Q. (In Spanish.)

1 A. (In Spanish.)

2 Q. (In Spanish.)

3 A. (In Spanish.)

4 Q. (In Spanish.)

5 A. (In Spanish.)

6 Q. (In Spanish.)

7 A. (In Spanish.)

8 Q. (In Spanish.)

9 A. (In Spanish.)

10 Q. (In Spanish.)

11 A. (In Spanish.)

12 Q. (In Spanish.)

13 A. (In Spanish.)

14 Q. (In Spanish.)

15 A. (In Spanish.)

16 Q. (In Spanish.)

17 A. (In Spanish.)

18 MR. MURTHY: Your Honor, I object to
19 that question. The witness is not proposing
20 anything like that in his testimony and if he is, I
21 want to see a specific reference to a line.

22 MR. GRIFFIN: She's asking his
23 opinion. It's a fair question.

24 It's denied.

25 And, Counselor, you have two minutes.

1 CHAIRMAN AVILES: (In Spanish.)

2 BY MS. MERCADO:

3 Q. (In Spanish.)

4 A. (In Spanish.)

5 Q. (In Spanish.)

6 A. (In Spanish.)

7 Q. (In Spanish.)

8 A. (In Spanish.)

9 Q. (In Spanish.)

10 A. (In Spanish.)

11 Q. (In Spanish.)

12 A. (In Spanish.)

13 Q. (In Spanish.)

14 A. (In Spanish.)

15 MR. SEILHAMER: You can stop the time
16 right now. Two questions and we'll move on.

17 BY MS. MERCADO:

18 Q. (In Spanish.)

19 A. (In Spanish.)

20 Q. (In Spanish.)

21 MS. MERCADO: (In Spanish.)

22 CHAIRMAN AVILES: (In Spanish.)

23 MR. SEILHAMER: We are going to
24 excuse --

25 COMMISSIONER MATEO: Sr. Alameda.

1 BY COMMISSIONER MATEO:

2 Q. (In Spanish.)

3 A. (In Spanish.)

4 CHAIRMAN AVILES: Gracias.

5 THE WITNESS: (In Spanish.)

6 CHAIRMAN AVILES: (In Spanish.)

7 MR. SEILHAMER: (In Spanish.)

8 Sorry, OIPC is next. Sorry.

9 (EXAMINATION OF MR. HURTADO)

10 BY MR. VAZQUEZ:

11 Q. (In Spanish.)

12 A. (In Spanish.)

13 Q. (In Spanish.)

14 A. (In Spanish.)

15 Q. (In Spanish.)

16 A. (In Spanish.)

17 Q. (In Spanish.)

18 A. (In Spanish.)

19 Q. (In Spanish.)

20 A. (In Spanish.)

21 Q. (In Spanish.)

22 A. (In Spanish.)

23 Q. (In Spanish.)

24 A. (In Spanish.)

25 Q. (In Spanish.)

1 A. (In Spanish.)
2 **Q. (In Spanish.)**
3 A. (In Spanish.)
4 **Q. (In Spanish.)**
5 A. (In Spanish.)
6 **Q. (In Spanish.)**
7 A. (In Spanish.)
8 **Q. (In Spanish.)**
9 A. (In Spanish.)
10 **Q. (In Spanish.)**
11 A. (In Spanish.)
12 **Q. (In Spanish.)**
13 A. (In Spanish.)
14 **Q. (In Spanish.)**
15 A. (In Spanish.)
16 **Q. (In Spanish.)**
17 A. (In Spanish.)
18 **Q. (In Spanish.)**
19 A. (In Spanish.)
20 **Q. (In Spanish.)**
21 A. (In Spanish.)
22 **Q. (In Spanish.)**
23 A. (In Spanish.)
24 **Q. (In Spanish.)**
25 A. (In Spanish.)

1 **Q. (In Spanish.)**

2 A. (In Spanish.)

3 MS. MERCADO: Asked and answered. My
4 objection.

5 MR. SEILHAMER: I don't know the
6 question yet. He hasn't asked the question yet.

7 BY MR. VAZQUEZ:

8 **Q. (In Spanish.)**

9 A. (In Spanish.)

10 **Q. (In Spanish.)**

11 A. (In Spanish.)

12 **Q. (In Spanish.)**

13 A. (In Spanish.)

14 **Q. (In Spanish.)**

15 A. (In Spanish.)

16 **Q. (In Spanish.)**

17 A. (In Spanish.)

18 **Q. (In Spanish.)**

19 A. (In Spanish.)

20 **Q. (In Spanish.)**

21 A. Okay.

22 **Q. (In Spanish.)**

23 A. (In Spanish.)

24 **Q. (In Spanish.)**

25 A. (In Spanish.)

1 **Q. (In Spanish.)**

2 A. (In Spanish.)

3 **Q. (In Spanish.)**

4 A. (In Spanish.)

5 **Q. (In Spanish.)**

6 A. (In Spanish.)

7 MR. SEILHAMER: He answered the
8 question.

9 BY MR. VAZQUEZ:

10 **Q. (In Spanish.)**

11 MS. MERCADO: We are going to allow
12 the question. But, Counselor, be aware that he has
13 testified that in terms of specifics, he's not the
14 ideal person, so if he doesn't have the answer, he
15 can give you an overview of what he has under his
16 testimony. But if he doesn't know the answer, he
17 will just state it to you.

18 MR. VAZQUEZ: (In Spanish.)

19 THE WITNESS: High level of customer
20 service...

21 (In Spanish.)

22 BY MR. VAZQUEZ:

23 **Q. (In Spanish.)**

24 A. (In Spanish.)

25 **Q. (In Spanish.)**

1 A. (In Spanish.)

2 Q. (In Spanish.)

3 A. (In Spanish.)

4 Q. (In Spanish.)

5 MR. SEILHAMER: Counsel, you've asked
6 that question like in 20 different ways and he's
7 answered that question several times.

8 Thank you very much.

9 BY MR. MURTHY:

10 Q. Mr. Hurtado, a few more questions for you.

11 We were talking earlier about what LUMA
12 thought would be achievable in June 2020. And you
13 said you weren't sure at that time what amount LUMA
14 could achieve.

15 So my question is: At that time, you
16 thought there was a certain -- you thought there was
17 a certain number of metrics and targets were
18 achievable. And at this point, with new data, is it
19 fair to say that your idea of what metrics and
20 targets are achievable has changed?

21 A. From June of 2020?

22 Q. Yeah.

23 A. In terms of the actual numbers that we
24 would use to target; is that what you're talking
25 about?

1 **Q. Let me simplify my question.**

2 **Is it fair to say that between June of**
3 **2020 and today, your idea of what targets LUMA can**
4 **achieve has changed?**

5 A. Well, we're much more informed about the
6 operation and how we would go about things and the
7 characteristics of things.

8 So we're much better educated on the
9 operations and what the history has been and that
10 affects what the targets would be.

11 I think we have a better idea of
12 investment programs and their link in the budget,
13 what's necessary to achieve that. Obviously when
14 you're talking about the future, there is always
15 some degree of uncertainty and there is a degree of
16 risk. But we know a lot more now than we did in
17 June of 2020.

18 **Q. So, yes, your idea of what's achievable**
19 **has changed between June of 2020 --**

20 A. We know a lot more now than we did in June
21 of 2020.

22 **Q. Yes or no, your idea of what --**

23 MR. SEILHAMER: Asked and answered.
24 It's an implied answer. He has said that he has
25 more knowledge.

1 BY MR. MURTHY:

2 Q. Okay. So he said yes. Thank you.

3 And is it fair to say five years from now,
4 LUMA's idea of what's achievable in terms of targets
5 and in terms of metrics would have changed?

6 MS. MERCADO: I object to the
7 question as well. It calls for speculation.

8 MR. SEILHAMER: Sustained.

9 BY MR. MURTHY:

10 Q. Let me ask a different question.

11 Are you capable of thinking about what
12 LUMA is capable of five years from now? Is it
13 possible for you to think about what LUMA is capable
14 five years from now and say that the targets
15 achievable would have changed?

16 MS. MERCADO: Same objection.

17 MR. SEILHAMER: Sustained, again.

18 MR. MURTHY: Okay.

19 Dr. Lara, I have a few questions for
20 you based on your testimony.

21 MR. LARA: Yes.

22 EXAMINATION OF DR. JUAN LARA

23 BY MR. MURTHY:

24 Q. I want to start with line 125.

25 I am sorry, line 165. Take a minute to get there

1 and let me know when you are done.

2 A. 165?

3 Q. Yes.

4 A. So here you describe a scenario where
5 "management dreads losses more than it values
6 bonuses."

7 I want to talk about that scenario spec
8 with regards to LUMA. Does LUMA dread losses more
9 than it values bonuses?

10 MS. MERCADO: Objection, beyond the
11 scope.

12 (Recess due to technical
13 difficulties.)

14 MR. MURTHY: Let me get back to my
15 question.

16 BY MR. MURTHY:

17 Q. Does LUMA management dread losses more
18 than LUMA management values bonuses?

19 A. I'm not part of LUMA management. I don't
20 know what they think or feel.

21 Q. Let talk's about from your perspective as
22 an economist.

23 Let's talk generally for a company. Say a
24 company's management dreads losses more than they
25 value bonuses; how does that affect?

1 A. Well, the reason I'm making that statement
2 here is that witness Alameda was asked about what is
3 the proper balance between penalties and rewards in
4 a scheme.

5 And he didn't answer the question. He
6 didn't talk about the issue of balancing those two.
7 And he essentially presented the formula that
8 implicitly assumes that you want to weigh both
9 equally.

10 And I'm saying, why? He doesn't explain
11 why you want to balance it in that particular
12 manner. And why that would be efficient as opposed
13 to the mechanism where, for example, you weight
14 penalties more than rewards or vice versa.

15 The point is, what the incentive effect of
16 the scheme will be depends on what the behavior of
17 the regulated entity is. And it's not talking about
18 that at all. Even though that's the question he's
19 being asked. That's the point I'm making.

20 **Q. So you're not saying that an actual**
21 **company that you have seen in your experience as a**
22 **economist has actually dreaded losses more than they**
23 **value bonuses?**

24 A. No. I am saying that this is standard
25 economic analysis.

1 When we talk about, for example, consumer
2 behavior or firm behavior, in economic theory we
3 know that you don't always react in the same way to
4 all kinds of incentives. So if you happen to dread
5 losses more than you enjoy rewards then a scheme
6 that treats rewards and losses in the same way may
7 not be efficient.

8 **Q. Later on in your opinion testimony right**
9 **there on line 166 you mentioned that penalties could**
10 **cause disproportionate attention to some metrics; is**
11 **that right?**

12 A. Correct.

13 **Q. If penalties were imposed on LUMA as part**
14 **of this scheme, what methods specifically are you**
15 **concerned will receive too much attention?**

16 A. I didn't look into that. That wasn't my
17 charge.

18 **Q. So your point here is that penalties could**
19 **push LUMA to prioritize certain metrics.**

20 A. Yes. I'm actually making reference to a
21 statement in one of the documents that Dr. Alameda
22 used extensively in his testimony. Actually a
23 document from which he takes the two formulas that
24 he presents.

25 He ignores a warning that's very

1 explicitly made in that document saying that you
2 have to be careful with penalties because you can
3 overdo it and you can induce n the side of behavior?
4 Like, for example, excessive risk aversion. Because
5 you say I'm going to get in so much trouble with
6 these regulators, with these penalties, I'm going to
7 put all of my effort into avoiding that. And I'm
8 neglecting other areas that are probably more
9 important.

10 I am not saying that the handbook that
11 Alameda quotes says that. He doesn't bring it up.
12 And when he talks about balancing rewards and
13 penalties, he doesn't really answer the question and
14 he assumes implicitly that it doesn't matter because
15 the formulas that he presents are symmetric.

16 I mean symmetric in the sense that they
17 are the same to the left of the baseline as to the
18 right.

19 **Q. So if the Energy Bureau wanted to**
20 **prioritize certain metrics and wanted to create risk**
21 **aversion they could use penalty to do that.**

22 A. I think it has been clearly established
23 here this morning that the Energy Bureau can do that
24 if they want to.

25 There's no question about that.

1 **Q. Isn't it true --**

2 A. Whether the incentive would produce the
3 desired effect is something that has to be
4 researched and not assumed.

5 **Q. Okay. Isn't it true, Dr. Lara, that in a**
6 **capitalist profit-driven economy companies aren't**
7 **driven by the need to avoid penalties?**

8 A. Well, regulated companies maybe. Not all
9 companies are regulated. If you're talking about
10 regulated companies, they might be, yes.

11 **Q. They might be?**

12 A. They might be driven by the fear of
13 penalties, depending on by the regime in which they
14 operate.

15 **Q. On line 175 of your testimony you say,**
16 **"Penalties are an excessive regulatory burden."**

17 **My question is: What regulatory burden do**
18 **penalties create?**

19 MS. MERCADO: I object to the
20 question. I think it's an incorrect
21 characterization of the testimony.

22 THE WITNESS: That's not what it
23 says.

24 MR. SEILHAMER: So we are going to
25 allow the witness to clarify what --

1 THE WITNESS: I'm not saying that
2 penalties create excessive regulatory burden. What
3 I'm saying and I am citing the very handbook that
4 Alameda uses, is that they can create excessive
5 regulatory burden. And you want to bear that in
6 mind when you talk about penalties.

7 **Q. What types of regulatory burdens could**
8 **penalties create?**

9 A. For example, like we just said, if you
10 induce the regulated entity to be excessively risk
11 avoiding, then you can create a situation where too
12 many resources are devoted to that. And that's an
13 excessive burden.

14 And you can also create an excessive
15 burden if you design a system in which the regulator
16 finds it hard to comply with it -- I mean the
17 regulated entity finds it difficult to comply with
18 it. And even the regulator may find it hard to
19 enforce, because of the information requirements and
20 so on.

21 All of those issues have to be addressed
22 when you're talking about by the scheme like this
23 and Alameda doesn't. That's my point.

24 BY MR. MURTHY:

25 **Q. Dr. Lara, is it fair to say that the**

1 scheme we're considering in this case will have an
2 impact on energy rates in Puerto Rico?

3 A. What scheme?

4 Q. The metrics that we're considering in this
5 case.

6 A. I don't know what those are. I mean
7 certainly Alameda is not proposing any particular
8 scheme with any particular metrics.

9 Q. Have you examined the metrics that LUMA is
10 proposing in this case?

11 A. No, that's not what I'm here for.

12 MS. MERCADO: It's beyond.

13 MR. SEILHAMER: It is beyond the
14 scope.

15 BY MR. MURTHY:

16 Q. Line 205 of your testimony you ask a
17 rhetorical question. You say: Why would the Energy
18 Bureau aim at reducing rates indirectly during an
19 incentive scheme; do you see that?

20 A. Oh, yes.

21 Q. So the question is -- seems rhetorical to
22 me -- in your opinion, are you saying the Energy
23 Bureau should not be using incentive and penalties
24 to indirectly reduce rates?

25 A. No, I'm saying why would they want to do

1 indirectly what they can do directly? They have the
2 full authority for that.

3 CHAIRMAN AVILES: We can do both.

4 THE WITNESS: I know. That is the
5 question I'm asking. It is a rhetorical question.

6 Why go the roundabout way when you
7 have the authority to do it directly?

8 Again, if you're going to propose
9 something like that as Alameda seems to be doing,
10 you have to explain why. Why would it work?

11 What's the rationale behind that?

12 BY MR. MURTHY:

13 Q. Dr. Lara, I would like to look at page 28
14 of your testimony. This is by the exhibit which is
15 your résumé.

16 Take a minute to find it and let me know
17 when you are there.

18 MS. MERCADO: For the record, it is
19 not numbered 28.

20 THE WITNESS: It is not numbered,
21 yes.

22 BY MR. MURTHY:

23 Q. In your résumé you list your positions
24 held, your professional activities, and your work as
25 an expert; is that right?

1 A. Yes.

2 Q. None of the items listed here involved
3 PREPA, did they?

4 A. I don't recall, no. But I did do some
5 work for PREPA in the past, but it's probably not
6 here.

7 Q. It's not here. Okay. Yeah.

8 And none of the items listed here involved
9 the Puerto Rico energy grid; is that right?

10 A. No.

11 Q. Have you in the past in your career
12 proposed metrics, reward or penalty metrics, for an
13 energy company?

14 A. No, I haven't.

15 Q. In your experience as an economist -- let
16 me back up a little bit.

17 In your testimony you discussed Dr.
18 Alameda's testimony on social wellbeing.

19 In your experience as an economist do you
20 consider social wellbeing as a factor?

21 A. Oh, yeah. But what I'm saying about Dr.
22 Alameda's testimony on that particular issue s that
23 the definition he uses for what he calls social
24 welfare is not grounded on economic theory or on
25 economic analysis.

1 It's an opinion of his about what social
2 welfare might be and we might, each one of us, have
3 an opinion on that. But there's a field in
4 economics that's called welfare economics with very
5 clear definitions and some theorems on that subject
6 and Alameda doesn't touch on any of that.

7 **Q. Look at line 316 of your testimony. Take**
8 **a minute to get there and let me know when you are**
9 **done.**

10 A. 315.

11 **Q. 316.**

12 A. Yeah. Okay.

13 **Q. I want to ask you about your statement**
14 **here: "As argued above, there's no unqualified**
15 **guarantee that a reward and penalty scheme will**
16 **automatically generate better performance."**

17 So here are you referring -- you were not
18 referring specifically to LUMA's scheme, correct?

19 You were referring generally to
20 penalty/reward schemes?

21 A. That's correct.

22 **Q. And you say even if reward/penalty schemes**
23 **did generate better performance, that's not enough**
24 **either. We still need to compare the benefit to the**
25 **cost of complying; is that right?**

1 A. That's right.

2 **Q. So without conducting that comparison, the**
3 **benefit of the incentive to the public is not clear.**

4 A. Well, this is a good example of why he
5 should have brought economic theory into this area.

6 Welfare economics doesn't only consider
7 the benefits created by an action, but also costs.

8 And the net social benefit of action is
9 what matters.

10 **Q. Had LUMA conducted this kind of**
11 **comparison?**

12 MS. MERCADO: Objection. Beyond the
13 scope of his testimony.

14 MR. SEILHAMER: Sustained.

15 BY MR.MURTHY:

16 **Q. Let me ask a different question.**

17 **Should LUMA have conducted this**
18 **comparison?**

19 MR. HURTADO: I am sorry. Can you
20 repeat it. I missed it. I am very sorry.

21 BY MS. MERCADO:

22 **Q. According to the principles that we just**
23 **discussed, do you think it would have been necessary**
24 **for LUMA to conduct a comparison of the benefits of**
25 **each of these metrics to the costs and the**

1 **incentive?**

2 MS. MERCADO: Objection. The purpose
3 of rebuttal testimony is to answer a particular
4 scheme and how it performed.

5 MR. MURTHY: The witness is referring
6 specifically to a reason to have something that must
7 be done before a reward/penalty scheme is imposed
8 and whether that reward/penalty scheme will actually
9 generate better performance.

10 MR. SEILHAMER: I'll allow the
11 question.

12 BY MR.MURTHY:

13 **Q. So going back to my question, Dr. Lara.**

14 **Should LUMA in this case have conducted a**
15 **comparison, the incentives they will receive versus**
16 **the actual benefits that these metrics will create?**

17 MS. MERCADO: I have a further
18 objection that it's mischaracterizing the way this
19 proposed scheme was some designed.

20 MR. SEILHAMER: The objection, just
21 the basis, and not --

22 MS. MERCADO: It's an incorrect
23 portrayal of the proposed --

24 MR. SEILHAMER: Make your objection
25 and let the witness answer. He can explain --

1 THE WITNESS: I would assume that
2 when they defined metrics they include a calculation
3 of what they expect the cost will be to meet those
4 metrics to them, and possibly to the regulator as
5 well.

6 And I suppose that they have to have
7 in mind some kind return from those metrics -- I
8 mean some benefit has to accrue to them.

9 BY MR. MURTHY:

10 Q. When you say benefits, you are referring
11 to the benefits to the customers.

12 A. Benefits in general, all benefits to all
13 the parties.

14 Q. Okay. I want to ask a few more questions
15 to Mr. Terzic.

16 MR. TERZIC: Yes, sir.

17 EXAMINATION OF BRANKO TERZIC

18 BY MR. MURTHY:

19 Q. Earlier you referred to by the fact
20 that -- scratch that.

21 I would like to look at your testimony
22 which is Exhibit 5.

23 MR. GRIFFIN: Just to let counsel
24 know, he has five more minutes.

25

1 BY MR. MURTHY:

2 Q. My first question for you, Mr. Terzic, is
3 profit maximization a goal for LUMA?

4 A. Is profit -- it's a business and it would
5 want to maximize it's profit, yes. Yes, it's a
6 for-profit company.

7 Q. I wanted to look at line 289 of your
8 testimony.

9 A. Line --

10 Q. 289.

11 A. Line three --

12 MR. SEILHAMER: Line 289.

13 THE WITNESS: Sorry. I was in the
14 artillery, my apologies.

15 289, yes.

16 BY MR. MURTHY:

17 Q. Here you say: "The question for the
18 members of the Energy Bureau is whether the initial
19 metrics are adequate to get PREPA moving in the
20 direction first of a viable 20th century utility
21 before it can move to 21st century standards.

22 My question to you is: Is the goal of the
23 metrics we're considering here today to get to a
24 20th century utility?

25 A. My understanding of the goal of these

1 metrics are to meet the requirements of PREPA and
2 PPP and the financial authority after they have
3 reviewed, quite extensively, the physical and
4 operational condition of PREPA.

5 And my understanding is these metrics are
6 their decision as to how best to reach the goals
7 along with the decision to -- not to privatize
8 PREPA, but along with the decision to do a
9 concession contract.

10 Q. Okay. So the goals -- so the metrics
11 you're looking at were the metrics that PREPA and
12 P-3 originally proposed?

13 A. And negotiated later, I assume.

14 Q. If PREPA and P3 had originally proposed
15 penalties to be part of this scheme, would you agree
16 with me that that is an important consideration for
17 the Energy Bureau to include?

18 MS. MERCADO: Objection. It calls
19 for speculation -- it's beyond what he's testified
20 or what -- he's not aware of what --

21 MR. MURTHY: The witness placed a lot
22 of importance --

23 MR. TERZIC: It is a hypothetical. I
24 don't know what they originally proposed. I read
25 the OMA; I saw what was there.

1 BY MR. MURTHY:

2 Q. Okay. If PREPA and P3 originally proposed
3 for penalties to be part of this scheme, would you
4 consider that to be an important fact to be
5 considered here?

6 MS. MERCADO: Asked and answered.
7 And also it is the same hypothetical as the prior
8 question.

9 MR. SEILHAMER: Sustained. And,
10 Counselor, do you want to advise your witness if
11 they answer before I can answer your objection,
12 there's nothing I can do. It becomes academic.
13 Just so you are aware of it.

14 BY MR. MURTHY:

15 Q. I wanted to look a line 299 of your
16 testimony.

17 A. Yes.

18 Q. Here you have an excerpt from your book on
19 21st century utilities and you point out the need
20 for 21st century utility policies that provide the
21 right incentives for efficiency; do you see that?

22 What did you mean by efficiency? Are you
23 talking about energy efficiencies or efficiencies
24 more generally?

25 A. This is -- this has to do with the

1 utilities and how efficient -- this whole discussion
2 we're having has to do with how efficient the
3 operation of the utility is.

4 Performance base rate making and a set of
5 rate making has as its goal to make the utility more
6 efficient so that costs can be lower as a benefit in
7 the future to consumers.

8 We're talking about the efficiency of the
9 operation of the utility and the incentives that
10 would do that.

11 **Q. Here you also call for policies that**
12 **provide the right incentives to moderate demand?**

13 **So my question to you is: Would you**
14 **support performance incentives on LUMA that moderate**
15 **demand from energy efficiencies?**

16 MS. MERCADO: Objection. Beyond the
17 scope of his testimony.

18 MR. MURTHY: Your Honor, the witness
19 a commissioner who has regulated utilities for
20 dozens of years. I think he can answer questions on
21 energy efficiency.

22 MR. SEILHAMER: I'm sure he can
23 answer questions, but in this specific case it's
24 outside the scope of what his testimony is.

25 MR. MURTHY: Okay. I'm going to ask

1 my last few questions to Mr. Hall.

2 MR. HALL: Yes, sir.

3 EXAMINATION OF DONALD HALL

4 BY MR. MURTHY:

5 Q. I would like to look at your testimony
6 which I believe is Exhibit 6.

7 MR. HURTADO: Exhibit 6 you said?

8 MR. MURTHY: Yes.

9 MR. HALL: Exhibit 6 --

10 MR. SEILHAMER: It's 5.

11 MR. HALL: That's yours.

12 MR. BRANKO: Mine is 5.

13 MR. SEILHAMER: It's 4.

14 MR. HALL: 4. You actually slipped
15 out earlier.

16 BY MR. MURTHY:

17 Q. So here you say: "LUMA recommends
18 focusing performance metrics on areas of adequate
19 historical data to develop an accurate baseline
20 against which performance data can be measured; is
21 that right?

22 A. That's right.

23 Q. But LUMA's proposal does include
24 performance metrics which don't have baselines based
25 on historical data; is that right?

1 A. I can't answer that. None of the ones
2 that I worked on. But I can't answer that. You
3 will have to ask --

4 **Q. You're the lead performance metric for**
5 **LUMA; is that right?**

6 A. That's my title, yes. But I'm not the
7 subject matter expert on each category of metrics.

8 **Q. So you're not aware of whether LUMA's**
9 **performance metrics actually have historical data**
10 **against which an accurate baseline could be**
11 **measured.**

12 A. Some of them do.

13 **Q. Some of them do.**

14 A. Yeah, I don't know about the other ones.

15 **Q. You also state here on line 114: "LUMA**
16 **recommends clear, unambiguous objective**
17 **quantification"; is that right -- line 114?**

18 A. 114. Yes.

19 **Q. But LUMA's proposal does include**
20 **performance metrics that don't allow for**
21 **quantification; is that right?**

22 A. Not that I'm aware of.

23 **Q. Not that you are aware of. Okay.**
24 **I want to ask you questions about raw**
25 **data --**

1 MS. MERCADO: Time-wise --

2 MR. SEILHAMER: He has one more
3 minute.

4 BY MR.MURTHY:

5 Q. I want to ask you a few questions about
6 raw outage data, something you discussed before.

7 If raw outage data was released, a
8 professional engineer who was versed in 1366 would
9 be able to calculate reliability metrics using that
10 data; is that right?

11 A. They would also have to understand the
12 data elements in the particular data base that's
13 released.

14 All of OMS systems have different data
15 schemes and names for the same elements.

16 Q. You mentioned the possibility of
17 misinterpretation.

18 Have you seen any example of data being
19 withheld from the public just because of the
20 possibility of misinterpretation?

21 A. I don't know of any utility in the
22 United States that releases outage data.

23 Q. Let me ask my question again: Have you
24 seen any example of data being withheld from the
25 public simply because of the possibility of

1 misinterpretation?

2 A. No.

3 Q. You mentioned the recent sabotage
4 incidents.

5 Have you submitted to the Energy Bureau or
6 any Puerto Rico government agencies reliable
7 evidence of attempt to sabotage Puerto Rico
8 equipment?

9 A. No.

10 MR. SEILHAMER: One last question,
11 counsel.

12 BY MR. MURTHY:

13 Q. Are you proposing to add any category of
14 data -- like raw outage data -- to the definition of
15 critical energy infrastructure information?

16 MS. MERCADO: I think it's beyond the
17 scope of his testimony.

18 MR. MURTHY: Following up on
19 questions that were asked earlier today about raw
20 outage data --

21 MR. SEILHAMER: Were the witnesses
22 asked to --

23 MS. MERCADO: I don't believe the
24 topic of critical energy infrastructure information
25 was brought up in the prior questions.

1 MR. MURTHY: The witness raised that
2 very topic -- that very phrase.

3 MR. SEILHAMER: It's outside the
4 scope. It's past the time. We are going to move on
5 then.

6 Are we done?

7 You are allowed to answer that last
8 question.

9 BY MR. MURTHY:

10 Q. Are you proposing to add the category raw
11 outage data or any category of data to the
12 definition of critical energy infrastructure
13 information.

14 A. Myself, no. My point was the transmission
15 data is typically CEII data.

16 Distribution data hasn't been considered
17 by the industry yet, for the most part.

18 MR. SEILHAMER: Thank you.

19 EXAMINATION OF MR. HALL BY THE PANEL
20 BY COMMISSIONER RAMOS:

21 Q. Mr. Hall, when you say the transmission
22 data has been categorized as CEII, you're
23 specifically talking about transmission outage data?

24 A. No. What I'm referring to is bulk
25 electric system data in the States.

1 **Q. Location?**

2 A. Locations --

3 **Q. (Inaudible).**

4 A. Yes. Exactly. I've also never seen
5 outage data provided.

6 COMMISSIONER RAMOS: Okay. Thank
7 you.

8 MR. SEILHAMER: Four more minutes.

9 MS. MERCADO: I would ask that Mr.
10 Alameda be brought back for those minutes at another
11 point.

12 It's difficult to start and stop and
13 begin again.

14 Alameda was excused. I really would
15 like to have an opportunity to fully cross-examine
16 Alameda.

17 CHAIRMAN AVILES: (In Spanish.)

18 MS. MERCADO: My request would be to
19 call Alameda, because I do think that he was unduly
20 discharged.

21 MR. SEILHAMER: Four minutes, it's a
22 concession -- it's beyond the time limit -- but if
23 you're not going to take them -- it's a
24 concession --

25 MS. MERCADO: I do think -- I know

1 that the agenda was pushed. But I think we did not
2 get enough minutes fully with the witnesses, to
3 cross-examine them.

4 So I do appreciate the offering of
5 four minutes. But I don't think that's how a full
6 cross-examination with a witness should flow.

7 I think that our right would be to
8 recall Mr. Alameda and also continue with Mr.
9 Irizarry tomorrow.

10 We have been here all day, but we did
11 not get enough time on cross-examination.

12 COMMISSIONER MATEO: You got as much
13 time as everyone else.

14 MS. MERCADO: And I don't oppose that
15 they get more time.

16 CHAIRMAN AVILES: (In Spanish.)

17 MR. SEILHAMER: Four minutes --

18 EXAMINATION OF MR. DONALD HALL

19 BY MR. MURTHY:

20 **Q. Mr. Hall, I'm going to continue with you.**

21 MR. SEILHAMER: Counselor, I think it
22 is disrespectful, your comments, and avoid the
23 comments, and if you cannot avoid it then you have
24 to leave the room.

25 MS. MERCADO: I apologize for that.

1 MR. SEILHAMER: But I'm not going to
2 take that type of conduct in the room.

3 Go ahead.

4 BY MR. MURTHY:

5 Q. I wanted to look at line 223 of your
6 testimony.

7 Here you respond to Dr. Irizarry's
8 consideration of performance metrics from other
9 jurisdictions; is that right?

10 A. Line 223?

11 Q. Yes.

12 A. Yes.

13 Q. Earlier you mentioned Entergy in Illinois;
14 I don't know if I heard you correctly. Are you
15 saying that is or is not a comparable utility to
16 Puerto Rico?

17 A. I believe it would be.

18 Q. Are there any other utilities that you
19 would consider peer utilities to PREPA or for LUMA?

20 A. There were two or three, but I don't have
21 them committed to memory at this point. That study
22 was done a very long time ago.

23 Q. What study are you roofing to?

24 A. I conducted a benchmarking study where I
25 examined the utilities that that the energy board

1 had selected. And then based on a lot of things but
2 weather patterns for one thing and my knowledge of
3 different utilities.

4 I looked at others as well and compared
5 several characteristics.

6 Q. Line 253, you disagree with Dr. Irizarry
7 that Hawaii utility metrics -- that Hawaii are peer
8 utilities to Puerto Rico and that Hawaii utility
9 metrics are relevant, right?

10 A. It's not just Hawaii. There's two
11 electric companies, there Hawaii Electric Light
12 Company and Hawaii Electric Company. Hawaii
13 Electric Company is extremely small.

14 Q. Is it fair to say that Hawaii and Puerto
15 Rico have a similar load profile?

16 A. I would have to go back to my benchmark
17 study and look at that.

18 Q. Is it fair to say they have a similar
19 generation rate?

20 A. The same, I would have to go back and look
21 at my study.

22 Q. We talked about the climate similarities
23 today.

24 At this point are you ready to say they
25 have a similar climate?

1 A. No. I don't disagree with his statements.
2 But the research I did was from NOAA. And I would
3 like to go back and reread the research that I used
4 for that.

5 Q. Okay. Fair to say they are both island
6 systems without the ability to connect to a
7 different grid?

8 A. That's true.

9 Q. I want to go back to something that you
10 discussed earlier, the 20th century system versus
11 the 21st century system.

12 Some items carrying in parallel; some
13 items occurring in sequence.

14 You mentioned distribution automation,
15 something that could occur in parallel; is that
16 happening now?

17 A. Yes.

18 Q. You mentioned interconnection of
19 distributive renewables is something that could
20 occur in parallel.

21 A. It could. The key factor is that the
22 infrastructure that it's going to interconnect to is
23 rebuilt. Just like with distribution automation.

24 So there actually is a sequence because
25 the rebuild has to happen first and then the

1 automation applied to that.

2 MR. SEILHAMER: Last question,
3 counsel.

4 BY MR.MURTHY:

5 Q. Last question. Line 221 of your
6 testimony. I want to go to that and I have one
7 question about that and then -- give me a minute --

8 A. Okay.

9 MR.MURTHY: Nothing further.

10 Thank you.

11 THE WITNESS: Thank you.

12 MR. SEILHAMER: Thank you.

13 You have four minutes, counselor.

14 MS. MERCADO: Thank you.

15 For Mr. Irizarry.

16 (EXAMINATION OF MR. IRIZARRY.)

17 BY MS. MERCADO:

18 Q. (In Spanish.)

19 A. (In Spanish.)

20 Q. (In Spanish.)

21 A. (In Spanish)

22 Q. (In Spanish.)

23 A. (In Spanish.)

24 Q. (In Spanish.)

25 A. (In Spanish.)

1 Q. (In Spanish.)
2 A. (In Spanish.)
3 A. (In Spanish.)
4 Q. (In Spanish.)
5 A. (In Spanish.)
6 Q. (In Spanish.)
7 A. [In Spanish]
8 Q. (In Spanish.)
9 A. (In Spanish.)
10 Q. (In Spanish.)
11 A. (In Spanish.)
12 Q. (In Spanish.)
13 A. (In Spanish.)
14 Q. (In Spanish.)
15 A. (In Spanish.)
16 Q. (In Spanish.)
17 A. (In Spanish.)
18 Q. (In Spanish.)
19 A. (In Spanish.)
20 Q. (In Spanish.)
21 A. (In Spanish.)
22 Q. (In Spanish.)
23 A. (In Spanish.)
24 Q. (In Spanish.)
25 A. (In Spanish.)

1 **Q. (In Spanish.)**

2 **A. (In Spanish.)**

3 MR. SEILHAMER: One last question.

4 MS. MERCADO: Thank you.

5 MR. SEILHAMER: We are going to
6 recess until tomorrow at 9:00 in the morning when we
7 are going to start with the section of technical
8 safety and regulatory performance.

9 So thank you for your cooperation and
10 all of the witnesses are excused.

11 MR. HURTADO: Thank you.

12 (Whereupon, at 6:31 p.m. the hearing
13 was adjourned.)

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COURT REPORTER'S CERTIFICATE

City of San Juan)
) ss.:
Commonwealth of Puerto Rico)

I, DENNIS ZAMBATARO, Certified Court Reporter
in the United States, do hereby certify that the
foregoing is a true and correct transcript of the
proceedings had in the within entitled and numbered
cause on February 7, 2023; and I do further certify
that the foregoing transcript has been prepared
under my direction.



DENNIS ZAMBATARO, RPR and
N.M. and GA CSR

February 21, 2023

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In the Matter Of:
IN RE: Performance Metrics Targets for Luma Energy

February 07, 2023

Primer audio Feb 7

11 ln 4

CHAIRMAN AVILÉS: (Sin audio.)

Segundo audio

0:00:56, 106 ln 25

A. Soy perito para LECO, las organizaciones comunitarias y ambientales.

0:01:21, 107 ln 6

A. Yo examiné las -- la ley que le da paso a la privatización del sistema eléctrico, el contrato con LUMA. Examiné el contrato en sí mismo. Y examiné las órdenes que había presentado el Tribunal -- el Negociado.

Además de eso, consulté una serie de referencias a la que -- que incluyo en mi informe. Estudié esos documentos y llegué a mis propias conclusiones.

0:03:35, 107 ln 25 a la 108 ln 1 (sustituir esas líneas)

Q. Can you open to page 6, please?

A. ¿Página 6 del Exhibit 7?

Q. Page 6, please.

0:03:51, 108 ln 4

A. Mi primera conclusión es que, si el contrato de LUMA se ejecuta perfectamente, y

1 hemos dicho no se está ejecutando perfectamente,
2 llevaría a Puerto Rico a tener un sistema
3 eléctrico muy bueno, de acuerdo a lo que era un
4 sistema eléctrico bueno en el siglo 20. Y por
5 esa razón no cumple la parte de modernizar el
6 sistema eléctrico, según pide la ley que crea
7 todo este proceso.

8 0:04:45, 108 ln 9

9 A. Sí. En mi testimonio yo establezco que
10 en el siglo pasado había una tecnología
11 disponible y que -- que es hacer una red
12 centralizada con combustibles fósiles, quemando
13 combustibles fósiles para producir electricidad;
14 y que, para recuperar las inversiones necesarias
15 para establecer ese tipo de red alrededor del
16 mundo, se hicieron tres modelos distintos. Y
17 discuto los tres modelos: público o privado o
18 cooperativo.

19 Y que el marco regulatorio en ese momento era
20 principalmente de monopolio restringido. Con
21 múltiples cambios que describo en mi informe,
22 entre ellos, cambios tecnológicos importantes,
23 pues, las regulaciones y las metas y las
24 expectativas sociales de cómo debe ser el
25 servicio de electricidad han cambiado.

1 Y, además de mantener las reglas tradicionales
2 para mantener confiabilidad, para mantener
3 costo/efectividad, etcétera, la sociedad hoy en
4 día espera que hayan otros componentes
5 disponibles como parte del servicio eléctrico,
6 como lo son, por ejemplo, la resiliencia, la
7 sostenibilidad; como lo son también la capacidad
8 de los que antes eran solo clientes en
9 convertirse también en clientes y productores de
10 energía. Se hacen intercambios no solo de
11 energía en una sola dirección, sino que hayan
12 intercambios de comunicación y flujo de energía
13 en ambas direcciones. Son características de
14 los sistemas eléctricos modernos y no aparecen
15 bien reflejadas en ese contrato y en la
16 propuesta que hace LUMA de métricas.

17 0:07:07, 108 Ln 14

18 A. Sí. Mi recomendación una es un resumen,
19 pretende llevarle al lector, en este caso a los
20 comisionados, llamarles la atención a que yo
21 enumero una serie de métricas en las tablas 4 --
22 desde la Tabla 4 hasta la Tabla 10 de mi
23 informe, que pretenden traer los componentes que
24 la ley señala que tiene que tener esta
25 transformación, que es que tengamos un sistema

1 moderno, sostenible, confiable, eficiente,
2 resiliente. Esas métricas, que no aparecen en
3 ninguna parte del contrato de LUMA -- algunos de
4 estos conceptos ni siquiera se mencionan en el
5 contrato más allá del apéndice, de las métricas.
6 En el contrato en ninguna parte aparecen esos
7 conceptos, algunos de estos conceptos. Pues,
8 propongo unas métricas para que sí se alcancen.
9 Y en esta recomendación, recomiendo que se
10 examinen y se adopten estas métricas.

11 0:08:31, 108 ln 19

12 A. Sí. Me parece que eran métricas
13 asociadas a tres áreas en general. Tres áreas
14 adicionales que le añade el Negociado como
15 requisito a LUMA de que tiene que tener
16 métricas. Eficiencia es una de ellas,
17 interconectividad de sistemas distribuidos -- y
18 la tercera se me escapa.

19 0:09:06, 108 ln 22

20 A. Sí. Manejo -- gerencia de la vegetación,
21 sí.

22 0:09:26 109 ln 1

23 A. Métricas en esas tres áreas sí ayudan a
24 mejorar la -- el servicio que reciben los
25 ciudadanos de un operador de red eléctrica. No

1 son los únicos que yo recomiendo, y es necesario
2 establecer métricas en esas áreas que estén
3 cónsonas con el concepto de métricas de
4 desempeño. Concepto de métricas de desempeño
5 que, por hacer tu trabajo, no se te dan -- no se
6 te penaliza y tampoco se te da beneficios.

7 Tú cobras una compensación básica por hacer tu
8 trabajo, lo que se espera que tú hagas. Si no
9 alcanzas lo mínimo, se te penaliza. Y si logras
10 alcanzar las metas que son difíciles de
11 alcanzar, ahí es que se te da un bono. Así que
12 el establecimiento de las métricas por parte del
13 Negociado en cualquiera de los renglones, no
14 solo esos tres, deben ser fieles a ese
15 principio, que es el que define la ley y lo que
16 es, en la literatura, métricas de desempeño.

17 0:10:52, 109 ln 5 a la ln 11 (sustituir)

18 A. La segunda recomendación es basada en el
19 análisis que yo hago del trabajo que han hecho
20 otros negociados en otras jurisdicciones,
21 particularmente en los Estados Unidos -- aunque
22 hay ejemplo en otras partes -- donde, para
23 establecer métricas, se abren procesos, procesos
24 participativos. Esos procesos participativos
25 vienen todas las personas que tienen -- que se

1 ven afectados por el establecimiento de las
2 métricas. Participa, digamos en este caso, el
3 operador, que sería LUMA. Participa el dueño
4 del sistema, que sería la Autoridad de Energía
5 Eléctrica. Participan los ciudadanos.
6 Participan comunidades.

7 Y se abre un proceso en el que se establecen
8 cuáles son las metas alcanzables para acercarnos
9 a nuestro objetivo, ¿no? Oh, perdón, cuáles son
10 los objetivos alcanzables para acercarnos a
11 nuestras metas. Y eso, ese proceso es un
12 proceso abierto. No se circunscribe a --

13 Q. Sir, I --

14 A. -- datos pasados, por ejemplo, y cosas
15 como esas.

16 Q. Sir, I was asking about your second
17 conclusion. It's on page 6 going to page 7.

18 A. Ah, la conclusión. Perdón. Estaba
19 hablando de la recomendación dos.

20 Q. I apologize if I misspoke.

21 A. En la conclusión dos, señalo que las
22 métricas que sugiere LUMA contrastan
23 significativamente con lo que se hace en otras
24 jurisdicciones cuando se asumen mecanismos de
25 medir el desempeño porque no incluyen

1 penalidades si no se alcanza el desempeño
2 mínimo. Esto contradice el concepto mismo de
3 tener un sistema de métricas de desempeño. Como
4 está redactada la propuesta de LUMA, que se
5 circunscribe a un apéndice del contrato, que en
6 efecto los umbrales que se establecen son
7 umbrales de desempeño mínimo.

8 En muchos casos, esos umbrales de desempeño
9 mínimo sería lo que tienes que hacer para no ser
10 penalizado. Pero de la forma en que está
11 planteado, se consideran logros y logros que
12 ameritan un bono. La estructura de métricas de
13 desempeño no funciona así. No funciona así en
14 ninguna parte donde se ha utilizado.

15 Por hacer tu trabajo, tú cobras tu
16 compensación normal. Si no cruzas el umbral
17 mínimo, se te penaliza. Y, si alcanzas metas
18 difíciles de alcanzar, ahí es que cobras una
19 bonificación. Eso no es lo que aparece
20 propuesto por LUMA.

21 0:14:19, 109 ln 14

22 A. Me parece que la única penalidad que
23 existe en el contrato es una penalidad en la que
24 si LUMA, en tres años consecutivos, hace un
25 trabajo terrible donde no satisface el mínimo en

1 áreas críticas, entonces el gobierno tiene la
2 capacidad de prescindir del contrato, eliminar
3 el contrato, salirse del contrato. Pero esa
4 estructura es completamente contraria al
5 concepto de métricas de desempeño. El simple
6 hecho de que tú tengas que hacer un trabajo
7 terrible durante tres años para que yo te pueda
8 despedir, es una -- choca de frente con el
9 concepto de hacer métricas de desempeño.

10 0:15:44, 109 ln 19

11 A. La recomendación cuatro, que aparece en
12 la página 8 de mi informe, dice que debe en
13 una -- en este concepto de métricas de
14 desempeño, deben existir penalidades, y esas
15 penalidades deben activarse si el desempeño de
16 LUMA no alcanza un umbral mínimo establecido
17 para las distintas métricas. El concepto de
18 penalidad no existe en el contrato de LUMA,
19 salvo lo que ya describí de tres años terribles.

20 Así que, para verdaderamente adoptar un
21 esquema de penalidad y recompensa, es necesario
22 establecer umbrales mínimos en cada uno de
23 los -- de lo que se esté midiendo. Y, si no se
24 alcanzan esos umbrales mínimos, hay que
25 establecer penalidades. Eso es lo que yo

1 planteo en la recomendación cuatro.

2 0:16:52, 109 ln 22

3 A. En la recomendación número siete, yo hago
4 referencia a uno de los documentos que examiné.
5 Yo examiné el contrato que existe en Long
6 Island. Long Island es una jurisdicción que
7 pasó por este proceso y le pasó la
8 administración de la red eléctrica a un privado.
9 Ellos adquieren un contrato inicial y pasaron
10 por un proceso largo, complicado, para revisar
11 ese contrato.

12 En esa revisión con esta empresa PSEG, se
13 establece también un mecanismo de compensaciones
14 basado en desempeño. Y allí adoptan una serie
15 de métricas, le llaman las métricas de -- en
16 inglés es "gating performance metrics". Son
17 métricas de desempeño que disparan, ¿no?, que
18 tienes que (audio se entrecorta) provisiones del
19 contrato. Y también hay una serie de métricas
20 que te declaran en "default", en que no estás
21 cumpliendo con el contrato.

22 Las métricas estas de "gating" lo que hacen es
23 que son unos umbrales macros, por decirlo así.
24 Hay una -- se identifican unas áreas de
25 desempeño que son cruciales. Si en esas áreas

1 de desempeño crucial la empresa no alcanza los
2 mínimos, no solo se le penaliza por eso, sino
3 que lo descualifica para recibir bonos por otras
4 áreas que no se consideran críticas.

5 Eso no existe en el contrato de LUMA. LUMA no
6 lo propone como una métrica (interferencia en el
7 audio). Y me parece a mí que es un mecanismo
8 importante, que es una oportunidad de aprender
9 de lo que está pasando en otras jurisdicciones.

10 Y esto es una oportunidad de establecer un
11 criterio claro de que existen jerarquías en las
12 métricas. No todas las métricas tienen la misma
13 importancia. No tienen la misma importancia
14 porque no llevan el mismo beneficio social hacia
15 la ciudadanía.

16 Que cojan el teléfono rápido es diferente, muy
17 diferente a que actúen cuando una línea
18 eléctrica cae y está energizada. No son -- lo
19 traigo como ejemplo de dos asuntos que en un
20 caso nadie tiene el riesgo de perder la vida, en
21 el otro caso, sí. Entonces no podemos
22 clasificarlas todas como si fueran iguales. En
23 esa revisión que hacen del contrato en LIPA
24 reconocen esa situación y establecen unas
25 métricas que, si no cumples con esto, pues, te

1 descualifico para que ganes bonos en otras
2 áreas. Y eso es lo que traigo en esa
3 recomendación.

4 Aparte de que además existen unas métricas que
5 son tan y tan importantes que, si no se cumplen,
6 entonces te declaro en "default", no estás
7 cumpliendo con el contrato y puedo cancelar el
8 contrato. Y ese -- que eso -- esa evaluación se
9 hace anual y no hay que esperar tres años de
10 desempeño terrible. No está definido qué es lo
11 que es desempeño terrible. De todas las
12 métricas, cuántas tienes que fallar para que
13 realmente sea terrible el desempeño. Todo ese
14 tipo de cosas está -- es ambiguo en la propuesta
15 de LUMA. Y me parece que en esta revisión de
16 contrato de LIPA se presenta un ejemplo
17 interesante que el Negociado debe considerar
18 seriamente. Por eso lo recomiendo.

19 De la página 109 ln 25 a la 110 ln 8 no se
20 escucha nada en el audio.

21 0:22:40, 110 ln 9

22 A. El Estado debería poder establecer
23 penalidades que vayan contra la compensación
24 básica que recibe LUMA porque, de la estructura
25 que propone LUMA, el no desempeñarse o no

1 alcanzar los mínimos, lo que provoca es que no
2 cobre un bono. Cuando no alcanza los mínimos.
3 Pero la compensación por hacer su trabajo, que
4 no lo estaría haciendo porque no alcanza el
5 mínimo, nunca se ve afectada. Y lo que yo
6 propongo es que, si verdaderamente vamos a
7 adoptar un sistema de bonos y penalidades, sí
8 debe existir la capacidad por parte del
9 Negociado de imponer penalidades contra la
10 compensación básica que recibe LUMA, que en la
11 estructura que propone LUMA, la penalidad es no
12 recibir el bono.

13 0:24:14, 110 ln 21

14 THE WITNESS: No. Necesito el anejo
15 para refrescarme la memoria.

16 0:24:32, 110 ln 24

17 THE WITNESS: Este exhibit -- bueno.
18 El contexto que usted me hace la pregunta
19 es si yo voy a -- yo prefiero no
20 circunscribirme a lo que propone LUMA
21 porque me parece que es muy limitante. Hay
22 una serie de ejemplos en el contrato de
23 LIPA que, por ejemplo, pudiéramos quizás
24 adoptar. La que recuerdo de inmediato sin
25 tener que ir directamente a mi docume -- al

1 documento que yo escribí cuando resumía lo
2 de "gating metrics" en el contrato de LIPA,
3 era, por ejemplo, con las métricas de
4 seguridad tanto laboral como ciudadana. No
5 cualificas para ningún bono porque no estás
6 cumpliendo con un mínimo.

7 Si no cumples con alcanzar una serie
8 de ahorro, que está usualmente atados al
9 presupuesto -- si tú tienes un presupuesto
10 para operar, te pasas de ese presupuesto y
11 no lo puedes justificar, pues, eso te
12 descualifica para coger bonos. O sea, hay
13 una serie de métricas que establece en ese
14 ejemplo que traigo, que es el contrato de
15 LIPA que, a través de un proceso, se
16 determinó que esas eran las críticas. Y
17 esas se convierten entonces en las métricas
18 que, si fallas en esas, los demás bonos no
19 los vas a coger.

20 Eso es sencillo en el sentido de que
21 permite, si no tienes ese tipo de métrica,
22 permite que alguien coja un bono por hacer
23 lo fácil, mientras que no está ocupado
24 haciendo lo crítico. Si tú tienes una
25 estructura donde acumulas muchos puntos por

1 hacer algo que es fácil de hacer, entonces
2 yo cojo un bono por hacer esto que es fácil
3 de hacer. Pero esto otro que es crítico,
4 si no lo alcanzo, no tengo ninguna
5 penalidad porque no -- no cojo el bono. No
6 cojo el bono.

7 0:26:29, 111 ln 1 a la ln 12

8 CHAIRMAN AVILÉS: ¿Cómo está, doctor?
9 Buenos días. Buenas tardes. En su
10 testimonio, a mí me gustaría tener un
11 intercambio más bien -- no quiero llamarlo
12 filosófico -- pero para aclarar unos puntos
13 que yo creo que desde la mañana como que no
14 están claros en lo que hemos visto.
15 Primero, que hay que aclarar primero que el
16 Negociado de Energía regula todas las
17 empresas y el sistema eléctrico del país.

18 THE WITNESS: Correcto.

19 CHAIRMAN AVILÉS: Y que el contrato de
20 LUMA con las P3 y la Autoridad es parte, no
21 es el todo, es parte de ese andamiaje
22 jurídico regulatorio. En esos estamos
23 claro.

24 THE WITNESS: Sí.

25 CHAIRMAN AVILÉS: Y también estamos

1 claro que, en caso de que surjan
2 discrepancias entre ese contrato y ese
3 andamiaje, hay que resolverlo. Y el
4 primero llamado a resolver esas
5 discrepancias es el Negociado de Energía.

6 THE WITNESS: Yo estoy de acuerdo con
7 eso.

8 CHAIRMAN AVILÉS: Okay. Aclarado eso,
9 vamos a lo segundo. Esto es un proceso
10 para establecer unas bonificaciones a raíz
11 del contrato. Yo entendí desde el
12 principio que el Negociado establece que el
13 proceso es para establecer un mecanismo de
14 métricas por desempeño. Y las métricas por
15 desempeño no están restringidas solo a
16 bonificaciones --

17 THE WITNESS: Muy bien.

18 CHAIRMAN AVILÉS: -- incluyen
19 penalidades --

20 THE WITNESS: Muy bien.

21 CHAIRMAN AVILÉS: -- o pueden incluir
22 penalidades. Por ahí vamos. O sea, este
23 proceso es parte de un proceso más grande
24 que ya está regulado. En este en
25 específico estamos hablando de la

1 posibilidad de bonificaciones. Se está
2 discutiendo aquí la posibilidad de
3 penalidades. Eso es algo que está sobre la
4 mesa.

5 Pero, en términos generales, es una
6 estructura de bonificación que nace en el
7 contrato. Eso no quiere decir que ya
8 nosotros tenemos un reglamento para
9 establecer unas métricas y que, de acuerdo
10 al poder que nos confiere la ley, en esa
11 reglamentación que se basa en la ley,
12 nosotros podemos establecer otros
13 mecanismos de penalidades, que la ley misma
14 establece que pueden ser hasta 25,000
15 dólares de multa diarios por incumplimiento
16 con una orden del Tribunal. O sea, que
17 independientemente de lo que se defina en
18 esta estructura, lo cierto es que ya la ley
19 establece que hay una reglamentación bajo
20 el poder de regulación del Negociado que
21 podemos nosotros, a través de esa
22 regulación, establecer unas penalidades por
23 incumplimiento de unos umbrales y de unos
24 mínimos.

25 ¿Estamos de acuerdo con eso?

1 THE WITNESS: Yo estoy de acuerdo que
2 eso debe ser así.

3 CHAIRMAN AVILÉS: Muy bien.

4 THE WITNESS: El Negociado debe poder
5 establecer penalidades.

6 CHAIRMAN AVILÉS: Eso es todo.
7 Gracias.

8 COMMISSIONER UGARTE: Buenas tardes.
9 Buenas.

10 En su recomendación dos, usted alega
11 que no cree que este proceso ha sido uno
12 participativo. Me gustaría que abundara en
13 eso y por qué lo dice y qué haría para
14 mejorarlo.

15 THE WITNESS: Es típico de los
16 procesos administrativos en Puerto Rico --
17 no estoy hablando exclusivamente ahora del
18 Negociado, sino de prácticamente todos los
19 procesos -- en que se establece una
20 estructura semi-judicial, donde primero hay
21 un proceso de establecer quién tiene
22 derecho a presentarse y quién no tiene
23 derecho a presentarse. Para venir aquí
24 tienes que ser perito y tener a veces más
25 grados que un termómetro para poder

1 sentarte a hablar con el comisionado.
2 Ocurre siempre en San Juan la vista en
3 horas laborables. Eso les pasa a todas las
4 agencias.

5 Las personas que se ven afectado por
6 esto en Maricao, en Guánica, en Arecibo,
7 tienen mucho menos acceso a este proceso.
8 Yo he visto en otras jurisdicciones que se
9 abren grupos de trabajo regionales. Se
10 hace un esfuerzo porque la ciudadanía pueda
11 participar de los procesos. En ese
12 sentido, tenemos camino que andar, no solo
13 el Negociado, sino otras unidades
14 administrativas de nuestro gobierno. Ese
15 es el espíritu en el que yo escribo mi
16 recomendación. No sé si contesté su
17 pregunta.

18 COMMISSIONER UGARTE: La otra es -- la
19 otra pregunta, cuando usted hizo sus
20 conclusiones y sus recomendaciones sobre
21 las métricas, su incentivo, ¿usted --
22 solamente quiero confirmar -- ¿usted tuvo
23 en cuenta el estado del sistema
24 actualmente?

25 THE WITNESS: ¿El estado se refiere a

1 la condición física del sistema eléctrico?

2 COMMISSIONER UGARTE: A la
3 condición -- bueno, sí.

4 THE WITNESS: Sí. Hace varios años
5 que no sale un informe completo de la
6 condición física del sistema eléctrico.
7 Así que, cuando yo hago mis
8 recomendaciones, estoy basándome en la poca
9 información que se puede obtener de la
10 página pública del Negociado y de mi
11 experiencia personal y la información que
12 tengo en el ejercicio de mi profesión.
13 Porque, como le digo, mi mejor recuerdo es
14 que desde el 2012, hace diez años, no sale
15 un informe completo del estado del sistema
16 eléctrico de Puerto Rico.

17 La respuesta es sí, porque cuando --
18 se me hace bien difícil a mí comprender que
19 llega una empresa en forma voluntaria a
20 participar de un proceso para ganar una
21 competencia y manejar un sistema eléctrico,
22 y esa empresa no está consciente de la
23 condición del sistema eléctrico que
24 pretende manejar. Entonces yo escucho todo
25 el tiempo esta alegación de que, "No puedo

1 cumplir y mejorar el sistema porque estaba
2 muy malo". Pero es que tú sabías que
3 estaba malo cuando entraste y asumiste esa
4 responsabilidad. No era un secreto que
5 estaba malo.

6 Además, la empresa debería haber hecho
7 una evaluación del sistema eléctrico que
8 asume responsabilidad de manejar. Hace una
9 representación de que, "Soy capaz de coger
10 este sistema y mejorarlo significativamente
11 en poco tiempo". Entonces, una vez que se
12 hace esa -- ese proceso y se da una
13 adjudicación, se asume la -- llega la fecha
14 en que uno toma posesión y ahora opera el
15 sistema, y entonces de momento son noticias
16 el que el sistema estaba malo. A mí me
17 parece que eso es contradictorio. Así
18 que -- y hago ese comentario --

19 COMMISSIONER UGARTE: Pero la pregunta
20 iba dirigida --

21 THE WITNESS: Hago ese comentario
22 precisamente a eso.

23 COMMISSIONER UGARTE: -- a lo que
24 usted analizó y evaluó. Si --

25 THE WITNESS: Yo evalúo eso también

1 porque yo soy, además de perito en este
2 caso, yo soy ciudadano en este país, y yo
3 vivo todos los días las condiciones del
4 sistema eléctrico. Yo vivo en el campo.
5 Yo vivo en San Germán. O sea, si hay una
6 zona que sufre los problemas eléctricos más
7 que el resto del país es la zona suroeste.

8 Si uno mira las métricas de desempeño
9 como SAIDI, SAIFI, etcétera, se da cuenta
10 que, en esa zona, la respuesta es muy
11 distinta al área metropolitana, por
12 ejemplo. Así que sí, yo estoy consciente
13 que el estado de situación del sistema
14 eléctrico es uno que requiere inversión,
15 que requiere atención, que requiere
16 trabajo. Pero eso es precisamente fue a lo
17 que vino LUMA. Eso fue a lo que se hizo
18 voluntario. Así que, ¿hasta dónde uno
19 puede estirar la excusa de que el sistema
20 estaba malo?

21 Por eso es que yo hago unas
22 recomendaciones basadas en cómo debe ser el
23 desempeño de una empresa que se presenta
24 como una empresa capaz, con recursos y que
25 puede coger el sistema eléctrico y

1 mejorarlo. Y esa es una de las preguntas
2 que hay que hacerse, ¿cuánto tiempo hay que
3 esperar para que ejecute correctamente?

4 COMMISSIONER UGARTE: Yo no tengo más
5 preguntas.

6 0:36:14, 112 ln 2 y 3

7 A. Sí. José Alameda Lozada, profesor de la
8 Universidad de Puerto Rico, Recinto de Mayaguez,
9 Departamento de Economía.

10 0:36:27, 112 ln 5 a la ln 7 (sustituir)

11 Can you describe your role in the proceeding?

12 A. ¿Si describo mi...? No lo oí claramente.
13 ¿Describir...?

14 Q. Your role in the proceeding.

15 A. Oh. Okay. Fui contratado por LECO para
16 evaluar las métricas -- la posibilidad de
17 establecer métricas y de establecer un sistema
18 de ecuación o un modelo, un esquema, de
19 penalidades/recompensas. Y ese modelo se
20 evaluó: uno, examinando la literatura que había
21 acumulada; dos, evaluando las ecuaciones; tres,
22 proponiendo unas métricas parecidas sin
23 pretender que fueran finales. Solamente, es una
24 propuesta para que se mirara con detenimiento la
25 posibilidad de buscar un equipo posteriormente

1 de peritos y establecer un sistema métrico de
2 penalidades/recompensas. Y ese fue
3 prácticamente el trabajo.

4 Se evalúa también la energía esencialmente,
5 como lo recientemente se ha tratado de evaluar
6 en muchos países, como un derecho humano, a
7 "human rights" -- "energy as a human right". Se
8 evalúa también la energía como un servicio
9 fundamental/esencial, y la importancia del
10 sistema energético para el crecimiento
11 económico. Eso fundamentalmente es la base.

12 0:40:24, 113 ln 3 a la 4

13 A. Sí. Al momento en que yo evalué la
14 literatura, había dos esquemas fundamentales que
15 se trataban y se insistía en esos esquemas. El
16 esquema de "reward/penalty scheme", el escenario
17 de penalidades/recompensa. Y uno que ellos
18 llaman compensación por "outage", que son
19 apagones.

20 THE WITNESS: ¿Estoy correcto (habla
21 en voz baja)?

22 Compensación por apagones. Y entonces
23 varios trabajos, estudios que se citan en
24 mi trabajo evalúan estos dos escenarios.
25 Posteriormente, en la lectura hay otros

1 escenarios que surgen en Nueva York, la
2 ciudad de Nueva York, y otros esquemas más
3 que, obviamente, no estaban presentes
4 porque, cuando lo escribí, no sabía de esos
5 otros escenarios.

6 0:41:47, 113 ln 8

7 A. No entendí la pregunta. Repítalo, es que
8 lo oigo muy bajo.

9 0:42:00, 113 ln 11

10 A. Okay. Sí. Exactamente. Al examinar a
11 LUMA, LUMA parece que tiene un sistema
12 penalidad/recompensa, lo único que, en el lado
13 de la penalidad, es cero o se acerca a cero.
14 Porque prácticamente, cuando uno examina las
15 métricas que utilizan otros estados por los
16 diferentes modelos, ellos pueden haber
17 cambiado -- de hecho, muchos han tirado para
18 atrás los esquemas y han hecho otros esquemas de
19 reglamentación. Pero eso es precisamente la
20 idea de todo este proceso, este ejercicio, de
21 uno hacer unos ejercicios matemáticos,
22 investigativos, económicos, sociales, que te
23 permitan establecer mejor sistema.

24 Cuando yo veo -- y lo que hemos discutido
25 aquí -- queda claro que LUMA prácticamente tiene

1 un sistema "penalty/reward", pero que "penalty"
2 es cero o casi cero, ¿ve? Porque no es un
3 esquema al estilo de los modelos que yo había
4 examinado y que están considerados en la
5 literatura.

6 0:43:20, 113 ln 12 a 16 (Sustituir)

7 Q. Okay. And then, on line 16, same page --

8 A. The same -- ¿la misma página 5?

9 Q. (Reading from the document.) "I conclude
10 and recommend that PREB develop a reward-and-
11 penalty scheme." Do you have any more specific
12 recommendations on how the Bureau should do
13 that?

14 A. Sí. Como dije anteriormente, lo que
15 propongo ahí es que se examine un modelo de
16 penalidad/recompensa o un modelo de "outage
17 compensation", cualquiera de los dos o cualquier
18 otro modelo que haya surgido modernamente. Y
19 que se examine estos estados como New York,
20 California, los errores que han cometido porque
21 han cometido errores que han tenido que tirar
22 hacia atrás el esquema de evaluación. Se
23 examinen esos para tratar entonces de establecer
24 de "penalty/reward", de
25 compensación/penalidades, para que Puerto Rico

1 pueda obtener -- porque la discusión aquí,
2 cuando la estuve oyendo esta mañana, estaba muy
3 centrada en LUMA como empresa.

4 LUMA como que busca maximizar ganancia,
5 maximizar el valor de la empresa a sus
6 accionistas, lo cual obviamente es completamente
7 lógico en un sistema de orden capitalista como
8 vivimos. No criticamos eso. Lo que yo creo es
9 que el regulador, que fundamentalmente busca
10 llegar a la parte social, esa es la que yo creo
11 que vi flaco, la presentación de LUMA, porque
12 fundamentalmente lo que es el modelo de la
13 empresa privada tratando de maximizar su valor.

14 Aquí es que viene precisamente la importancia
15 del Bureau, el Negociado, para tratar entonces
16 de llegar a metas sociales, que es la que
17 nosotros queremos de un sistema resiliente,
18 menos apagones. Y ese esquema es lo que
19 nosotros, como economistas y como ciudadano de
20 este país, que pago la luz todos los días,
21 queremos que eso sea así. Esa es la idea.

22 0:46:04, 113 ln 19 a la 114 ln 8

23 COMMISSIONER UGARTE: Hola. Buenas.

24 MR. ALAMEDA: Buenas.

25 COMMISSIONER UGARTE: En esa misma

1 página, en ese mismo párrafo, usted dice
2 que hay cinco estados, cinco jurisdicciones
3 que se establecieron el mismo tipo de
4 métrica. ¿Me podría decir cuáles son las
5 jurisdicciones a las que se refiere?

6 MR. ALAMEDA: Tendría que revisar
7 dónde -- el artículo porque, así de
8 memoria, no recuerdo. Creo que está
9 presente aquí. Pero uno de ellos es Nueva
10 York. Otro de ellos es California, Hawaii,
11 Long Island.

12 Si no estoy -- y otros más estados que
13 se presentan en los estudios a la cual yo
14 he citado en las notas al calce. Déjeme
15 ver si estoy bien. Es que estoy tratando
16 de buscar cuál es el que se cita, que están
17 los diferentes estados. Pero -- no. Yo
18 estoy seguro que lo hice, pero --

19 COMMISSIONER UGARTE: Se le queda uno.
20 Si lo encuentra luego --

21 MR. ALAMEDA: Okay. Se lo busco por
22 ahí.

23 COMMISSIONER UGARTE: -- me lo indica,
24 por favor.

25 MR. ALAMEDA: Cómo no.

1 COMMISSIONER UGARTE: Muchas gracias.
2 No tengo más preguntas.

3 CHAIRMAN AVILÉS: Buenas tardes,
4 doctor. ¿Qué tal?

5 MR. ALAMEDA: Cómo no. Saludos.
6 Saludos.

7 CHAIRMAN AVILÉS: Saludos. Usted
8 menciona que si hay algo que tiene que
9 hacer el Negociado entre tantas otras
10 cosas, pero que le interesaría o que quiere
11 ver que el Negociado hace, que en esas
12 métricas que escoja, incluyan métricas que
13 velan por el interés público; usted le
14 llama "razón social".

15 MR. ALAMEDA: Correcto.

16 CHAIRMAN AVILÉS: Estamos
17 completamente de acuerdo porque esa es la
18 razón de ser del Negociado. Entonces mi
19 pregunta directa, al grano, si yo le digo a
20 usted, "Deme por lo menos" -- fíjese lo que
21 le estoy diciendo -- "por lo menos cinco
22 métricas que tienen que estar en esa
23 estructura", ¿cuáles usted me menciona?

24 MR. ALAMEDA: Bueno, las métricas
25 típicas de evaluación, uno es SAIDI; la

1 otra es KAIDI, que responde a -- tendría
2 que buscar las siglas, a qué responde.
3 Métricas también sobre la cuestión regional
4 de justicia energética. Una cosa bien
5 importante, que yo he estado en estos
6 estudios y lo presentó el compañero de la
7 Universidad de Puerto Rico, el Dr. Castro
8 Sitiriche, es que, por ejemplo, se
9 anuncia -- hay un huracán. Se anuncia que
10 tenemos el 95 por ciento de la gente
11 energizadas; faltan cinco. Pero esos cinco
12 están en Maricao, Adjuntas, Las Marías.
13 Dejan de anunciar esos cinco por ciento, y
14 esos se tardan como 20 o 25, 30 días más.
15 Por razón de mi trabajo, al estar en
16 Mayaguez y viajar a esa área oeste, por
17 razones de mi trabajo, yo me doy cuenta de
18 que eso es así.

19 Por lo tanto, una métrica que tiene
20 que evaluar el sistema eléctrico es cómo
21 nosotros podemos llevar corriente,
22 electrificar a esos campos, que
23 típicamente -- recordemos que al principio,
24 cuando Mayaguez -- en el '40, '30, Mayaguez
25 Light Power era privada. Y una de las

1 cosas que se estatificó, que el estado la
2 compró, es porque la empresa privada no
3 quería bregar la energía eléctrica por
4 todos los lugares. Y esa es la tercera.

5 Y otras más que, obviamente, no tengo
6 en la memoria, pero que muy bien -- LUMA,
7 por ejemplo, presentó aquí unas métricas
8 que también se podrían considerar, como las
9 llamadas, las cosas que ellos
10 establecieron, que son métricas
11 importantes. De hecho, mi entender es que,
12 cuando se establezca un sistema de esta
13 naturaleza, LUMA tiene que participar,
14 hacer su exposición, las comunidades
15 también tienen que hacer sus exposiciones.
16 O sea, tiene que ser un proceso inclusivo,
17 de una sociedad inclusiva con todos los
18 "stakeholders", participantes de este
19 esquema de manera tal que haya una
20 participación efectiva de todos esos
21 "stakeholders".

22 CHAIRMAN AVILÉS: Si me permite,
23 quizás Dr. Irizarry pueda ayudar al Dr.
24 Alameda.

25 Él me dio tres: SAIDI, KAIDI, métricas

1 regionales. Dos más que usted quiera
2 añadir.

3 MR. IRIZARRY: Si usted me permite, yo
4 haría una -- englobaría unas cosas. Cuando
5 hablo de SAIDI y KAIDI, son métricas de
6 confiabilidad. Y de lo que estamos
7 hablando de SAIDI y KAIDI, a mí me preocupa
8 usar exclusivamente esos indicadores que
9 son promedios porque los promedios ocultan
10 los extremos.

11 Cuando yo estaba en la Junta de
12 Gobierno de la Autoridad de Energía
13 Eléctrica, yo molesté bastante para que me
14 dieran SAIDI y KAIDI por alimentador; nunca
15 me lo dieron. Lo más que pude obtener
16 fueron regiones. Cuando uno examinaba el
17 SAIDI y el KAIDI de las regiones en Puerto
18 Rico, descubrías que la zona metropolitana,
19 por ejemplo, tenía un SAIDI y un KAIDI
20 superior, mejor que el promedio. Y veías
21 el oeste y estaba por debajo del promedio.

22 Y yo pedía eso para decir, "Bueno,
23 ahora, cuando vas a hacer inversiones,
24 mejoras capitales", yo seguía viendo
25 inversiones en un área que, si tú juzgabas

1 por confiabilidad, decías, "Pero si esta
2 área está por encima del promedio. Ella
3 está bien. ¿Por qué sigues invirtiendo ahí
4 y tienes abandonada una zona que siempre
5 está atrás?" No haces la inversión
6 correcta para mejorarla. Entonces que el
7 Negociado mire con mayor granularidad ese
8 asunto del SAIDI y el KAIDI también es
9 importante. No es solamente el SAIDI, el
10 SAIFI y el KAIDI, es que no se oculte en el
11 promedio la condición de regiones.

12 Eso va atado a la segunda métrica que
13 plantea Alameda, que es un asunto de
14 justicia energética. La justicia
15 energética no aparece en ninguna parte de
16 las métricas que propone LUMA. Es un
17 concepto que está completamente ausente del
18 contrato. Yo no he -- todavía no he visto
19 una -- un "docket", como ustedes usan, el
20 lenguaje del Negociado, es abrir un
21 expediente de hablar de justicia
22 energética. Esa conversación en Puerto
23 Rico todavía no se ha dado en forma formal.

24 El Dr. Marcel Castro Sitiriche,
25 siguiendo el mensaje que trae el Dr.

1 Alameda, hace un análisis de quiénes son
2 los últimos que se conectan después de un
3 huracán, y siempre son los mismos. Siempre
4 es las mismas regiones las últimas en
5 conectarse. Pues, entonces la
6 justificación es siempre la misma, "Es que
7 es una montaña y es lejos" y qué sé yo.
8 "Oye, ¿pero cuántas veces te va a morder el
9 mismo -- el perro otra vez? ¿Cómo vas?
10 ¿Qué inversiones nuevas vas a hacer? ¿Qué
11 tecnología nueva vas a traer para atender
12 ese problema?"

13 Así que confiabilidad, justicia
14 energética. Pero el otro tema que yo creo
15 que debería tener muy presente como métrica
16 el Negociado es seguridad en la --
17 seguridad para la ciudadanía. O sea, hay
18 un asunto de seguridad laboral. Y esos
19 quedan un poco cubiertos con los
20 reglamentos de OSHA, etcétera. O sea, ya
21 hay una organización que mira por la
22 seguridad laboral.

23 Pero la seguridad de los ciudadanos no
24 aparece en ninguna parte en las métricas.
25 Y eso a mí me preocupa muchísimo porque la

1 cantidad de -- eso está atado a otras
2 métricas como, por ejemplo, manejo de
3 vegetación, etcétera. O sea, la gente que
4 se electrocuta porque sale a buscar una
5 pana o un aguacate y cosas como esas que
6 son grandes tragedias. Eso no debe pasar
7 en nuestro país. La seguridad ciudadana
8 debe ser importantísima.

9 La transformación del sistema
10 eléctrico se supone que es el eje de todo
11 este proceso. La ley que le da paso a todo
12 esto que estamos viviendo habla de
13 transformar el sistema eléctrico. Yo
14 tendría una métrica de reelectrificación de
15 nuestro país con tecnología moderna. O
16 sea, esa parte de cuál es el sistema que es
17 moderno, que es confiable, que es
18 sostenible, que es resiliente, todo eso se
19 engloba en que el sistema -- la tecnología
20 que le suple la electricidad en forma
21 confiable y resiliente a la gente, ¿es la
22 misma que usamos al principio del siglo
23 pasado o es la tecnología nueva? ¿Cómo
24 adoptamos eso? ¿Con qué rapidez hacemos
25 ese despliegue? Esa métrica no existe.

1 Yo creo que el Negociado debería
2 establecerse -- métricas existen internas y
3 existen externas. Y el Negociado podría
4 tener una métrica interna de cómo yo -- una
5 asignación, ¿verdad? -- de cómo yo voy a
6 medir esta transformación. Y luego se
7 puede traducir a mandatos y a métricas que
8 se les imponen a distintos factores. Así
9 que en esa métrica de la transformación no
10 sé si de primera instancia es interna y
11 luego es externa, pero eso tengo que
12 pensarlo un poco más.

13 El otro tema que me parece a mí
14 importante es el costo de hacer las cosas
15 que hacemos. Y el costo comparado con qué.
16 El costo comparado con qué. O sea, ¿cuánto
17 más nos cuesta a nosotros los ciudadanos el
18 paso de traer un operador versus otra
19 manera de suplirnos nuestra energía.
20 Nosotros teníamos un esquema de corporación
21 pública y se tomó la decisión de pasarlo a
22 una operación privada, pero existen otras
23 estructuras. Una estructura cooperativa es
24 una alternativa. Nunca hemos conversado
25 sobre eso, y cuál es la que va a ser más

1 costo-efectiva para las condiciones de
2 nuestro país. Así que el costo es
3 importante, y el control de gastos es
4 importante. Incentivos para que la
5 operación del sistema sea la más
6 eficiente.

7 En la estructura de compensación de
8 LUMA, hay una bonificación fija, pero hay
9 un componente enorme de lo que se llama de
10 pasar los costos, el "pass through". El
11 "pass through", por ahí pasa todo; y todo
12 es todo. Entonces, ¿cómo yo mido el
13 desempeño de una empresa que es capaz de
14 pasar todos los gastos? ¿Dónde está la
15 eficiencia y el control sobre ese pasar los
16 gastos? ¿Cómo yo establezco una métrica
17 para reducir el "pass through", por
18 ejemplo? La compensación fija que la fija
19 en un contrato. Pero el "pass through",
20 ¿cómo yo examino y controlo ese costo?
21 Esas son métricas que no se -- que no hemos
22 conversado, no aparecen en la estructura
23 actual. Y yo no la traje, precisamente, en
24 mi informe. Lo traigo ahora motivado por
25 la pregunta que usted me hace. Y motivado

1 también por escuchar la conversación que
2 hemos tenido en el día de hoy.

3 CHAIRMAN AVILÉS: Yo voy a aprovechar
4 y voy a sentar otras bases. Usted bien
5 señala que Puerto Rico está en un proceso
6 de transformación. Y LUMA es un "player",
7 un jugador (audio se entrecorta) más.
8 Usted bien señala como profesor de sistemas
9 eléctricos el paradigma del siglo pasado ya
10 no es más. Pero eso está recogido en la
11 ley. Y el llamado a establecer las bases y
12 la reglamentación para que se dé esa
13 transformación es el Negociado de Energía.

14 ¿Qué cosas se han adelantado en ese
15 proceso? Adopción de la reglamentación de
16 trasbordo, un plan agresivo de generación a
17 base de energía renovable, un plan agresivo
18 de permitir la conexión de sistemas
19 distribuidos, una optimización del proceso
20 de establecer mini redes a lo largo y ancho
21 del país. Eso es el Negociado de Energía.

22 Una vez eso esté establecido, los
23 jugadores -- y ya seleccionado LUMA --
24 tiene un rol que hacer fiscalizado por
25 nosotros. Que es un monopolio, sí, como

1 usted bien sabe. Los sistemas de
2 transmisión y distribución tienen que ser
3 monopolio. No hay de otra. Generación son
4 otros 20 pesos. Y por eso hay unos PPOA de
5 energía renovable. Por eso tenemos a las
6 personas que se interconectan y venden y
7 consumen electricidad en sus casas. Por
8 eso tenemos una transformación hacia un
9 mercado en el cual eventualmente podríamos
10 tener "spot selling market" para vender
11 energía de acuerdo a una necesidad para
12 reserva y otros elementos necesarios en la
13 red. Así que estamos en ese proceso.

14 Estamos encaminados a dejar atrás el
15 paradigma de generación centralizada que,
16 como usted señala, quien último lo sufre, y
17 sin razón, y quien más lo sufre es el de la
18 montaña. Atado a eso, estoy consciente y
19 tengo conocimiento que tenemos que tomar e
20 insertar en nuestra discusión lo que se
21 llama justicia energética. Porque en
22 Puerto Rico podríamos hablar que el
23 afectado es el de la montaña, pero en los
24 Estados Unidos a veces esa injusticia
25 esconde un discrimen para ciertos sectores

1 por razón de raza y de género. No sabemos
2 si aquí eso existe. Por (audio se
3 entrecorta) consciente y estamos también
4 moviéndonos en esa dirección.

5 Muchos cambios, tenemos que ir paso a
6 paso. No podemos tardar demasiado.
7 Queremos ver el efecto positivo de
8 inmediato. Pero voy a tomar, ¿verdad?,
9 tomaremos en consideración esas
10 recomendaciones; creo que son estupendas.
11 Pero le quería dejar saber como académico,
12 como pensador, como doctor y perito en esta
13 materia, qué se está haciendo en la línea
14 de sus preocupaciones. Gracias.

15 COMMISSIONER TORRES: Sí. Tengo una
16 pregunta. El comisionado Torres para
17 récord. La pregunta es dirigida al Dr.
18 Alameda.

19 Usted mencionó que la propuesta de
20 LUMA en cuanto a penalidades es de cero a
21 casi cero. Yo entiendo por casi cero que
22 existen algunas penalidades y, si es así,
23 ¿cuáles son?

24 MR. ALAMEDA: Bueno, las que se
25 discutieron aquí de -- que tiene que pasar

1 por un tiempo para entonces la posibilidad
2 de que se elimine el contrato que ese se
3 estaba discutiendo aquí, ¿verdad? (Sin
4 audio) efectos perversos en la asignación
5 de los recursos. Porque entonces, si yo
6 voy a recibir una -- es como si tiene un
7 niño y tú dices, "Niño, tienes que
8 estudiar. Si no, no tienes entonces el
9 carrito que te iba a comprar". Pues, si el
10 niño no estudia y tú le das el carrito
11 comoquiera, entonces tienes un incentivo
12 perverso porque no has logrado -- haciendo
13 este mismo parangón, este mismo ejemplo
14 sencillo, esto también -- por eso es que
15 hay que (audio se entrecorta) un buen
16 sistema métrico de penalidades/recompensas,
17 mirar las experiencias de otros estados.
18 Las que fallaron, pues, quitarlas y
19 mejorarlas, los errores que cometieron,
20 porque lo han hecho los estados. Han
21 virado para atrás.

22 Y posiblemente en la discusión vaya a
23 salir de que California tiró para atrás,
24 pero -- y New York. Pero hicieron otras
25 métricas. Y Puerto Rico tiene que mirar

1 eso seriamente.

2 2:08:56, 154 ln 14 a la ln 23

3 COMMISSIONER AVILÉS: Buenas tardes,
4 doctor. Usted acaba de testificar que el
5 testimonio del Dr. Alameda falla en
6 utilizar literatura de países que son muy
7 distintos a Puerto Rico en términos
8 generales.

9 THE WITNESS: Sí. Es parte de lo que
10 dije.

11 COMMISSIONER AVILÉS: La realidad es
12 que Puerto Rico es una jurisdicción en
13 términos de sistema eléctrico muy peculiar.
14 Tenemos un sistema eléctrico que el dueño
15 es el estado, que es grande. Y a eso le
16 vamos a añadir que acabamos de contratar un
17 operador para darle mantenimiento y operar
18 el sistema, que en el contrato con ese
19 operador se establecen unos incentivos.
20 ¿Podemos decir que eso es peculiar cuando
21 analizamos la literatura del mundo?

22 THE WITNESS: No. En la literatura se
23 habla de incentivos. El planteamiento que
24 yo estoy haciendo es que la literatura
25 específica que se cita es sobre un tipo

1 particular de reglamentación diseñado para
2 una "private utility" con dueños
3 "shareholders and profit maximizing" y que
4 opera con unos controles diferentes a los
5 que se aplican en el régimen regulatorio
6 nuestro.

7 COMMISSIONER AVILÉS: Quizás no --

8 THE WITNESS: Se podrían hacer aquí,
9 pero habría que cambiar el sistema.

10 COMMISSIONER AVILÉS: Quizás no me --

11 THE WITNESS: Estamos hablando de otra
12 cosa.

13 COMMISSIONER AVILÉS: -- expresé
14 correctamente. Mi pregunta va en la línea
15 de tratar de establecer que Puerto Rico es
16 una jurisdicción muy peculiar.

17 THE WITNESS: Yo diría que sí. Para
18 empezar, estamos hablando de que tenemos un
19 sistema que sabemos que está muy malo, que
20 sabemos que hay que reconstruirlo, que es
21 propiedad pública pero que se va a
22 reconstruir con dinero público que no es
23 dinero de Puerto Rico, que es dinero que
24 nos van a regalar. Y que por eso entiendo
25 yo que no se puede privatizar

1 completamente, porque el gobierno de
2 Estados Unidos no va a decir, "Ahí tienen
3 9,000,000,0000 -- 10,000,000,000 de dólares
4 y ahora regálenselos a una entidad
5 privada", obviamente. Así que operamos con
6 sistemas de contratar a alguien para que
7 opere partes de un sistema cuyos activos
8 siguen siendo propiedad pública y cuyo
9 objetivo central sigue no siendo la
10 maximización de ganancias, sino algún otro.

11 COMMISSIONER AVILÉS: Y le añadimos
12 que es un sistema aislado. A todo eso que
13 usted acaba de mencionar --

14 THE WITNESS: Sistema aislado, exacto.
15 Y por eso es importante que, si vamos a
16 hablar de aplicar esquemas a Puerto Rico
17 que estén citados y analizados en la
18 literatura económica, que usemos una
19 literatura que trate de sistemas similares
20 o razonablemente parecidos a lo que estamos
21 hablando aquí.

22 COMMISSIONER AVILÉS: Porque, al final
23 del día, no vamos a encontrar un sistema
24 como el de nosotros.

25 THE WITNESS: No creo que encontremos

1 en la literatura -- quizás un "paper" que
2 diga, "Este 'paper' está hecho para
3 aplicarlo a Puerto Rico". Pero
4 ciertamente, cuando vemos toda esta
5 discusión sobre "price-cap mechanisms" en
6 la literatura que cita el Dr. Alameda,
7 tenemos que pensar que estamos hablando de
8 algo que realmente no es el tema para el
9 que estamos aquí.

10 2:12:43, 155 ln 5 hasta 155 ln 9 (sustituir)

11 We are going to start with the Oficina
12 Independiente. And then we're going to go
13 LECOs. I don't know if PREPA has
14 questions.

15 So then we're going to go OIPC and
16 then LECOs and then we'll --

17 Is there something that LUMA...?

18 2:13:47, 156 ln 1 a la ln 2

19 MR. VÁZQUEZ: Buenas tardes a todos.
20 Soy el licenciado Pedro Vázquez en
21 representación de la Oficina Independiente
22 de Protección al Consumidor. Nuestras
23 preguntas en esta tarde van a estar
24 dirigida al Sr. Hurtado. No vamos a estar
25 haciendo preguntas a los demás.

1 156 ln 5

2 BY MR. VÁZQUEZ:

3 Q. Así que buenas tardes, Sr. Hurtado.

4 Sr. Hurtado, ¿básicamente pudiera decir que el
5 establecimiento de unas métricas de desempeño de
6 unos incentivos -- de incentivar mediante
7 métricas de desempeño el fin último es promover
8 el mejor funcionamiento y el mejor desempeño de
9 la utilidad, en este caso, de LUMA?

10 A. Mario Hurtado para el récord, de LUMA.
11 Bueno, yo diría que hay varios propósitos, ¿no?
12 Y en mi testimonio hablo de varios de esos
13 propósitos. Pero, en términos generales, es
14 alinear las actividades e intereses del operador
15 del sistema de transmisión y distribución con
16 ciertas metas y actividades al beneficio de los
17 consumidores, de los clientes del sistema
18 eléctrico y alinearlos con metas de la política
19 pública energética de Puerto Rico.

20 Q. Correcto. Y así fue -- según usted
21 contestó en el requerimiento de información del
22 PREB en el primer interrogatorio en su pregunta
23 número uno que, en efecto, es una herramienta
24 para incentivar (audio se entrecorta) política
25 pública y así (audio se entrecorta) ¿correcto?

1 2:17:36, 158 ln 8 a la ln 11

2 Q. Sí, Sr. Hurtado. Volviendo a la
3 pregunta. Según usted manifestó, estaba usted
4 contestando a mi pregunta con relación a que si
5 el objetivo principal básicamente es incentivar
6 a la utilidad para un mejor desempeño.

7 A. Sí, pero -- o sea, es uno de los
8 objetivos. Y estaba diciendo que uno de los
9 objetivos principales es alinear las actividades
10 más cercamente a la política pública energética
11 de Puerto Rico y a unos beneficios específicos
12 para los clientes del sistema eléctrico.

13 Q. Correcto. Y ahí entonces es que le traje
14 a usted su respuesta al interrogatorio número
15 uno del Negociado a la pregunta número uno. Le
16 estaba haciendo --

17 A. ¿La pregunta número uno en qué documento?

18 Q. En el requerimiento de información número
19 uno del Negociado.

20 A. ¿Y cuál -- ¿qué documento?

21 Q. Pregunta número uno.

22 2:18:53, 158 ln 18

23 MR. VÁZQUEZ: Okay. Estoy haciendo
24 referencia a -- y podemos ir directamente
25 en el set de documentos del Negociado, en

1 la página 2,680 específicamente.

2 2:19:38, 159 ln 6

3 MR. VÁZQUEZ: Con relación al
4 documento, estaremos solicitando que se
5 admita en evidencia. En cuestión de la
6 prueba, estoy haciendo referencia --

7 2:19:46, 159 ln 9

8 MR. VÁZQUEZ: Precisamente, estoy
9 haciendo referencia a documento entrado,
10 por ejemplo, haciendo referencia
11 directamente al set que tiene el Negociado,
12 específicamente al que proveyó y compartió.
13 Nosotros, en ese sentido, no lo sometimos
14 "per se" como evidencia habiendo sido
15 sometido por otra parte tanto por el
16 Negociado o por LECO también está sometido.
17 2:20:07, 159 ln 12

18 MR. VÁZQUEZ: No ha sido marcado en
19 evidencia. Y estoy entonces haciendo
20 referencia para sacar una copia de la
21 página 2680 del set del Negociado, que fue
22 que se nos compartió previo a la vista
23 también.

24 2:20:47, 159 poner antes de línea 20

25 MR. VÁZQUEZ: No, no hay problema

1 si --

2 2:30:12, 162 ln 1 a la ln 4

3 Q. Y estábamos hablando nuevamente que si
4 parte de los propósitos es fomentar el mejor
5 desempeño de la utilidad de LUMA en este caso.

6 A. Sí.

7 Q. Correcto.

8 Y le pregunto si se debe incentivar a LUMA por
9 cumplir con su parte del contrato, por hacer el
10 trabajo por el cual sí hay un "fee" y se le paga
11 una cantidad específica.

12 MS. MERCADO: Voy a solicitar que se
13 le -- entendí la pregunta es compuesta.
14 Tiene dos premisas, si la puede dividir.
15 Empezó cumplimiento de contrato y después
16 dio otra explicación.

17 2:30:58, 162 ln 8

18 MS. MERCADO: Okay. Sí. No hay
19 problema. Compuesta.

20 Y ya que interrumpí, tengo un punto de
21 clarificación del tipo de documento y
22 dispositivos que los testigos pueden tener
23 de frente, al estar todavía sujetos al --
24 que se aclare.

25 2:31:45, 162 ln 22 a la 164 ln 19

1 Q. Nuevamente le pregunto que si se debe
2 incentivar en este caso a LUMA por cumplir con
3 lo establecido en el contrato.

4 A. Bueno, yo no creo que se trata -- o sea,
5 el propósito de los incentivos no es
6 incentivar -- decir que, bueno, si no estuviera
7 el incentivo, LUMA no haría tal cosa. Desde mi
8 punto de vista, el propósito, como estamos
9 diciendo, de los incentivos es alinear los
10 intereses e incentivar. Eso no quiere decir que
11 LUMA no haría ciertas cosas en la ausencia de
12 esas métricas. O sea, es un -- me parece que
13 eso no es correcto en términos de la estructura
14 del contrato ni de la manera en que funciona una
15 serie de métricas, ¿no?

16 Lo que tiene que -- tiene que ver con premiar
17 o dar ciertos beneficios para un desempeño
18 específico, ¿no? Pero este concepto de que,
19 "Bueno, se le está pagando porque hace su
20 trabajo. ¿Y por qué se le está premiando por
21 hacer su trabajo?", me parece honestamente una
22 línea de -- es una argumentación interesante,
23 pero esa no es la manera en que está
24 estructurado el contrato. Y la idea de los
25 incentivos no es que, si no existiera el

1 incentivo, la empresa eléctrica nunca haría esa
2 función o haría esa cosa.

3 Obviamente, una empresa eléctrica, por
4 ejemplo, va a trabajar para mejorar la
5 confiabilidad del sistema porque esas son las
6 funciones principales. Eso no quiere decir que
7 tú no establezcas o que uno no establezca
8 incentivos que tengan que ver con la
9 confiabilidad del sistema para premiar un
10 desempeño específico. Pero no -- o sea, eso es
11 diferente a decir que, si no hubiera el
12 incentivo, pues, nunca haría nada la empresa en
13 esa área. Me parece que esa línea de
14 argumentación es una manera de enmarcar, a mi
15 punto -- a mi manera de ver, es una manera
16 incorrecta de enmarcar esta discusión sobre
17 incentivos.

18 Q. Como usted acaba de mencionar, es para
19 incentivar un desempeño específico, ¿correcto?

20 A. Cuando estoy diciendo desempeño
21 específico, digo llegar a un desempeño numérico
22 sobre una métrica. Por ejemplo, decir que -- o
23 sea, en ese sentido, sí es importante.
24 Obviamente, por eso es que hay metas que se
25 fijan y por eso se miran los datos y se mira el

1 desempeño.

2 Parte de las características de -- en general
3 de métricas de desempeño exitosas o que estén
4 bien diseñadas es que sean de una característica
5 que sean cuantitativas, que se pueda cuantificar
6 de una manera relativamente objetiva los datos
7 que soportan esa actividad y los resultados que
8 se van a demostrar.

9 Q. Puesto de otra manera también, ¿se debe
10 incentivar a la -- en este caso a LUMA por
11 cumplir con lo que la ley así le requiere
12 también?

13 A. No entiendo su pregunta.

14 Q. De la misma manera que le pregunté que si
15 se debe incentivar por cumplir con el contrato
16 con cosas que sí tienen que hacer -- hay cosas
17 que indistintamente, incentivo o no incentivo,
18 hay cosas que LUMA tiene que hacer porque tiene
19 una obligación contractual, ¿correcto?

20 A. Ciertamente. Sí.

21 Q. Correcto. Así que, si ese cumplimiento
22 con esas obligaciones las tienen que llevar a
23 cabo indistintamente del incentivo, significa
24 que un incentivo debe premiar un desempeño que
25 vaya más allá de tu cumplimiento normal de lo

1 que hubiera sido tu obligación, ¿correcto?

2 A. Sí. Pero estamos hablando de términos
3 bastante vagos e imprecisos, ¿no?, y ambiguos.
4 Entonces decir que, "Bueno, de todas maneras, X
5 empresa eléctrica tiene que mejorar la
6 confiabilidad del sistema".

7 Q. No --

8 A. Pues, entonces, si ese es el caso -- o
9 sea, esa línea de argumentaciones, eso quiere
10 decir que, "Bueno, entonces, ¿para qué vamos a
11 hacer incentivos si de todas maneras bajo la ley
12 la empresa eléctrica tiene la obligación de
13 tratar de brindar un servicio confiable?".
14 Entonces, si la lógica es, "Bueno, si hay un
15 requisito legal para hacerlo, no deberíamos
16 tener un incentivo", me parece que eso no es una
17 manera correcta de enmarcar la discusión porque
18 ahí estaríamos echando a un lado un montón de
19 actividades importantes, que son importantes
20 para los clientes y que es importante ir
21 mostrando progreso y mejoras en esas áreas.

22 Q. Bueno, su testimonio en esta mañana y
23 tarde es precisamente por los aspectos generales
24 porque este proceso precisamente está para ir al
25 detalle de cómo sería y cómo estaría diseñado o

1 aprobándose esas métricas de desempeño
2 específicas a las que usted hace referencia.
3 Pero, en aspecto general, estamos hablando que
4 LUMA tiene una obligación contractual. Tiene no
5 solamente una obligación contractual, sino
6 también tiene un deber de cumplir con la ley.

7 Y mi pregunta va dirigida, en un aspecto
8 general, si en ese sentido se debe incentivar a
9 la utilidad para --

10 A. Sí. Y yo creo que le he respondido.

11 Q. Correcto.

12 Durante este proceso, se llevarán a cabo o se
13 estarán aprobando unas métricas juntamente con
14 unas metas en la cual requerirá -- y usted me
15 dice si coincide, requerirán unos incentivos
16 para un desempeño más allá de lo que deber ser
17 su obligación contractual, ¿correcto?

18 A. No. No es correcto.

19 Q. No es correcto.

20 A. Yo no lo enmarcaría así tampoco. No,
21 porque el proceso de fijar las métricas es un
22 proceso de investigación y de mirar cuál es la
23 realidad. Y por eso hay una línea base, un
24 "baseline" -- perdonen que use el término en
25 inglés -- que se establece basado en el

1 desempeño actual. Eso no tiene que ver con -- o
2 sea, no quiero -- yo creo que este tema de que,
3 "Bueno, tienen que ir más allá, más allá de -- o
4 sea, por eso se usan datos, ¿no?

5 Q. Claro.

6 A. Por eso se clasifica para establecer,
7 "Bueno, esta es la línea base y este es el
8 desempeño que se espera". Pero yo -- me parece
9 que se están usando términos cualitativos con
10 implicaciones de valores casi morales de que --
11 versus el número es X y lo que usted quiere es
12 llegar a X más 20 por ciento en un término de X
13 número de años.

14 Q. Y trayendo ese punto que usted está
15 mencionando ahora, si yo tengo unas bases, unos
16 "baselines" de los cuales ahora mismo los
17 números muestran que el que se está proponiendo
18 ya actualmente se está cumpliendo, ¿cómo eso va
19 a promover el mejor desempeño de la utilidad si
20 actualmente se cumple?

21 A. Bueno, en parte precisamente porque ha
22 pasado bastante tiempo y ya LUMA ha estado
23 operando en tiempo. Yo hice la propuesta esta
24 mañana de que se deberían actualizar las metas y
25 los números que se utilizan para la empresa,

1 para tener una serie de métricas con las metas y
2 los "minimum thresholds", línea mínima de
3 desempeño, más acorde con los datos más
4 recientes de la empresa y el sistema eléctrico.

5 Q. ¿Pudiera entonces usted testificar que,
6 en cada una de las métricas propuestas, si los
7 números actuales reflejan que la base que se
8 está proponiendo actualmente se está cumpliendo,
9 debería revisarse para entonces proponer unas
10 metas que pudieran promover el mejoramiento en
11 cada una de ellas?

12 A. La propuesta es que, teniendo en cuenta
13 algunas determinaciones sobre cuáles son las
14 metas que se van a utilizar, de (ininteligible)
15 esas metas, se puede hacer un ejercicio de
16 actualizar los datos y presentar esos datos al
17 Negociado y a las otras partes que participan en
18 un proceso para asegurar que se puedan fijar
19 metas y líneas mínimas de desempeño acordes a
20 los últimos datos del sistema eléctrico.

21 Q. De alguna manera, Sr. Hurtado, no me
22 queda claro si me contestó en la afirmativa o en
23 la negativa.

24 ¿Entiende que, si las bases que se están
25 proponiendo actualmente se están cumpliendo,

1 deben cambiarse para promover el mejoramiento en
2 cada una de esas áreas?

3 A. Yo creo -- repito otra vez que se
4 deberían establecer las metas para saber
5 exactamente qué es lo que -- a qué es lo que se
6 tiene que atender LUMA y cómo va a hacer la
7 estructura de esas métricas -- perdón, no metas,
8 de las métricas de desempeño. Y teniendo en
9 cuenta esa estructura y teniendo en cuenta una
10 fecha más clara de cuándo van a comenzar a
11 aplicar efectivamente las métricas, se reúnan
12 los datos y se haga una presentación de los
13 datos actualizados para el Negociado poder tomar
14 en cuenta esos datos más actualizados del
15 sistema y asegurarse que están cómodos con las
16 metas existentes o si se tienen que revisar
17 según los datos más actuales.

18 Q. ¿No considera que este es el proceso para
19 eso?

20 A. Yo no descarto que eso se pueda hacer
21 dentro de ese proceso. Es una decisión del
22 Negociado. Pero en este momento esos datos no
23 están ante -- no hacen parte de este proceso.
24 Porque se hizo un testimonio y se hizo un anejo
25 nuevo específico con los datos que existían en

1 ese momento.

2 Q. Al momento --

3 A. O sea, la manera del proceso sería una
4 decisión del Negociado.

5 Q. ¿Significa que mucha de la "data"
6 sometida para el establecimiento de las metas --
7 de las métricas como están propuestas no
8 necesariamente es muy confiable la información
9 que se pudo obtener?

10 A. No. Yo no creo que eso es lo que yo
11 dije.

12 Q. Y le pregunto yo entonces, ¿entiende
13 usted que la "data" utilizada para poder
14 proponer las métricas que están ante la
15 consideración de este Negociado es confiable
16 para poder así entonces establecer sin la
17 necesidad de tener que revisarlas nuevamente?

18 A. Bueno, los datos -- bueno, el hecho de
19 que sean confiables o no, no tiene que ver
20 con -- si haya una conveniencia de actualizar
21 las metas. Las metas establecidas y los mínimos
22 que están establecidos usan los mejores datos
23 disponibles en el tiempo de la preparación de
24 estas metas. Tenemos testimonio y en el mismo
25 anexo nuevo bastante información sobre esos

1 datos, que en algunos casos esos datos que
2 recogimos durante el proceso de transición
3 inicial de la Autoridad de Energía Eléctrica
4 teníamos problemas de fondo. Por eso, en
5 ciertos casos, sugerimos unas líneas base
6 basadas en unos tiempos específicos o sugerimos
7 unas líneas base diferentes a lo que uno
8 asumiría solo mirando los números de la
9 Autoridad. Porque, en algunos casos, hay unos
10 problemas de fondo en la manera en que esos
11 datos se recogieron o se reportaron o en la
12 manera en que se calculó los resultados.
13 Entonces yo creo que para cada dato tenemos una
14 discusión sobre la calidad de los datos, qué
15 datos se están utilizando. Y utilizamos lo
16 mejor de datos disponibles en su momento para
17 poder presentar el anejo nuevo --

18 Q. Claro, pero --

19 2:44:20, 164 ln 23 a la 165 ln 7

20 MR. VÁZQUEZ: Okay. Moviéndonos
21 entonces un poco más adelante.

22 BY MR. VÁZQUEZ:

23 Q. Con relación a las métricas sometidas,
24 ¿cuál es la diferencia entre la métrica
25 propuesta en la cual se firmó en el contrato, en

1 el OMA, versus la propuesta ante el Negociado?
2 ¿Hubo cambios en esas métricas?

3 A. Sí. Hubo cambios que están anotados en
4 el Anejo IX. O sea, cuando hay un cambio
5 específico de la métrica o se ha diferido la
6 métrica, y eso está claramente marcado en el
7 anejo nuevo -- o sea, IX. ¿Está diciendo en
8 comparación con lo que estaba en el Anejo IX en
9 el momento de la firma del contrato?

10 Q. Correcto.

11 A. Sí.

12 Q. Correcto.

13 A. Ahí se nota -- hay unas métricas que
14 nosotros propusimos que se postergaran o se
15 infirieran, y eso está anotado en el Anejo IX.

16 Q. ¿Y otras métricas que se cambiaron, por
17 ejemplo, el "effective weight" o que se hayan
18 cambiado la manera en que se contabiliza la
19 misma?

20 A. De que yo me acuerde específicamente, no.
21 Hay unas métricas nuevas, entonces esas métricas
22 en el contrato no tienen un "effective weight"
23 ¿no? Pero en general se colocó un efecto -- o
24 sea, se miró cada métrica y se miró el
25 "effective weight".

1 Hubo una discusión con el Gobierno de Puerto
2 Rico representado por la Autoridad de Alianzas
3 Público-Privadas y sus consejeros sobre cada de
4 las métricas. Ellos revisaron las métricas que
5 estaban en el contrato, lo que nosotros
6 estábamos proponiendo, hicieron revisiones.
7 Esas revisiones se tomaron en cuenta para hacer
8 un Anejo IX que se sometió al Negociado en
9 febrero del 2021. Entonces sí hubo un proceso y
10 los cambios grandes y todos están anotados en el
11 Anejo IX.

12 Q. Okay.

13 2:46:36, 165 ln 9 a la ln 12 (sustituir)

14 THE WITNESS: O sea, vale la pena
15 aclarar que este esquema de compensación
16 fue algo propuesto por el Gobierno de
17 Puerto Rico inicialmente, y nosotros, en
18 general, aceptamos esa estructura, nosotros
19 digo LUMA. Y eso está anotado en el
20 informe del "partnership committee" de esta
21 transacción específica. Y el proceso que
22 se hizo durante el proceso de transición
23 fue formar el comité que tenía miembros de
24 la Autoridad de Energía Eléctrica y la P3 y
25 LUMA para revisar los datos. Después se

1 hizo un borrador del Anejo IX, de los
2 cambios al Anejo IX. Eso se revisó con la
3 Autoridad de Alianzas Público-Privadas y
4 sus consejeros. Ellos hicieron revisiones
5 y sugerencias. Esas se tomaron en cuenta,
6 y eso fue lo que se sometió en febrero del
7 2021 al Negociado.

8 Y subsecuente a eso, como hablamos
9 esta mañana, hubo unas reformas que se
10 hicieron para someterlo otra vez en agosto
11 y septiembre del 2021. Y subsecuente a
12 eso, después de eso, el Negociado pidió que
13 se añadieran ciertas métricas y se
14 añadieron al Anejo IX. Y en cada de esas
15 etapas, cuando se -- creo, cuando se ha
16 sometido ese anejo nuevo, se ha pedido un
17 "red line" del anejo, y eso se ha sometido.
18 Entonces eso está muy -- o sea, hay
19 claridad sobre qué cambios se hicieron en
20 cada versión del anejo.

21 MR. VÁZQUEZ: Dirigido al examinador,
22 en el caso que nosotros no vamos a hacer
23 preguntas a los demás, si nos permite
24 varias preguntitas más porque no vamos a
25 estar consumiendo tiempo con los demás

1 testigos.

2 2:41:46, 165 ln 18 a la 166 ln 7 (sustituir)

3 Q. Sr. Hurtado, según su testimonio en la
4 línea 215 --

5 A. ¿Cuál? ¿El testimonio inicial?

6 Q. Su testimonio inicial, correcto.

7 A. Okay. Déjeme buscarlo, por favor.

8 Q. Se habla específicamente de las
9 características, usted detalla las
10 características que debe contener las métricas
11 propuestas, según ustedes, ¿correcto?

12 A. Perdone. ¿Está haciendo referencia a qué
13 líneas?

14 Q. La línea 215 en adelante.

15 A. Ah. Bueno. Sí. Ya estoy ahí. Gracias.

16 Q. Indica -- y lo voy a leer para la
17 situación de que está en inglés. Lo voy a leer
18 así mismo. Indica que tienen que ser "Clear,
19 unambiguous, objective quantification",
20 ¿correcto?

21 (Leyendo del documento.) "An accurate
22 baseline indicating the degree to which progress
23 is being made in relation to the current state
24 of the system, alignment with public policy and
25 the customer needs, and focused to efficiently

1 change", ¿okay?

2 ¿En efecto la información que ustedes
3 recopilaron para promover o para sugerir las
4 métricas que están ante la consideración cumplen
5 con cada una de esas características que usted
6 está exponiendo en su testimonio?

7 A. Bueno, ese es el objetivo, ¿no? O sea,
8 lo que dice es que es importante que se tome en
9 consideración estas características en cuanto a
10 las diferentes métricas de desempeño. Entonces,
11 como digo en el testimonio, creo que en
12 particular las características una y dos son
13 mucho -- o sea, se puede decir que no son tan
14 aplicables a los "major outage event metrics"
15 precisamente porque es muy difícil establecer un
16 "baseline" sobre una emergencia porque cada
17 emergencia es diferente y uno no puede "a
18 priori" decir que la emergencia va a ser así y
19 asá. Y es mucho más difícil la cuantificación
20 de esas actividades.

21 Entonces, por eso esas métricas tienen una
22 característica diferente, es más procesual.
23 Procesual, aunque creo que no es español, pero
24 es "more procedural". Tienen que ver más con el
25 proceso según el modelo que se utilizó en Nueva

1 York para el "scorecard" de emergencias, que es
2 una manera de tratar de establecer una
3 herramienta para poder hacer evaluaciones del
4 desempeño durante emergencias. Entonces esas
5 métricas, pues, son un poco diferentes.

6 2:51:37, 166 ln 11 a la 167 ln 1

7 Q. Volviendo a una pregunta de seguimiento
8 anterior que le había hecho con relación al
9 establecimiento o lo que usted había mencionado
10 de revisar las bases que se han ofrecido, que se
11 puede volver a visitar o volver a
12 actualizar -- ¿fue la palabra que usó?

13 A. Sí, actualizar. Yo creo que es más -- o
14 sea, actualizar los datos realmente es lo más --
15 yo diría que es lo más importante.

16 Q. Ahora para, a manera de ejemplo, ¿está
17 consciente, por ejemplo, en la métrica de la
18 tasa de abandono de llamadas, ustedes proponen
19 un "baseline" de 40?

20 A. ¿Puedo tener el Anejo IX para poder --
21 sí.

22 Q. Básicamente, proponen un "baseline" de 40
23 por ciento o la meta es 40 por ciento en el
24 primer año, ¿correcto?

25 A. No. La meta -- sí. Correcto. Sí, es 40

1 por ciento.

2 Q. ¿Tiene idea en cuánto está actualmente?

3 A. No. Tendríamos que preguntarle a la
4 persona que está encargada de esa métrica. No
5 tengo esa métrica.

6 Q. ¿Desconoce si es más o es menos?

7 A. No. No sé.

8 Q. Okay.

9 A. O sea, mi impresión en general es que en
10 las métricas de servicio al cliente estamos
11 bien, pero tendríamos que preguntarle al experto
12 sobre esta métrica exactamente cuál es el
13 puntaje. No lo tengo en mi memoria.

14 Q. Según lo que han reportado en el otro
15 "docket" del que están haciendo referencia, el
16 00 -- el 2019-0007, para los meses de diciembre,
17 enero -- de diciembre, noviembre y octubre,
18 estamos hablando de cuatro, cinco y ocho por
19 ciento. ¿No es desproporcional lo establecido
20 versus lo actual, que en efecto llevaría al
21 punto de revisar los "baselines" que están --
22 que se están proponiendo?

23 A. Bueno, yo creo que, otra vez, tiene que
24 ver con las metas y los -- el nivel mínimo de
25 desempeño, no necesariamente el "baseline". El

1 "baseline" es lo que es. O sea, entonces se
2 pudiera argumentar que se deberían cambiar, pero
3 me parece que lo importante es actualizar
4 precisamente para que las metas y los niveles
5 mínimos -- pero no podría comentar
6 específicamente sobre ese -- o sea, realmente es
7 una pregunta para las personas que son los
8 expertos en esta métrica porque ellos saben cómo
9 se está calculando y si se está calculando de la
10 misma manera en el 0007 de lo que se está
11 calculando acá, porque eso no necesariamente el
12 caso en todas las métricas. Entonces no
13 quisiera dar una respuesta que no está
14 fundamentada en la realidad de esa métrica y
15 cómo se recogen esos datos. Entonces eso es una
16 buena pregunta para los expertos en esa área.

17 Q. Muchas gracias, Sr. Hurtado.

18 A. Gracias.

19 MR. VÁZQUEZ: Más ninguna pregunta
20 para el testigo.

21 Tercer audio

22 0:16:47, 187 ln 21 a la 187 ln 23

23 (sustituir)

24 Debido a que voy a comenzar con el
25 Ing. Irizarry, voy a utilizar el idioma

1 español. Y me excuso de entrada si incurro
2 en el "Spanglish". Así que entiendo que
3 fue el primero que el Negociado entrevistó.

4 EXAMINATION AGUSTÍN IRIZARRY RIVERA

5 BY MS. MERCADO:

6 Q. Ing. Irizarry, ¿usted considera que Earth
7 Justice es su cliente en este procedimiento?

8 0:17:22, 188 ln 2

9 MS. MERCADO: Va a la naturaleza de la
10 situación en la que -- las razones por las
11 que está aquí y es parte de su CV, que es
12 un anejo del testimonio.

13 0:17:39, 188 ln 8

14 MS. MERCADO: Es parte de su CV,
15 "curriculum vitae", y que es un anejo de su
16 testimonio, que es parte de su testimonio o
17 está incorporado en su testimonio.

18 0:17:54, 188 ln 11 (sustituir)

19 MS. MERCADO: Sí.

20 BY MS. MERCADO:

21 Q. La pregunta es si Earth Justice es su
22 cliente, es la parte que usted considera su
23 cliente en este procedimiento. ¿Sí o no?

24 A. No.

25 0:18:14, 188 ln 19 a la 188 ln 19

1 MS. MERCADO: He mencionado que es
2 parte de su "curriculum vitae".

3 MR. SEILHAMER: That's fine. Can you
4 make reference in the direct?

5 MS. MERCADO: Sí. Si le pueden hacer
6 entrega del Exhibit 7 con sus anejos, la
7 parte -- la página 5 de su "curriculum
8 vitae" del Ing. Agustín Irizarry.

9 MS. ARROYO: (Inaudible.)

10 MR. MURTHY: No.

11 MS. MERCADO: Le estoy pregun -- el
12 testigo puede contestar. Es una pregunta
13 sí así.

14 BY MS. MERCADO:

15 Q. ¿Me dijo que no --

16 A. (Inaudible.)

17 Q. -- que Earth Justice no es su cliente?

18 ¿Esa fue -- le pregunto, ¿Earth Justice --

19 0:18:58, 188 ln 24 a la 189 ln 19

20 Q. Página 5 del Exhibit 7, es parte de su
21 exhibit, es su CV, "curriculum vitae", que es el
22 Exhibit 1 de su testimonio. Página 5.

23 Su "curriculum vitae" es el Exhibit 1.

24 MR. SEILHAMER: Just give him a chance
25 to look for it.

1 MS. MERCADO: Es para ayudarle.

2 BY MS. MERCADO:

3 Q. ¿Está en la página 5?

4 A. Estoy en la página 5.

5 Q. Y en el acápite que dice: "Expert
6 witness in civil court and Puerto Rico Energy
7 Bureau", inciso 1, ahí usted indica que usted es
8 un perito para Earth Justice. ¿Es correcto?

9 A. Aquí dice, y leo: "Expert witness for
10 Earth Justice on behalf of local environmental
11 organizations".

12 Q. Pero -- exacto, para Earth Justice. ¿Es
13 correcto?

14 A. Mis clientes son las organizaciones.
15 Earth Justice representa a las organizaciones.

16 Q. ¿Earth Justice le ha pagado sus
17 honorarios en este caso como perito?

18 A. Sí.

19 Q. Le han pagado 12,000 dólares, ¿correcto?

20 A. Correcto.

21 Q. ¿Usted espera recibir compensación por el
22 testimonio que está ofreciendo como perito ahora
23 mismo en este caso, en esta vista ante el
24 Negociado?

25 A. Sí.

1 Q. Le pregunto, como parte de LECO, que es
2 la parte interventora, son varias organizaciones
3 que componen a LECO, ¿correcto?

4 A. Correcto.

5 Q. Correcto.

6 ¿Una de ellas es la UTIER, Unión de
7 Trabajadores de la Industria Eléctrica y Riego
8 de Puerto Rico?

9 A. Correcto.

10 Q. ¿Usted ha sido miembro de la UTIER?

11 A. No.

12 Q. No.

13 ¿Usted ha operado el sistema de transmisión y
14 distribución de la Autoridad de Energía
15 Eléctrica de Puerto Rico?

16 0:21:07, 189 ln 23

17 MS. MERCADO: No. Esto a va a sus
18 cualificaciones y experiencia. Son
19 relevantes en un testimonio pericial que
20 tiene que ver con componentes de
21 cumplimiento y "performance" de una
22 utilidad.

23 0:21:22, 190 ln 2

24 MS. MERCADO: No. Le estoy
25 preguntando. Entiendo que esto es un

1 contrainterrogatorio a un perito sobre sus
2 cualificaciones.

3 0:21:51, 190 ln 13 hasta 190 ln 21 (sustituir)
4 BY MS. MERCADO:

5 Q. Para que el récord quede claro, quiero
6 que me -- me excuso si ya me contestó, pero por
7 si lo olvidé, ¿no ha operado el sistema de
8 transmisión y distribución de la Autoridad de
9 Energía Eléctrica, usted?

10 A. ¿Me puede explicar qué significa operar
11 el sistema eléctrico?

12 Q. ¿Ha trabajado en la Autoridad de Energía
13 Eléctrica?

14 A. Yo no he sido empleado de la Autoridad de
15 Energía Eléctrica.

16 Q. Okay.

17 A. Sí he sido miembro de la Junta de
18 Gobierno de la Autoridad de Energía Eléctrica.

19 Q. Y como miembro de la junta de la
20 Autoridad de Energía Eléctrica, ¿usted tenía
21 algún rol operacional en los sistemas? Por
22 ejemplo, el Centro de Mando, ¿usted lo -- el
23 Centro de Control Energético...

24 A. La Junta de Gobierno de Energía Eléctrica
25 recibía informes técnicos, recibíamos testimonio

1 de eventos, juzgábamos el desempeño de los
2 operadores y señalábamos acciones correctivas.

3 Q. Okay.

4 Me menciona desempeño de los operadores.
5 Entonces, bajo esa misma línea que usted me
6 acaba de decir, ¿usted ha sido en alguna vez uno
7 de esos operadores de la Autoridad de Energía
8 Eléctrica? ¿Sí o no?

9 A. Yo solamente le enseñé la ingeniería que
10 ellos luego usan para operar el sistema. Yo
11 nunca he estado sentado en la silla operando.
12 Yo los entreno para que operen.

13 Q. Y hablemos un poquito de su rol en la
14 junta de directores de la Autoridad de Energía
15 Eléctrica. ¿Ese puesto usted lo ocupó de entre
16 junio de 2012 a septiembre de 2014?

17 A. Junio de 2012 a septiembre de 2014 es el
18 término que yo serví en la Junta de Gobierno de
19 Energía Eléctrica.

20 Q. ¿Dos años y tres meses?

21 0:24:08, 191 ln 9

22 MS. MERCADO: Just one second. No
23 estaba enterada de que estaba siendo muy
24 rápida, pero no hay problema.

25 0:24:16, 191 ln 13 hasta 191 ln 16 (sustituir)

1 MR. SEILHAMER: Sustained.

2 MS. MERCADO: Sí. No hay problema. O
3 sea, no me había dado cuenta.

4 MR. SEILHAMER: We'll instruct the
5 attorney to do so.

6 MS. MERCADO: Okay. No hay problema.

7 CHAIRMAN AVILÉS: Si me permiten, y
8 perdonen la interrupción, que tengo que
9 aclarar esto.

10 Usted entiendo que le preguntó al
11 doctor si esperaba cobrar dinero. Creo que
12 le dijo que sí.

13 La pregunta es si espera cobrar o
14 cobró por este proceso. ¿Ya usted cobró o
15 espera cobrar como perito?

16 THE WITNESS: No he cobrado por este
17 proceso.

18 CHAIRMAN AVILÉS: Okay.

19 0:24:45, 191 ln 18

20 Q. ¿No le han pagado? ¿Los 12,000 dólares
21 no se los han pagado?

22 0:24:54, 191 ln 21 (sustituir)

23 MS. MERCADO: Okay. Voy a hacer
24 referencia a la identificación de LUMA 37-
25 5. Es el Request for Information 0301

1 firmado por Agustín Irizarry Rivera, 37-5.

2 MS. ARROYO: Which one?

3 MS. MERCADO: Treinta y siete cinco.

4 Identificación de LUMA 37-5.

5 MR. SEILHAMER: Can we have a copy

6 so...

7 MS. MERCADO: (Inaudible.)

8 MR. SEILHAMER: It's going to be the

9 same rules as --

10 MS. MERCADO: Sí. Es que esa es la

11 copia que trajimos extra. La tiene el

12 testigo.

13 0:25:58, 192 ln 11

14 Q. Haciendo referencia a la Identificación
15 37-5, respuesta a la pregunta 0301, le pregunto,
16 ¿es correcto que ahí usted contestó que al
17 momento ha recibido 12,000 dólares por concepto
18 de honorarios como perito?

19 0:26:21, 192 ln 15 hasta 192 ln 17 (sustituir)

20 MS. MERCADO: Es que tenemos una

21 contestación a "discovery" en el que él

22 contestó este mismo particular y nos la

23 cursaron el -- creo que fue el 30 de enero,

24 una producción suplementaria. Y hay una

25 información precisamente que contradice lo

1 que ha dicho ahora mismo.

2 MR. SEILHAMER: Okay. If it's to
3 impeach him, go ahead.

4 0:26:37, 192 ln 19 hasta 193 ln 25

5 Q. Le pregunto si no es cierto que, en ese
6 documento, que ha sido marcado como Exhibit 15,
7 usted contestó que: "Al momento, he recibido
8 12,000 dólares en -- por concepto de honorarios
9 como perito".

10 A. Sí.

11 Q. Okay.

12 Como miembro de la --

13 MS. MERCADO: Lo devuelvo.

14 BY MS. MERCADO:

15 Q. Como miembro de la junta de directores de
16 la Autoridad de Energía Eléctrica, ¿en algún
17 momento usted participó en la elaboración de
18 alguna propuesta de métricas del desempeño de la
19 Autoridad de Energía Eléctrica?

20 A. Sí.

21 Q. ¿Cuáles?

22 A. En la -- en varios de los comités de la
23 junta, tomábamos acciones para pedirle a los
24 operadores de red, ingenieros de planificación,
25 auditores y otras, que nos trajeran índices,

1 medidas, para nosotros poder juzgar el desempeño
2 de las actividades, por ejemplo, inventarios.
3 Energía Eléctrica llevaba unos inventarios;
4 nosotros los examinábamos, le hacíamos
5 preguntas. Elaborábamos índices sobre
6 inventario. Elaborábamos índices sobre
7 mantenimiento a transformadores, mantenimiento
8 de disyuntores a la salida de las plantas
9 eléctricas. Eso vino a consecuencia de averías
10 que dejaron -- causaron apagones en el país.
11 Así que, según supervisábamos la labor del
12 ejecutivo, que era la labor de la junta de
13 gobierno, precisábamos información y
14 establecíamos métricas para decidir si las
15 asignaciones que dábamos se estaban cumpliendo o
16 no.

17 Q. Y esos índices que usted menciona, ¿se
18 sometieron -- se publicaron en algún lugar para
19 que el pueblo de Puerto Rico pudiera evaluar ese
20 desempeño de esos índices o el resultado de esos
21 índices? ¿Sí o no?

22 A. Están recogidos en las minutas de las
23 reuniones de comité y de la junta de gobierno.

24 Q. Esas minutas, ¿son públicas, si usted
25 sabe? ¿Sí o no?

1 A. Sí. Lo son.

2 Q. Esos índices, resultados de esos índices,
3 ¿se sometieron a alguna agencia del gobierno
4 para auditoría sobre la veracidad de la
5 información que está contenida en ellos?

6 A. En el período en que yo participaba de la
7 junta, la Autoridad de Energía Eléctrica era una
8 organización regulada por su junta de gobierno.

9 Q. O sea, ¿que la contestación es no?

10 A. No existía un organismo gubernamental
11 que -- para monitorear o juzgar ese trabajo.

12 Q. Le pregunto, previo al testimonio que se
13 ha marcado como el Exhibit 7 de este
14 procedimiento que usted presentó -- o tiene
15 fecha en su primera página del 16 de noviembre
16 de 2021, previo a eso, ¿había usted hecho alguna
17 publicación relacionada con métricas de
18 desempeño de una compañía de servicios
19 energéticos pública?

20 A. No. No recuerdo haber publicado
21 anteriormente sobre el tema.

22 Q. ¿Y sobre propuestas de penalidades que se
23 fueran a implementar a una compañía de servicios
24 pública energéticos?

25 A. Fuera de lo que discutíamos en la misma

1 empresa eléctrica --

2 Q. Una publicación es la -- usted como
3 individuo.

4 A. No. No tengo esa publicación.

5 Q. En cuanto a implementación de propuestas
6 de penalidades aplicables a una compañía -- una
7 utilidad pública de servicios energéticos,
8 previo a esta propuesta que usted le ha sometido
9 al Negociado, ¿había usted hecho una propuesta
10 de penalidades?

11 A. No.

12 Q. Hemos hablado durante el curso del día de
13 hoy de un procedimiento paralelo sobre el
14 desempeño; se llama "The Performance of the
15 Electric" -- de PREPA, el caso 2019-007.
16 Incluso, usted creo que en su testimonio
17 menciona algunas resoluciones que el Negociado
18 ha emitido en ese procedimiento. ¿Lo conoce?

19 A. Sí. Conozco el procedimiento.

20 Q. En este procedimiento, ¿usted conoce que
21 la Autoridad de Energía Eléctrica le presentó a
22 este Negociado de Energía a lo largo de unos
23 años, y a partir del 2020, datos sobre su
24 desempeño en ciertas áreas?

25 A. A solicitud del Negociado.

1 Q. A solicitud del Negociado.

2 A. Correcto. Sí.

3 Q. En ese proceso, al Negociado de Energía,
4 ¿en algún momento usted le presentó una
5 propuesta sobre métricas adicionales que
6 deberían considerar para evaluar el desempeño de
7 la Autoridad de Energía Eléctrica?

8 A. No.

9 Q. Voy a hacer referencia a otro documento
10 que --

11 MS. MERCADO: Aclaro que estos
12 documentos, desde la perspectiva de LUMA,
13 nosotros los podemos dejar como
14 identificaciones. Es para efecto del
15 contrainterrogatorio; no los tenemos que
16 marcar como exhibits.

17 0:32:05, 194 ln 5 (sustituir)

18 MS. MERCADO: Okay. Pero está marcado
19 como -- este sería la Identificación
20 47-1 --

21 0:32:09, 194 ln 7 (sustituir)

22 MS. MERCADO: Cuarenta y siete uno de
23 LUMA. El "Utility Performance Incentive
24 Mechanism, a Handbook for Regulators".
25 Esta lo que pasa es que tiene mis --

1 bueno...

2 0:32:24, 194 ln 15 a la 194 ln 21 (sustituir)

3 Q. Esa es la copia del Negociado. ¿Reconoce
4 ese documento que ha sido marcado por ahora como
5 la Identificación 47-1 y Exhibit 18 -- 16? Me
6 adelanté de tiempo.

7 A. Sí. Lo reconozco.

8 Q. Lo reconoce.

9 MR. MURTHY: Sorry. This is LUMA
10 exhibit, which one from your...?

11 MS. MERCADO: Identification 47-1.

12 MR. MURTHY: Forty-seven. Okay.

13 0:32:47, 194 ln 23 hasta 195 ln 21 (sustituir)

14 Q. Lo conoce, ¿verdad? Esto es un documento
15 que usted cita a lo largo de su testimonio, que
16 es el Exhibit 7 de este procedimiento.

17 A. Lo usé para preparar mi testimonio.

18 Q. Usted diría y -- lo usó.

19 Le pregunto si lo utilizó para preparar las
20 tablas cuatro a la diez con las métricas que
21 usted propone en su testimonio, Exhibit 7.

22 A. Uso este documento como un punto de
23 referencia para la creación de esas tablas.

24 Q. ¿Es un punto de referencia o estaría
25 correcto decir -- entender que usted utilizó

1 muchas de las tablas de métricas de esta
2 publicación y usted las incluyó también como
3 propuestas en su testimonio?

4 A. Usé las tablas en el documento como
5 referencia. Yo elaboré mi propuesta.

6 Q. Usted elaboró sus propuestas.

7 Le voy a hacer referencia a la página 47-25 de
8 ese documento, si lo puede acceder. Ahí hay una
9 tabla o -- bueno, un encasillado es más bien,
10 que se llama "Examples of Innovative Performance
11 Metrics".

12 A. Página 25, yo tengo --

13 Q. No. Tiene que ver -- perdóneme. Marcado
14 Identificación, abajo a mano derecha, 47-25
15 (inaudible).

16 Dice: "Examples of Innovative Performance
17 Metrics", ¿correcto?

18 A. Sí. En esta página hay un recuadro que
19 dice: "Examples of Innovative Performance
20 Metrics".

21 Q. Y en una lista -- un primer "item", dice:
22 "Peak load reduction", ¿correcto?

23 A. Sí.

24 Q. ¿Y dice: "Illinois"?

25 A. Sí.

1 Q. ¿Luego dice: "Stakeholder engagement,
2 Illinois y Hawaii"?

3 A. Sí.

4 Q. Pues, dígame si no es correcto que esa
5 tabla, podríamos -- ese encasillado es lo mismo
6 que usted incluyó en la Tabla 3 de su informe
7 que ha sido marcado como el Exhibit Número 7.

8 Si las compara, dígame si esos "items" que
9 usted puso ahí no son idénticos a su Tabla 3.

10 MS. ARROYO: ¿Qué página?

11 MS. MERCADO: Cuarenta y siete
12 veinticinco del Exhibit 16. Y, del
13 testimonio, es la página 19, Tabla 3.

14 THE WITNESS: ¿A cuál página de mi
15 testimonio se refiere?

16 0:35:15, 195 ln 23 hasta 198 ln 6 (sustituir)

17 Q. Página 19, Tabla 3.

18 A. La Tabla 3 de mi testimonio dice --

19 Q. La pregunta es si los --

20 A. -- "Existing or proposed performance
21 metric in other jurisdictions".

22 Q. Ese es el nombre que usted le dio.

23 A. Sí.

24 Q. Pero, si vamos al contenido, esa "Peak
25 Load Reduction" -- le pregunto, esa "Peak Load

1 Reduction Illinois", ¿no es lo mismo que está en
2 el primer "item" de la tabla de la
3 Identificación 47-25, que dice: "Peak Load
4 Reduction Illinois"? ¿Es la misma?

5 A. Yo identifico en esta tabla --

6 Q. ¿La misma --

7 A. -- lo que existe y se propone en otras
8 jurisdicciones. Y en este informe, lo resumen
9 en ese recuadro.

10 Q. Pues, vamos al próximo. En este informe,
11 resume "stakeholder engagement" como Illinois y
12 Hawaii, ¿correcto? "Stakeholder engagement
13 Illinois Hawaii".

14 A. Sí.

15 Q. ¿Lo mismo que usted pone, "Stakeholder
16 Engagement Illinois Hawaii"?

17 A. Sí. Estoy citando el informe.

18 Q. Está citando el informe. Okay.

19 ¿Usted evaluó esa métrica -- vamos a coger
20 una -- de "stakeholder engagement" en Illinois?
21 ¿Nos puede explicar en qué consiste esa métrica
22 en Illinois?

23 A. No. En Illinois no la evalué. Evalué la
24 de Hawaii.

25 Q. La de Hawaii elimini --

1 Y la de "Peak Load Reductions" de Illinois,
2 ¿la evaluó?

3 A. No.

4 Q. ¿No?

5 A. No, porque yo no --

6 Q. No, ya me contestó.

7 A. -- propongo una métrica de "peak load
8 reduction" en mi informe.

9 Q. ¿Pero la menciona?

10 A. Claro. La menciono --

11 Q. ¿Como de que existe en otras
12 jurisdicciones y la --

13 A. Correcto. Es un ejemplo de otras
14 métricas que existen en otras jurisdicciones,
15 pero no es una propuesta que yo traigo. Yo no
16 hago una métrica ni propongo una métrica de que
17 se le dé penalidad o incentivo a LUMA por
18 reducir el pico. Eso yo no lo incorporo en mi
19 informe.

20 Q. Okay.

21 Y si vamos a la Tabla 4 de su informe, en la
22 página 24: "Examples of metrics to achieve a
23 sustainable energy system" --

24 A. Sí.

25 Q. En la Tabla 4.

1 A. Página 24.

2 Q. Dígame si no es cierto que esa tabla
3 proviene de la Tabla 12 de ese documento
4 Handbook de SINAPS [fonético] que estamos viendo
5 ahora mismo, la Tabla 12 de ese documento. La
6 Tabla 12, página 47-31 del Exhibit 16.

7 A. En la Tabla 12 del documento --

8 Q. La Tabla 12, la primera métrica propuesta
9 es "Energy Efficiency", ¿correcto?

10 A. Sí.

11 Q. ¿Y es la misma primera métrica que usted
12 propone aquí en la Tabla 4, como ejemplo,
13 "Energy Efficiency"?

14 A. Sí. Yo hago referencia en mi título a
15 este documento.

16 Q. La pregunta es si son las mismas
17 métricas. De esa Tabla 12 del documento de
18 SINAPS, son las mismas que usted ha incluido en
19 su informe como ejemplos de métricas. Hay siete
20 métricas --

21 A. Sí. Son las mismas.

22 Q. -- en cada una. Son las mismas.

23 Ese documento de SINAPS, se llama un
24 "Handbook", ¿correcto? Si ve el título, se
25 llama "Handbook" -- Exhibit 16, "Handbook". Es

1 "Handbook -- Utility Performance Incentive
2 Metrics -- Mechanisms, A Handbook for
3 Regulators", ¿correcto?

4 A. Ese es el título del documento.

5 Q. ¿Y es una publicación del 9 de marzo de
6 2015?

7 A. Correcto.

8 Q. Correcto.

9 ¿Usted actualizó esta publicación? ¿Verificó
10 si hay un "Handbook" más reciente luego del
11 2015? Al preparar su informe, ¿verificó si hay
12 uno nuevo, actualizado?

13 A. ¿A la fecha de que yo produje el informe,
14 se refiere usted?

15 Q. Sí. Sí. Cuando lo preparó.

16 A. Yo preparé el informe en el '21. En el
17 '21, no conozco una versión más reciente. No
18 tenía yo una versión más reciente.

19 Q. ¿Pero la buscó? La pregunta es si la
20 buscó.

21 A. Sí. Busqué.

22 Q. ¿No la encontró?

23 A. No.

24 Q. Okay.

25 "Handbook" en español, ¿se traduciría como un

1 manual?

2 A. Correcto.

3 Q. Usted es académico, ¿correcto? ¿Verdad?
4 ¿Tiene publicaciones académicas?

5 A. Sí.

6 Q. En publicaciones académicas, le pregunto,
7 ¿utiliza manuales o "handbooks" como referencia?

8 A. Depende la publicación, sí.

9 Q. Vimos en esa Tabla 3 que estábamos
10 mirando de otras jurisdicciones -- sobre
11 métricas de otras jurisdicciones, que usted --
12 que las pone como ejemplo, ¿correcto?

13 A. Correcto.

14 Q. Le pregunto, ¿usted está de acuerdo que
15 cada utilidad pública, "electric power utility"
16 en inglés, tiene unas características
17 particulares?

18 A. Sí.

19 Q. Sí.

20 ¿Y esas características particulares son
21 relevantes a la operación, por ejemplo, del
22 sistema que la utilidad opera?

23 A. Sí.

24 Q. ¿Usted estaría de acuerdo que no hay una
25 sola compañía -- utilidad pública que sea

1 idéntica a la Autoridad de Energía Eléctrica?

2 A. Correcto.

3 0:41:00, 198 ln 9

4 MS. MERCADO: El informe de él tiene
5 66 páginas. Así que es --

6 0:41:06, 198 ln 12

7 MS. MERCADO: Hago constar para récord
8 que, como la parte pro -- que tiene el peso
9 de la prueba en este procedimiento, es
10 corto para el perito principal. Yo estoy
11 de acuerdo, quizás otros peritos no
12 tendrían un contrainterrogatorio tan largo.
13 Pero son 66 páginas, muchas citas de
14 publicaciones. Se le han hecho preguntas
15 en la mañana -- en el día entero. O sea,
16 que yo entiendo que él limita
17 indebidamente.

18 0:41:28, 198 ln 14

19 CHAIRMAN AVILÉS: ¿Cuánto tiempo
20 adicional necesitaría?

21 MS. MERCADO: Yo diría, dependiendo.
22 Por lo menos, como 15 minutos adicionales.
23 Yo no tengo problemas con --

24 CHAIRMAN AVILÉS: Ustedes necesitaban
25 tiempo adicional también, ¿verdad?

1 0:41:40, 198 ln 18 (sustituir)

2 CHAIRMAN AVILÉS: ¿Y ustedes también?
3 Adelante.

4 COMMISSIONER MATEO: ¿Ustedes se
5 pueden quedar?

6 Okay.

7 CHAIRMAN AVILÉS: Quien da por
8 terminada la vista somos nosotros.

9 Así que, adelante.

10 0:42:20, 199 ln 3 hasta 199 ln 10 (sustituir)

11 MS. MERCADO: ¿Pero vamos a terminar?
12 Quedan otros testigos.

13 MR. SEILHAMER: Quedan --

14 MS. MERCADO: Digo, yo no tengo
15 problemas --

16 MR. SEILHAMER: What do you mean
17 there's other witnesses?

18 MS. MERCADO: Bueno, que quedan -- hay
19 otros testigos que no se le han hecho
20 contrainterrogatorio. Hay un panel grande.
21 Y yo no --

22 MR. SEILHAMER: The 15 minutes is to
23 finish the --

24 CHAIRMAN AVILÉS: Estamos cediendo a
25 su petición de 15 minutos --

1 MS. MERCADO: Sí, no -- bueno, sí.
2 Está bien.

3 CHAIRMAN AVILÉS: Adelante.

4 MR. SEILHAMER: But we need to clarify
5 this because it's 15 minutes to finish her
6 line of -- it's not to start with a new
7 witness.

8 MS. MERCADO: No, no. Sí, con este
9 testigo. Sí. A lo que estaba diciendo es
10 que, si vamos a terminar la vista hoy,
11 entiendo que quedan muchos testigos de
12 contrainterrogatorio, que sí podemos
13 extender la vista, pero --

14 MR. ALAMEDA: Yo voy para Mayaguez.
15 Yo tengo clases mañana y no puedo.

16 MS. MERCADO: Tiene que --

17 MR. ALAMEDA: Tendría que ver hoy o
18 nunca.

19 0:47:31, 200 ln 11

20 CHAIRMAN AVILÉS: Las reglas
21 establecían (inaudible) dando tiempo
22 adicional. Así que adelante, licenciada.

23 MS. ARROYO: Y tomando en
24 consideración -- aquí Laura Arroyo,
25 representante de LECO -- que nosotros

1 tendríamos cuatro "witnesses". O sea, te
2 están dando 25 minutos para dos
3 "witnesses".

4 0:47:52, 200 ln 16

5 COMMISSIONER MATEO: La Comisionada
6 Mateo para el récord. Ya el Oficial
7 Examinador dio su determinación.

8 Y, licenciada Arroyo, usted ha estado
9 aquí en el IRP y sabe cuál es el proceso.
10 La licenciada Mercado no había tenido el
11 beneficio de estar aquí, pero esto no es
12 como un tribunal en el que podemos estar
13 diez días preguntándole a la gente. Todo
14 el mundo se tiene que organizar, ser
15 estratégico con sus preguntas. Y hemos
16 sido flexibles dándole tiempo adicional,
17 pero el calendario es el calendario.

18 MS. MERCADO: Comisionada, yo estuve
19 en el caso de "unbundling". Por si acaso.

20 COMMISSIONER MATEO: Ese fue en
21 pandemia. Este es atípico.

22 MS. MERCADO: Más corto. Más corto.

23 0:48:27, 200 ln 19 a la 202 ln 18 (sustituir)

24 Q. Continúo, Ing. Irizarry. Al preparar --
25 usted ha preparado una -- en su testimonio

1 incluye propuestas sobre métricas adicionales de
2 cumpli -- de desempeño que usted solicita que el
3 Negociado tome en cuenta. ¿Eso es correcto?

4 A. Sí.

5 Q. Al preparar esas propuestas de métricas,
6 ¿consideró usted cómo -- si el Negociado acepta
7 una o varias de esas métricas, si hubiese
8 suficiente dinero para financiar las acciones
9 que tendrían que cumplirse para -- dentro de
10 esas métricas?

11 A. No comprendo su pregunta.

12 Q. Si usted consideró si hay dinero
13 suficiente aprobado en los presupuestos de LUMA
14 y la Autoridad de Energía Eléctrica para
15 poder -- para que esas métricas se implementen.

16 A. Los presupuestos son una declaración de
17 prioridades.

18 Q. Le pregunto si usted -- la pregunta es si
19 usted supervisó -- revisó los presupuestos para
20 determinar, si se añaden estos indicadores
21 adicionales de desempeño, podría tener la
22 utilidad suficiente dinero para lograr esas
23 metas de desempeño. ¿Usted lo analizó? ¿Sí o
24 no?

25 A. No puedo contestar sí o no. Puedo

1 contestar la pregunta.

2 Q. Contésteme.

3 A. Mire, usted me está preguntando, por
4 ejemplo, si yo miré el presupuesto del 2021 y
5 cuánto va a costar hacer algo nuevo, y si eso yo
6 pienso que debo sumárselo a lo otro, o si debo
7 coger el presupuesto original y cambiar las
8 prioridades y gastar la misma cantidad, pero
9 haciendo otras cosas, ese ejercicio yo no lo
10 hice. Pero ese ejercicio se puede hacer.

11 Q. La pregunta es si usted lo hizo.

12 ¿Y usted consideró de algún modo el hecho de
13 que la Autoridad de Energía Eléctrica está bajo
14 un procedimiento de quiebra bajo el Título III
15 de la ley que popularmente se conoce como
16 PROMESA?

17 A. Pues, yo lo considero todos los días,
18 pero pensaba que este Negociado --

19 Q. Al diseñar su propuesta de métricas.

20 A. En el Negociado, yo he visto que el
21 Negociado ha separado el proceso de quiebras de
22 los demás procesos.

23 Q. O sea --

24 A. Yo no recuerdo en ninguno de los procesos
25 que la consideración de la quiebra sea algo para

1 discusión en el --

2 Q. Exacto --

3 MS. ARROYO: Sí. Yo objetaría --

4 Laura Arroyo -- objetaría esa pregunta.

5 Está fuera de lo que estamos aquí

6 discutiendo --

7 MS. MERCADO: Primero, ya contestó --

8 MS. ARROYO: -- y fuera de su

9 testimonio.

10 MR. SEILHAMER: Ya el testigo la

11 contestó.

12 BY MS. MERCADO:

13 Q. Le pregunto, al diseñar su propuesta de

14 métricas adicionales y penalidades, ¿usted

15 consideró las disposi -- comenzó en su

16 testimonio esta mañana, a preguntas del

17 Negociado, y usted dijo que revisó el contrato

18 de operación y mantenimiento entre LUMA, la

19 Autoridad de Energía Eléctrica y la Autoridad de

20 la P3. ¿Es correcto?

21 A. Leí el contrato.

22 Q. Al diseñar y proponer una propuesta de

23 métricas adicionales, ¿usted consideró que ese

24 contrato dispone que debe existir presupuesto

25 suficiente para que se puedan alcanzar las

1 métricas de desempeño que están dispuestas en el
2 contrato?

3 A. Siempre es así.

4 Q. ¿Lo consideró?

5 A. Sí.

6 Q. ¿Y cómo usted entonces acomodó ese
7 análisis? ¿Cómo fue ese análisis?

8 A. Yo no he hecho una redistribución de
9 presupuesto.

10 Q. Okay.

11 En su propuesta de métricas contenidas en el
12 Exhibit 7, que es su testimonio, ¿usted no
13 propone -- para cada una de esas métricas que
14 usted propone, ¿usted propone unos "targets"
15 o -- perdonen que utilice el inglés -- "targets"
16 u objetivos? Para cada una de esas métricas,
17 ¿propone usted "targets" u objetivos?

18 A. Doy ejemplos.

19 Q. Da ejemplos.

20 A. Yo --

21 Q. Pero la pregunta es si, para ca -- usted
22 tiene tablas del cuatro al diez en su informe,
23 ¿verdad?

24 A. Sí.

25 Q. Exhibit 7. Y cada una de esas tablas a

1 su vez tienen varias métricas propuestas. ¿Eso
2 es así?

3 ¿Cada una de esas tablas tiene métricas
4 propuestas, que tienen un nombre, cada métrica?

5 A. Las tablas tienen la misma estructura
6 todas. Dicen -- identifican -- hay una etiqueta
7 para llamar a la métrica, hay un propósito para
8 la métrica y hay una fórmula o manera de
9 medirla.

10 Q. Una fórmula. Una manera de medirla.

11 ¿Ahí en esas tablas usted no incluyó una
12 sugerencia al Negociado de cuál serían los
13 objetivos para cada una de esas métricas que se
14 deben cumplir, numéricos? ¿Cuántas --

15 MS. ARROYO: Objeto la pregunta. Está
16 fuera de su testimonio; está pidiendo una
17 información que eso es responsabilidad de
18 LUMA y de los reguladores, no del experto.

19 MR. SEILHAMER: The question is if he
20 incorporated that information in the -- in
21 his report.

22 MS. MERCADO: Sí. Si hay una
23 propuesta de objetivos ahí, sí o no.

24 MR. SEILHAMER: So, if he didn't, then
25 he can answer no.

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0:53:03, 202 ln 20 a la 203 ln 13

Q. Para cada una de las métricas, si hay una propuesta de "targets" u objetivos atados a cada una de esas métricas.

A. Yo arreglé -- yo le re -- en mi informe, yo le recomiendo al Negociado de Energía que abra un proceso amplio de participación ciudadana para establecer esos objetivos para las métricas que decida seleccionar.

Q. O sea, ¿que la contestación a mi pregunta es no?

A. Yo no lo puse. Le recomiendo --

Q. No.

A. -- al Negociado que abra un proceso para definir eso. Me parece que ese es el proceso correcto.

Q. En su testimonio -- lo cierto es que lo he revisado, es un testimonio largo. Y no -- le pregunto, en ese testimonio no hay una consideración de cuál sería el efecto en el contrato, en las partes contratantes del contrato de operación y mantenimiento, si se añaden penalidades. ¿Eso es correcto? ¿No hay un análisis del efecto en las partes

1 contratantes?

2 A. ¿Un análisis legal del contrato?

3 Q. Cuál sería el efecto para el -- ¿usted
4 reconoce que usted está proponiendo unas
5 penalidades que no están dentro del contrato de
6 operación y mantenimiento entre LUMA y el
7 Gobierno de Puerto Rico y la Autoridad de
8 Energía Eléctrica?

9 A. Correcto. No son parte del contrato.

10 Q. Le pregunto si usted analizó las
11 consecuencias, si algunas, de la -- que se
12 adopte el esquema de penalidades que usted
13 sugiere a este contrato, el efecto en las
14 partes.

15 A. Cuando usted dice consecuencias, ¿se
16 refiere a consecuencias legales?

17 Q. Legales, sí.

18 ¿Usted conoce -- consideró si sería un
19 menoscabo de las expectativas contractuales de
20 alguna de las partes en ese contrato de
21 operación y mantenimiento --

22 MS. ARROYO: Objeción. Está haciendo
23 unas alusiones a la legalidad del contrato.
24 Está fuera del marco de las --

25 0:54:50, 203 ln 16

1 MS. ARROYO: Además, está argumentando
2 con el experto.

3 MS. MERCADO: Aquí yo voy a pedir un
4 "ruling" porque, si queremos que el tiempo
5 se --

6 0:55:00, 203 ln 21 a la 204 ln 11

7 Q. Si consideró --

8 A. ¿Me puede repetir la pregunta?

9 Q. -- si sería un menoscabo a las
10 expectativas contractuales de alguna de las
11 partes en ese contrato el que se adopte un
12 esquema de penalidades que no está dispuesto en
13 ese contrato. ¿Lo consideró? ¿Sí o no?

14 A. ¿Pero se refiere usted a un análisis
15 legal del contrato?

16 Q. Un análisis de, si se incluye esas
17 penalidades, cómo se va a afectar LUMA o cómo se
18 va a afectar la Autoridad de Energía Eléctrica
19 si se añade una penalidad que no estaba
20 dispuesta en el contrato. ¿Lo analizó? ¿Sí o
21 no? Práctico, legal o algún análisis,
22 considerar qué pasaría -- cómo caben estas
23 penalidades en un contrato y cuál sería la
24 consecuencia.

25 A. Yo no hice análisis legal porque yo no

1 soy abogado. Ahora, sí hice un análisis desde
2 el punto de vista de que -- cuál es el propósito
3 de hacer -- cuál es el propósito de tener
4 métricas de desempeño.

5 Q. Correcto.

6 A. Ese análisis yo lo hago.

7 Q. Sí. Eso --

8 A. Y el objetivo de tener las métricas de
9 desempeño es un mayor beneficio social.

10 Q. O sea, que la --

11 A. Eso sí yo lo analizo y ese es el marco en
12 el que yo hago mi recomendación.

13 Q. ¿Fuera del contrato de operación y
14 mantenimiento?

15 ¿No analizó el contrato?

16 A. Yo estudié el contrato.

17 Q. Para los efectos de cómo se -- para los
18 efectos en las partes del contrato, usted no
19 toma en cuenta o entiende que está fuera de su
20 análisis el efecto que tendría las --

21 A. Sí.

22 Q. -- penalidades en las partes
23 contratantes.

24 A. Si ustedes --

25 CHAIRMAN AVILÉS: Licenciada, ya él

1 contestó que no, que no es abogado y no
2 hizo análisis legal.

3 MS. MERCADO: Okay. Bueno, pues,
4 entonces...

5 0:56:28, 204 ln 13 a la 205 ln 25

6 Q. ¿Usted está de acuerdo en que la
7 Autoridad de Energía Eléctrica -- le pregunto,
8 ¿la Autoridad de Energía Eléctrica es lo que se
9 conoce como -- y voy a moverme al inglés --
10 "investor-owned utility", la Autoridad de
11 Energía Eléctrica?

12 A. Es una corporación pública.

13 Q. Es una corporación pública. Correcto.
14 ¿Tiene una misión de maximizar ganancias, la
15 Autoridad de Energía Eléctrica?

16 A. No.

17 Q. No.

18 A. No tiene esa misión.

19 Q. ¿Y sabe usted si LUMA no tiene -- no es
20 dueña de los activos del sistema de transmisión
21 y distribución de la Autoridad de Energía
22 Eléctrica?

23 A. Es correcto. LUMA no es dueña de los
24 activos de transmisión y distribución.

25 Q. ¿Usted estaría de acuerdo conmigo en que,

1 si LUMA aumenta la base de clientes, si los
2 clientes aumentan, y las ventas aumentan y los
3 "revenues" aumentan, LUMA no participa de esas
4 ganancias si se aumentan esas ganancias o lo que
5 se recauda de las ventas?

6 A. Pero ya establecimos que no hay
7 ganancias. Usted misma me ha dicho que no hay
8 ganancias.

9 Q. Las ventas que tiene la compañía de
10 servicios eléctricos, esas ventas, si hay
11 ganancias, si hay -- si es "profitable", ¿LUMA
12 no recibe una compensación adicional a base de
13 si hay mayores ventas en la compañía?

14 A. Su pregunta tiene un -- y disculpe que lo
15 presente de esa manera.

16 Q. Um-jum.

17 A. Tiene un problema conceptual. Y es que
18 la --

19 Q. Pero yo la voy a cambiar. No se
20 preocupe.

21 El incentivo fijo que tiene LUMA en el
22 contrato, el pago bajo -- que es el "fixed fee",
23 que usted lo ha llamado "fixed fee" -- quizás es
24 que, como estamos cambiando de inglés a español,
25 los términos se nos confunden. Ese "fixed fee",

1 ¿está sujeto a que aumenten o disminuyan las
2 ventas en la Autoridad de Energía Eléctrica?

3 A. No. Paradójicamente, no está sujeto.

4 Q. Le pregunto, al preparar su informe -- ha
5 escuchado testimonio esta mañana y entiendo que
6 debe haber visto el testimonio del Sr. Branko
7 Terzic sobre lo que es "performance-based
8 regulation" y "performance incentive
9 mechanisms". En su criterio, ¿usted conoce las
10 diferencias entre "performance-based regulation"
11 y "performance incentive mechanisms"?

12 A. Existen unas -- ¿usted quiere que le
13 conteste en base al testimonio del colega?

14 Q. No. Lo que usted conoce.

15 ¿Hay una diferencia entre uno y otro? ¿Sí o
16 no?

17 A. Sí. Bueno --

18 0:59:14, 206 ln 8 a la 206 ln 22 (sustituir)

19 Q. En su testimonio, ¿es correcto que usted
20 utiliza una propuesta -- propuestas basadas en
21 lo que se conoce como "performance-based
22 regulations"? ¿Sí o no?

23 A. Mi testimonio está atado a "performance-
24 based mechanisms", mecanismos de métricas de
25 desempeño, en base a métricas de desempeño.

1 Q. Y usted cita publicaciones en su
2 testimonio, ¿correcto?

3 A. Sí.

4 Q. Varias.

5 ¿Y no es cierto que usted cita algunas -- al
6 menos una que habla de "performance-based
7 regulations"?

8 A. ¿Cuál es esa?

9 Q. Si no lo recuerda, yo se lo -- la
10 Identificación 38-1, "Power Systems of the
11 Future, 21st Century Power Partnership Thought
12 Leadership Report".

13 A. Treinta y ocho uno. ¿En qué lugar --

14 Q. Treinta y ocho uno.

15 MR. SEILHAMER: ¿Ese fue --

16 MS. ARROYO: Perdóname, pero --

17 MR. SEILHAMER: Is that the document
18 that we marked as Exhibit 16?

19 MS. MERCADO: No. Es un documento
20 nuevo. Sería el 17, ¿verdad?

21 MR. SEILHAMER: Can I have 16?

22 MS. MERCADO: Es que él lo tiene. Lo
23 tiene él. No me quiero acer --

24 Es que tengo mi copia --

25 MR. SEILHAMER: (Inaudible.)

1 MS. MERCADO: Sí. Lo puede marcar
2 allí. Si quiere ponerle la marca.

3 MR. SEILHAMER: Can you just provide
4 the document?

5 MS. MERCADO: The binder is yours.
6 It's for the Bureau. It's just in a binder
7 for convenience. So you can mark it there.

8 MR. SEILHAMER: That's fine. Just --

9 MS. MERCADO: Okay.

10 1:00:38, 206 ln 24 a la 208 ln 15 (sustituir)

11 Q. Es la Identificación 38-1 de LUMA que se
12 ha marcado como Exhibit 17. ¿Eso es un
13 documento que usted reconoce?

14 A. Sí. Lo reconozco.

15 Q. De hecho, usted lo cita en su informe.

16 A. Sí.

17 Q. Si va a la página treinta y -- dígame si
18 no es cierto que este documento habla de
19 "performance-based regulations".

20 Si va a la página interna 38, las
21 conclusiones --

22 A. Sí. Es una de las cosas que toca el
23 informe.

24 Q. Correcto.

25 Y si va a la página interna 38, que es la 38-

1 46 de LUMA, en esa página hacen unas
2 recomendaciones, ¿verdad? Ahí hablan de "next-
3 generation performance-based regulation" y
4 hablan de "key principles of this adaptive
5 pathway". Lo dice ahí, ¿correcto, en la página
6 38?

7 A. En la página 38 de ese informe de NREL,
8 aparece una sección que habla de "next-
9 generation performance-based regulation".

10 Q. Y habla de "key principles", ¿correcto?
11 Y hace una lista de cuatro "items" bajo "key
12 principles".

13 A. Sí.

14 Q. Correcto.

15 Y uno de esos "principles", el primero, dice:
16 "Regulations that tie utility profits to desired
17 performance outcomes rather than sales or
18 investments". Eso es uno de los "key
19 principles", ¿correcto?

20 A. Eso dice aquí.

21 Q. Pero usted me dijo que la Autoridad de
22 Energía Eléctrica no tiene una motivación de
23 "profits", ¿verdad?

24 A. Eso es correcto.

25 Q. A preguntas esta mañana del Negociado,

1 usted habló del contrato, del "second amended
2 restated contract" entre LIPA y PSG, ¿correcto?

3 A. Sí.

4 Q. ¿Y usted mencionó -- habló de los
5 "gating" y los -- "gating metrics" y "default
6 metrics"?

7 A. Sí.

8 Q. Y recuerdo que usted habló -- también
9 comparó las disposiciones de "default" -- habló
10 también de las disposiciones -- o le
11 preguntaron, perdón, de las disposiciones del
12 contrato de operación y mantenimiento de LUMA
13 sobre "key performance metrics" que pueden ser
14 un "event of default" bajo el contrato,
15 ¿correcto?

16 A. No recuerdo eso.

17 Q. No recuerda.

18 ¿Usted no recuerda que testificó que -- habló
19 de que el contrato no provee una penalidad para
20 "terrible performance", o desempeño terrible?
21 Perdón, que cambié al español. Usted habló de
22 desempeño terrible.

23 A. Recuerdo haber dicho que, en el contrato
24 que tiene LUMA con el gobierno, tiene que pasar
25 tres años de desempeño terrible para poder

1 terminar el contrato. Consecutivos, tres años
2 consecutivos.

3 MR. SEILHAMER: Counselor, just so
4 you're aware, we already passed his 15
5 minutes. So you're taking time from your
6 other witness.

7 MS. MERCADO: Pues, si puedo terminar
8 esta pregunta, lo agradezco.

9 MR. SEILHAMER: It's your time.

10 MS. MERCADO: Sí. Bueno, tengo más
11 preguntas. Lo hago constar, que sí tengo
12 más preguntas que quisiera hacerle al
13 testigo. Pero terminamos por ahora con
14 estas, sujeto a que se me permita mañana,
15 que el testigo va a estar aquí, pues,
16 continuar con él en alguno de estos temas.
17 1:04:14, 208 ln 18 a la 208 ln 23 (sustituir)

18 MS. MERCADO: Okay.

19 BY MS. MERCADO:

20 Q. Le pregunto, ¿dónde está -- el contrato
21 de operación y mantenimiento de LUMA, ¿tiene --
22 menciona desempeño terrible como un término
23 definido en ese contrato?

24 A. No recuerdo que use la palabra terrible.

25 Q. Pues, yo le voy a facilitar el contrato.

1 MS. MERCADO: Para que se marque como
2 el exhibit --

3 MR. SEILHAMER: Número 18. Number 18.
4 Exhibit Number 18.

5 BY MS. MERCADO:

6 Q. Y le voy a hacer referencia a esa
7 disposición de -- el Artículo 14 de "Default",
8 que es la subsección K, para que usted me diga
9 si ahí menciona desempeño terrible.

10 MR. MURTHY: Sorry. Your Honor, which
11 document is this in the --

12 MR. SEILHAMER: This is --

13 MS. MERCADO: Ese lo estamos -- es el
14 T&D OMA. No está marcado como
15 identificación, pero sí trajimos copia. Le
16 puedo enseñar a --

17 MR. SEILHAMER: You'll provide --

18 MS. DE LA ROSA: Es un documento del
19 Negociado.

20 MS. MERCADO: Es un documento marcado
21 por el Negociado. Está esa copia --

22 MR. MURTHY: Right, but --

23 MS. MERCADO: -- marcamos para todos.
24 "The T&D OMA."

25 MR. MURTHY: Which document was it in

1 the documents that you provided to --

2 1:06:30, 209 ln 25 hasta 210 ln 21 (sustituir)

3 Q. Le pregunto si está en el Artículo 14,
4 inciso k, "Failure to meet minimum performance
5 threshold".

6 A. Lo estoy viendo.

7 Q. Y ahí dice: "If oper -- deemed failure
8 to meet minimum performance threshold,
9 operator -- if shall fail to meet the minimum
10 performance threshold", ¿correcto? "Failure to
11 meet minimum performance threshold".

12 A. No entiendo la pregunta.

13 Q. Que eso dice ahí. Que esta disposición
14 se activa cuando el "operator shall fail to meet
15 the minimum performance threshold".

16 A. (Leyendo del documento.) "For three key
17 performance metrics during three or more
18 consecutive contract years".

19 Q. La pregunta sería, ¿ahí no dice "terrible
20 performance"?

21 A. No. La palabra terrible no aparece en
22 este contrato.

23 Q. ¿Y sabe usted si aparece la palabra
24 terrible en el contrato de LIPA, "second amended
25 (inaudible) LIPA contract"? ¿Aparece el término

1 "terrible performance"?

2 A. No. No sé.

3 Q. Usted lo revisó para su testimonio,
4 ¿correcto?, el contrato de LIPA. (Inaudible.)
5 O para preparase aquí a testificar, ¿usted
6 revisó ese contrato de LIPA?

7 A. No en su totalidad.

8 Q. No.
9 ¿Alguna porción?

10 A. Sí.

11 MS. MERCADO: Entiendo que se acabó.
12 Si me pueden dar un minuto para cambiar los
13 papeles a los -- un minuto. (Inaudible)

14 Licenciada Mercado para el récord.

15 Estoy lista cuando -- ¿procedo?

16 1:08:31, 210 ln 24 hasta 211 ln 3 (sustituir)

17 INTERROGATORY DR. ALAMEDA

18 BY MS. MERCADO:

19 Q. Doctor Alameda, le pregunto, previo -- en
20 la mañana de hoy hemos hablado del testimonio
21 que usted prestó sobre una propuesta de un
22 "penalty and reward scheme". ¿Eso es correcto?

23 A. Correcto.

24 UNIDENTIFIED MAN: What's this
25 witness' name?

1 MS. MERCADO: Alameda, A-l-a-m --

2 THE WITNESS: Alameda, A-l-a-m-e-d-a.

3 BY MS. MERCADO:

4 Q. Y su testimonio tiene fecha del 16 de
5 noviembre de 2021. Me estoy refiriendo al
6 Exhibit 8, que si --

7 MS. MERCADO: Esta es mi copia, pero
8 entiendo que hay una copia marcada.

9 1:09:11, 211 ln 7 a la 212 ln 17

10 Q. Le pregunto si, para preparar ese informe
11 del 16 de noviembre de 2021, si antes de
12 prepararlo había usted hecho una propuesta
13 similar de un esquema de penalidades y -- como
14 se llama en inglés, "reward and penalty
15 schemes".

16 A. No.

17 Q. ¿Tiene usted alguna experiencia
18 implementando un esquema de "rewards and
19 penalty" para una compañía como -- para una
20 utilidad como la Autoridad de Energía Eléctrica?

21 A. No.

22 Q. Similar a lo que le pregunté al Ing.
23 Irizarry, para desarrollar su propuesta, ¿revisó
24 usted -- conoce usted el procedimiento que el
25 Negociado de Energía sigue en el que recibe

1 datos del desempeño de la Autoridad de Energía
2 Eléctrica, el proceso paralelo en el que se
3 presenta información de desempeño? ¿Revisó las
4 constancias de esos -- los documentos que se
5 presentan en ese procedimiento?

6 A. ¿Cuando dice procedimiento es los CAIDI,
7 SAIDI, las métricas --

8 Q. No. Otro procedimiento que el Negociado
9 tiene en el que la Autoridad de Energía
10 Eléctrica y LUMA le someten trimestralmente
11 información sobre su desempeño, los datos.

12 A. Oh, okay.

13 Q. Y se presenta al Negociado de Energía los
14 datos trimestrales.

15 ¿Usted ha revisado esos datos trimestrales?

16 A. Si está en Internet, creo que sí.

17 Q. Correcto.

18 A. Los he revisado. Sí.

19 Q. ¿Los ha revisado?

20 A. Sí.

21 Q. ¿Alguna vez usted ha presentado una
22 propuesta de "rewards and penalties" al
23 Negociado, por ejemplo, en ese proceso que el
24 Negociado tiene sobre el desempeño de la
25 Autoridad de Energía Eléctrica?

1 A. No.

2 Q. ¿Estaría de acuerdo usted conmigo, si
3 estamos evaluando una propuesta de métricas de
4 desempeño, que es importante que esas métricas y
5 los incentivos estén atados a acciones que la
6 compañía puede controlar y realizar? ¿Estaría
7 de acuerdo conmigo?

8 A. ¿La compañía LUMA o la Autoridad?

9 Q. Sí. LUMA o la utilidad de la que se
10 trate. En este caso estamos hablando de LUMA.
11 Pero, como es un asunto conceptual, es
12 importante que esos indicadores de desempeño
13 estén atados a actuaciones que la compañía puede
14 controlar y realizar.

15 A. Claro. Por eso es que yo digo que tiene
16 que estar metidos en el proceso. Es inclusivo.
17 Si se va a implantar por parte de la Energy
18 Bureau, tiene que estar todo el mundo,
19 incluyendo LUMA.

20 Q. Inclusivo.

21 Y le pregunto, ¿sería justo o adecuado el que
22 se establezca un incentivo o una penalidad
23 basado en acciones que esa compañía -- LUMA, por
24 ejemplo, o una utilidad -- no puede controlar?
25 ¿Sería justo eso?

1 A. Los incentivos no los controla, se los
2 da -- están estipulados. Por lo tanto, las
3 penalidades sería lo mismo. Fíjese que ellos
4 reciben incentivos, como yo dije. LUMA tiene un
5 esquema incentivo/penalidad. Lo que pasa es que
6 en el lado de la penalidad es cero.

7 Q. Sí. Pero mi pregunta -- quizás no me
8 expresé bien. Perdón.

9 Si sería justo el que el Negociado evalúe un
10 esquema de penalidades o incentivos para aplicar
11 a LUMA que esté basado en acciones que LUMA,
12 como operadores del sistema de transmisión y
13 distribución, no puede controlar, no son
14 acciones bajo su control. ¿Sería justo esa
15 posibilidad?

16 A. Bueno --

17 1:12:48, 213 ln 1 a la 213 ln 14 (sustituir)

18 CHAIRMAN AVILÉS: Y para dejar claro,
19 no es que sea justo o no, es que el
20 Negociado no va a tomar esa acción.
21 Nosotros establecemos métricas para un
22 regula --

23 MS. MERCADO: Bueno, yo es que -- yo
24 quisiera, que le hice una pregunta el
25 testigo y yo no tengo problema con que él

1 me conteste. Yo sé que hay argumentaciones
2 legales y -- pero sería una pregunta para
3 él, si eso sería algo -- un esquema justo o
4 adecuado.

5 THE WITNESS: Lo que pasa es que la
6 palabra justo a mí no me -- me preocupa y
7 es muy --

8 BY MS. MERCADO:

9 Q. Pues, adecuado. Adecuado sería --

10 A. ¿Adecuado? Pues, yo creo que sí. Si
11 realmente tiene incentivo, los tiene, lo que
12 pasa es que no tiene las penalidades.

13 Q. Le pregunto, ya que el tiempo apremia,
14 ¿verdad? Y sí tengo más preguntas para usted,
15 pero estoy limitada.

16 Creo que quedó claro esta mañana que usted
17 reitera que lo que está contenido en su informe
18 son propuestas.

19 A. Correcto.

20 Q. O sea, ¿que usted estaría de acuerdo
21 conmigo que faltan elementos para poder
22 implementar una propuesta como la que usted --

23 A. Falta estudio, un estudio comprensivo que
24 ubique a todo el mundo, y que sean ingenieros.
25 Una propuesta que yo siempre he dicho, mire, la

1 Universidad de Puerto Rico, en el Recinto de
2 Mayaguez, tiene una capacidad de ingeniería
3 mejores del mundo. Pues, entonces vamos a
4 utilizarlos a ellos para que hagamos ese
5 esquema. No tenemos que tener presupuesto.
6 Allí está la Universidad de Puerto Rico. Ahí
7 está ese capital bueno. Vamos a usarlo.

8 MS. MERCADO: Tengo dos preguntas para
9 el doctor.

10 1:14:16, 213 ln 18 a la 213 ln 22 (sustituir)

11 Q. Dos preguntas. Sobre el tema de "outage
12 compensation" que usted incluye en su
13 testimonio, para sugerir ese esquema, ¿realizó
14 usted algún análisis de costo de como ese -- un
15 esquema como ese se podría aplicar a LUMA, a la
16 Autoridad de Energía Eléctrica?

17 A. No, no. Hay que analizarlo.

18 MS. MERCADO: Okay. Bueno, pues, creo
19 que por las limitaciones de tiempo -- tengo
20 más preguntas, pero lo dejamos --

21 COMMISSIONER RAMOS: (Inaudible.)

22 MS. MERCADO: Tengo muchas. Tengo
23 muchas preguntas. Lo que pasa es que, si
24 me permiten más tiempo, yo no tengo pro --

25 MR. SEILHAMER: Puedes escoger una.

1 MS. MERCADO: Creo que --

2 CHAIRMAN AVILÉS: Vamos a seguir
3 porque los demás estaban esperando. A lo
4 mejor los demás no consumen todo el tiempo
5 y son tan buenos --

6 MS. MERCADO: Okay. Que lo ceden.

7 COMMISSIONER RAMOS: -- tiempo que les
8 sobra a la licenciada para que termine su
9 línea de preguntas.

10 Adelante.

11 1:15:13, 213 ln 25 a la 214 ln 8 (sustituir)

12 COMMISSIONER MATEO: Tengo una
13 pregunta para el Sr. Alameda.

14 MS. MERCADO: Ah, bueno, dijeron que a
15 lo mejor puedo continuar si sobra tiempo.
16 Perdón.

17 BY COMMISSIONER MATEO:

18 Q. Sr. Alameda, en su opinión y en la
19 revisión que usted hizo del tema para rendir su
20 informe, en términos generales, ¿usted cree que
21 es apropiado o adecuado que se establezca una
22 métrica que de antemano se sabe que no es
23 factible cumplir con ella?

24 A. Si lo pone bajo esas condiciones de "if",
25 pues, obviamente, si no es factible cumplir con

1 ella, ¿entonces para qué necesitamos la métrica?

2 Q. Okay.

3 A. Porque está colocando ya -- ya está
4 amarrándola, la contestación.

5 Q. Sí. Gracias.

6 THE WITNESS: Disculpen. Es que tengo
7 que ir a Mayaguez y tengo clases mañana a
8 las 7:30.

9 UNIDENTIFIED WOMAN: Que llegue bien.

10 THE WITNESS: Un placer verlos.

11 CHAIRMAN AVILÉS: Antes de excusarlo,
12 ¿alguno de ustedes iba a hacerle preguntas
13 al Dr. Alameda?

14 MR. VÁZQUEZ: No, de nuestra parte, de
15 la parte de la OIPC.

16 MS. ARROYO: No.

17 MR. SEILHAMER: LECO. Oh, sorry.
18 OIPC. Sorry.

19 MR. VÁZQUEZ: Buenas tardes
20 nuevamente. El licenciado Pedro Vázquez en
21 representación de la OIPC. Nuestras
22 preguntas son para el Sr. Hurtado.

23 1:16:38, 214 ln 11 a la 216 ln 2

24 Q. A preguntas que han surgido en esta
25 tarde, usted mencionó que, desde la concepción

1 en el OMA de las métricas de desempeño versus lo
2 que se radicó para la aprobación del Negociado,
3 no ha habido cambios en la metodología,
4 ¿correcto?

5 A. ¿Cuál meto -- o sea, ¿se está refiriendo
6 a qué específicamente?

7 Q. A la metodología en la cual se crearon
8 las -- utilizadas para hacer las métricas que se
9 propusieron.

10 A. Yo no me acuerdo que haya habido cambios
11 en la metodología entre la primera -- o sea, la
12 primera cuando se sometió el Anejo IX en febrero
13 del 2021 y cuando se sometió otra vez en
14 agosto/septiembre del 2021. Eso fue lo --

15 Q. Sí. Pero mi pregunta va dirigida a las
16 propuestas en el OMA cuando se firmó y las que
17 se sometieron al Negociado.

18 A preguntas del compañero Raghu, le preguntó
19 sobre si hubo cambio de metodología. Inclusive,
20 le trajo a la atención la resolución y orden del
21 Negociado, si implementaron eso dentro de las --

22 A. Es que usted está usando un término
23 bastante vago. ¿Metodología de qué? O sea, ¿la
24 manera en que se calculó? ¿La manera en que se
25 recogen los datos? ¿La manera en que se --

1 Q. Estoy usando el mismo término que
2 utilizaron en ese momento. Dijeron metodología
3 y dijeron --

4 A. Metodología -- sí, no. Y nosotros, lo
5 que estamos refiriendo es a la metodología de
6 calcular las métricas, o sea, calcular los
7 números y registrar esos números versus una
8 meta.

9 Q. Correcto.

10 Pero, sin embargo, la manera en que se
11 calculan el "effective weight" en las métricas,
12 ¿es parte de la metodología?

13 A. Eso no era -- no me estaba refiriendo a
14 eso cuando hablaba de los cambios en
15 metodología. No --

16 Q. Pero le estoy preguntando, ¿usted
17 entiende que el cambio -- la manera en que se
18 determina el "effective weight" no es parte de
19 la metodología de la métrica?

20 A. No. Hay un "effective weight" que estaba
21 en el contrato en junio del 2020. Exactamente
22 como lo dije, se hizo el proceso que está
23 trazado en el contrato bajo las cláusulas en el
24 4.1 -- no me acuerdo exactamente, pero es la
25 Sección 4 porque esa es la del "front-end

1 transition". Se hizo el proceso, se miró cuál
2 eran las métricas, se miró cuál eran los
3 "effective weights".

4 En algunos casos, se hicieron unos cambios, y
5 eso se propuso a la P3A y sus consejeros. Y
6 ellos dieron "feedback", dieron comentarios,
7 pidieron cambios. Todo eso se tomó en cuenta
8 para finalizar el Anejo IX, y eso someterlo al
9 Negociado.

10 Q. ¿Qué tomó entonces usted en consideración
11 para establecer los "effective weight" que tiene
12 cada una de las métricas?

13 A. Depende de cada métrica. Uno de los
14 temas es que no -- o sea, el total -- el peso de
15 cada categoría se mantuvo. O sea, 50 por ciento
16 de los puntos vienen de la parte operativa y de
17 seguridad, "safety, technical and regulatory".
18 Perdón que me cambie al "Spanglish".

19 Entonces esa proporción se mantuvo. Y
20 después, como le dije, hay que sumar para que
21 sea el mismo total -- los números totales para
22 cada métrica. Depende de la métrica. O sea,
23 tendría que preguntarme cuál métrica
24 específicamente se cambió y --

25 Q. Vamos a --

1 A. -- habría que hablar con el testigo que
2 es el especialista para ver si se acuerda
3 exactamente cómo se hizo ese cálculo.

4 Q. Vamos ahora mismo.

5 A. Básicamente, tendría que ver con eso,
6 ¿no? Y yo no tengo conocimiento de cada métrica
7 y cada peso.

8 Q. Estaremos utilizando el Exhibit 18, el
9 OMA. Si va a la Tabla 2.2 -- a la Tabla 2,
10 perdóneme, en el cual estamos en las métricas de
11 satisfacción al cliente --

12 A. ¿El Anejo IX?

13 Q. En el anejo -- correcto. La Tabla 2. Es
14 9-4 la página.

15 A. Tabla 2. Sí.

16 Q. Si nos ubicamos en las métricas de
17 satisfacción al cliente, estamos hablando que la
18 número cuatro es el "Complaint Rate". Y se le
19 da un "effective weight" de cuatro por ciento,
20 ¿correcto?

21 A. Eso es lo que dice la tabla. Sí.

22 Q. Sin embargo, en lo que se sometió y las
23 que están actualmente -- estamos hablando del
24 exhibit -- las métricas radicadas en -- las
25 actualizadas, el último. Ese es el exhibit

1 marcado número --

2 MR. SEILHAMER: El 11.

3 BY MR. VÁZQUEZ:

4 Q. El 11. Si nos vamos ahí también a la
5 Tabla 2.2 o 2-2...

6 ¿La tiene consigo? Podemos ver -- ¿cuánto es
7 el "effective weight" que le ponen ahora al
8 "Complaint Rate"?

9 A. En la propuesta es un "efective weight"
10 de 1.7 por ciento (inaudible).

11 Q. Mientras que antes, en el firmado -- en
12 el incluido en el acuerdo, se le daban a cada
13 uno de los componentes de la métrica de
14 satisfacción al cliente el mismo peso.

15 A. Um-jum.

16 Q. ¿Alguna razón específica para que se haya
17 variado el peso al "Complaint Rate"?

18 A. Creo que es una buena pregunta para los
19 profesionales que trabajaron en esa métrica. Yo
20 en general me acuerdo que hubo una discusión
21 sobre --

22 Q. Y perdone que le interrump --

23 A. Si me permite terminar. Una discusión
24 sobre los datos y la dificultad que teníamos en
25 determinar exactamente cuáles eran los datos de

1 los "complaints", o sea, de las quejas, y cómo
2 se habían recogido esos datos. Entonces yo sé
3 que en ese momento hubo unos temas ahí sobre --
4 y unas dificultades sobre los datos que se
5 podían recoger. Pero ese es mi -- o sea, eso es
6 lo que yo me acuerdo. Pero la pregunta
7 específica la deberían hacer con los
8 profesionales que trabajan en experiencia del
9 cliente porque le pueden dar una respuesta más
10 completa.

11 Q. Y tendremos nuestro tiempo con la persona
12 designada por LUMA.

13 Pero le estoy preguntando específicamente de
14 su conocimiento --

15 A. Si --

16 Q. -- a su mayor entender --

17 MR. SEILHAMER: Let him answer the
18 question.

19 1:23:29, 216 ln 8 a la 218 ln 4 (sustituir)

20 Q. A su mayor --

21 A. Perdone, licenciado.

22 Q. A su mayor entender, ¿la razón por la
23 cual se cambió ese "effective weight" era por
24 una cuestión de la información que pudieron
25 obtener?

1 A. Me acuerdo que eso era uno de los temas,
2 pero no sé si eso era el único tema o si había
3 otros. O sea, no tengo -- no me acuerdo
4 exactamente para esa métrica si había otros
5 temas y no tengo todos los detalles de esa
6 conversación en mi mente.

7 Q. Okay.

8 Moviéndonos de esa pregunta -- deme un
9 momentito.

10 Pero manteniéndonos en satisfacción al
11 cliente, le pregunto si usted entiende cuál es
12 el objetivo de cada una de las métricas que
13 miden la satisfacción al cliente. ¿Cuál sería
14 el objetivo?

15 A. Bueno, el objetivo en general es medir
16 desempeño en el área de experiencia del cliente.

17 Q. ¿Medir el desempeño en el área de
18 servicio al cliente?

19 A. Al cliente, sí.

20 Q. ¿Y cómo puede medir ese desempeño?

21 A. Bueno, se ponen (audio se entrecorta)
22 métricas, se miran los datos, se pone una meta,
23 se hace un programa de mejoramiento o de
24 inversión o de cambio para poder efectuar
25 cambios y progresar, ir mejorando el desempeño

1 en esas áreas de servicio al cliente.

2 Q. Le pregunto -- y me refiero a su
3 testimonio en la línea 142-143, y le cito: "In
4 terms of customer satisfaction, the goal" --

5 A. ¿Me espera? ¿Me espera?

6 Q. "Sorry." Disculpe. Disculpe. La línea
7 142 y 143. De la 142 en adelante. Estamos
8 hablando de su directo de agosto 18.

9 Dice que: "In terms of customer satisfaction,
10 the goal is to achieve a high level of customer
11 service across all customer classes". ¿Así que,
12 básicamente, la métrica está diseñada
13 precisamente para medir cuán satisfecho está el
14 cliente con el funcionamiento de LUMA?

15 A. Para mejorar el servicio al cliente.

16 Q. Y el beneficio --

17 A. (Leyendo del documento.) "Achieve a high
18 level of customer service."

19 Q. Y el beneficio que se obtiene --

20 A. ¿Perdón?

21 Q. El beneficio que se obtiene entonces de
22 esa métrica, ¿cuál sería el beneficio que el
23 cliente obtiene de esa métrica si no es si está
24 satisfecho o no con el funcionamiento?

25 A. El beneficio es que tiene un servicio más

1 ágil. Voy a ser más responsivo, que se le está
2 atendiendo -- o sea, que tiene un servicio que
3 funciona mejor para él como cliente --

4 Q. ¿Pudiera --

5 A. -- como cliente.

6 Q. ¿Pudiera concluir conmigo que entonces el
7 cliente estaría más satisfecho con la labor de
8 ustedes?

9 A. Bueno, hay unas métricas que son
10 específicas de satisfacción del cliente. Hay
11 otras que no tienen que ver directamente con
12 satisfacción del cliente. Entonces no todas son
13 directamente sobre satisfacción del cliente.

14 Q. Claro. Pero estoy hablando
15 específicamente de las métricas bajo "customer
16 satisfaction".

17 A. Sí, no, hay --

18 MS. MERCADO: Tengo una objeción --

19 THE WITNESS: -- satisfacción del
20 cliente --

21 MS. MERCADO: Si me permiten. Obje --

22 THE WITNESS: -- que miden la
23 percepción de satisfacción --

24 MS. MERCADO: Objeción.

25 THE WITNESS: -- cliente tiene del

1 servicio que se le brinde y otras que no.
2 Otras tienen que ver con el tiempo de
3 respuesta en unas llamadas, el
4 "abandonement rate" que tiene que ver
5 con -- o sea, esas no tienen que ver con la
6 percepción de la calidad del servicio.

7 BY MR. VÁZQUEZ:

8 Q. Le pregunto, en un "abandonement rate",
9 ¿no implica que el cliente, si llama a la
10 utilidad, básicamente lo atienden y no se pierde
11 su llamada?

12 MS. MERCADO: Voy a hacer una
13 objeción. El Sr. Hurtado sí habla de las
14 métricas conceptualmente, los propósitos de
15 todas las métricas de "customer service".
16 Ya estamos entrando, y ya él lo ha dicho,
17 el mismo testigo, a las particularidades de
18 ciertas métricas, que en su testimonio no
19 cubre las particularidades de esas
20 métricas. Así que está fuera del -- aunque
21 ha contestado, entiendo que seguir sobre
22 una métrica en particular es fuera de su
23 testimonio.

24 MR. SEILHAMER: We are going to allow
25 the question.

1 But, Counselor, be aware that he has
2 testified that, in terms of specific, he's
3 not the ideal person. So, if he doesn't
4 have the answer, he can give you an
5 overview of what he has under his
6 testimony. But, if he doesn't know the
7 answer, he'll just state it to you.

8 MR. VÁZQUEZ: Correcto. Y
9 precisamente le estamos preguntando de su
10 directo específicamente, con el "goal" que
11 dice que establece la métrica de
12 satisfacción al cliente.

13 THE WITNESS: No. Eso no es lo que
14 dice. Dice: "Achieve a high level of
15 customer service".

16 BY MR. VÁZQUEZ:

17 Q. (Leyendo del documento.) "In terms
18 of" --

19 A. "A high level of customer service" quiere
20 decir un nivel alto de servicio al cliente.
21 Parte de eso puede ser la percepción del cliente
22 que tiene de ese servicio que le está brindando.
23 Obviamente es importante. Por eso tenemos dos
24 métricas que son sobre satisfacción al cliente.
25 Pero las otras métricas no son sobre percepción,

1 son sobre un desempeño para unos datos
2 específicos de una actividad específica. Esa es
3 la única diferencia que estoy tratando de hacer.

4 Q. Pero cuando estuvimos hablando a manera
5 conceptual, usted contestó que no solamente el
6 establecimiento de unas métricas de desempeño se
7 utiliza para mover a la utilidad regulada a
8 cumplir con política pública, sino también para
9 el beneficio de sus clientes, ¿correcto?

10 A. Dije que esos son de las características
11 importantes de unas buenas métricas de
12 desempeño.

13 Q. Correcto.

14 Y a --

15 A. La alineación con los beneficios para los
16 clientes y con la política pública.

17 Q. Voy precisamente a lo que usted entiende
18 de lo que debe ser el beneficio de los clientes.
19 Y le estaba preguntando antes que objetara la
20 compañera, cuando usted -- cuando hablan del
21 "abandonement rate", la tasa de abandono de una
22 llamada, si eso no implica que el cliente -- la
23 llamada del cliente se le va a atender y no va a
24 tener que volver a llamar nuevamente a ustedes
25 por razón de que se perdió su llamada,

1 ¿correcto?

2 A. Bueno, el "abandonement rate" es una --
3 se calcula de una manera específica, ¿no? Tiene
4 que ver con si -- entiendo, en términos
5 generales; otra vez, no soy el experto -- tiene
6 que ver con si el cliente dejó de esperar en una
7 llamada. O sea, si llamó y tenía que -- estaba
8 en espera y dejó de esperar para que lo
9 atendieran algún representante de servicio al
10 cliente. Esa es la manera en que yo lo
11 entiendo, pero, como dije, yo no soy experto en
12 esta métrica ni soy experto en servicio al
13 cliente.

14 Q. ¿Las métricas de "customer satisfaction"
15 no deben tener como su consecuencia satisfacción
16 del cliente?

17 1:30:26, 218 ln 8 (sustituir)

18 MR. VÁZQUEZ: Retiramos la misma si ya
19 la había contestado.

20 Nosotros no tenemos más preguntas para
21 el Sr. Hurtado.

22 MR. SEILHAMER: Thank you very much.

23 2:03:36, 243 ln 17

24 CHAIRMAN AVILÉS: Sí. Pero cuando
25 terminó el Dr. Agustín, que usted se movió

1 al Dr. Alameda, usted dijo que tenía más
2 preguntas, pero estaba cortando. Pues,
3 ahora va a tener cuatro minutos para
4 terminar el --

5 2:04:37, 244 ln 16 a la 244 ln 17 (sustituir)

6 COMMISSIONER MATEO: Attorn --

7 CHAIRMAN AVILÉS: (Inaudible.)

8 COMMISSIONER MATEO: Yes. And
9 that's --

10 CHAIRMAN AVILÉS: Tiene cuatro minutos
11 para usarlo con el Dr. Irizarry. ¿Los va a
12 usar?

13 MS. MERCADO: Yes. If you give me one
14 minute to go back to his -- yes.

15 CHAIRMAN AVILÉS: En lo que esperamos
16 por ella, cuatro minutos --

17 MR. SEILHAMER: Four minutes for LECO.

18 MS. MERCADO: I can -- es que --

19 CHAIRMAN AVILÉS: Adelante.

20 MS. MERCADO: With whom?

21 MR. MURTHY: Now?

22 CHAIRMAN AVILÉS: Yes.

23 MR. SEILHAMER: Yes.

24 2:09:03, 248 ln 18 a la 250 ln 4 (sustituir)

25 Q. Ing. Irizarry, olvidé que estamos en

1 español.

2 A preguntas del Negociado esta mañana, usted
3 habló sobre una de sus recomendaciones de un
4 proceso -- recomendaciones que usted tiene de
5 cómo unos procesos pueden ser un -- entiendo que
6 usted los llama participativos, si lo estoy
7 traduciendo del inglés al español, en su
8 testimonio. ¿Es correcto?

9 A. Yo menciono eso en mi testimonio.

10 Q. ¿Usted estaría de acuerdo conmigo que los
11 procesos que se conducen bajo el Negociado de
12 Energía no los controla LUMA como parte en esos
13 procesos, no los diseña LUMA?

14 A. Los procesos del Negociado los diseña el
15 Negociado.

16 Q. Moviéndonos a su testimonio escrito de
17 noviembre del 2021, usted también recomienda o
18 menciona un -- mecanismos de compensación a los
19 clientes por -- en inglés le llama en su
20 testimonio -- "outage compensation". ¿Eso es
21 correcto?

22 A. Quisiera ver el segmento de mi testimonio
23 que usted se refiere.

24 Q. Sí. Sí.

25 Mire a ver página 29, es el Exhibit 8, su

1 test -- perdón, es el Exhibit 7. En la página
2 29, si vamos a la página 29, línea 5 a la 8.
3 Página 29, línea 5 a la 8. Creo que es 5 o 6 a
4 la -- 5 a la 8.

5 Usted menciona un programa de restitución.
6 Perdón. Quizás con la tra -- restitución, pero
7 está hablando de compensación a los clientes por
8 cuando sufren por pérdida de servicio eléctrico,
9 ¿correcto?

10 A. Correcto.

11 Q. En su testimonio -- pero en ese -- dígame
12 si está de acuerdo conmigo en que usted no
13 propone un esquema particular de restitución a
14 los -- cómo funcionaría un esquema de
15 restitución, como usted -- "to obtain
16 restitution", como usted dice ahí.

17 A. La recomendación no incluye --

18 Q. Una recomendación particular.

19 A. No, no. No hago una recomendación
20 específica.

21 Q. Si va a la página 28 de su testimonio,
22 que es la anterior que estamos viendo, líneas 25
23 a la 26, usted está hablando de lo que usted
24 llama, y lo voy a decir en inglés, "severe
25 voltage fluctuations. A phenomenon normally not

1 seen while PREPA managed the electric grid".

2 ¿Eso es su testimonio en la página 28?

3 A. Correcto.

4 Q. Para hacer esa afirmación, ¿usted hizo
5 algún estudio de los lugares en particular donde
6 hubo cambios en voltaje o, como usted le llama,
7 "severe voltage fluctuations"? ¿Hizo un
8 análisis particular?

9 A. Tengo datos de algunos puntos, sí.

10 Q. ¿Y cómo estudió esos puntos?

11 A. Analicé los datos, las medidas de voltaje
12 y las fluctuaciones de voltaje en esos lugares.

13 Q. ¿En dónde? ¿Nos puede -- ¿en qué lugares
14 en particular?

15 A. En el oeste de Puerto Rico.

16 Q. ¿En qué lugares en particular?

17 A. Hormigueros, San Germán y Mayaguez.

18 Q. ¿Y qué metodología utilizó para eso?

19 A. Datos medidos y un análisis gráfico.
20 Graficamos los datos, examinamos cómo fluctuaron
21 los voltajes y si se salen o no de la banda
22 aceptable en base a estándares de la industria.

23 Q. Y esos resultados, ¿usted los cita ahí en
24 su testimonio? Esa información que nos está
25 dando ahora no está en su testimonio, ¿verdad?

1 A. No. No fueron publicados.

2 Q. ¿Perdón?

3 A. No fueron publicados.

4 Q. No fueron publicados. Okay.

5 Le pregunto, ¿usted sabe a cuántas compañías
6 de servicio eléctrico el Negociado de Energía ha
7 evaluado sus métricas de desempeño previo a este
8 proceso de la Autoridad de Energía Eléctrica?

9 A. A la Autoridad de Energía Eléctrica.

10 Q. ¿El Negociado de Energía?

11 A. El Negociado Energía evaluaba el
12 desempeño de la Autoridad de Energía Eléctrica.

13 Q. Y a cuántas -- y a la Autoridad de
14 Energía Eléctrica, ¿ha habido un proceso para
15 analizar penalidades con relación al desempeño
16 de la Autoridad de Energía Eléctrica, si usted
17 conoce?

18 A. Había unas métricas establecidas por el
19 procedimiento del 2019.

20 Q. La pregunta es si se han impuesto
21 penalidades a la Autoridad de Energía Eléctrica
22 relacionados a su desempeño de generación, por
23 ejemplo, si usted conoce.

24 A. Yo recuerdo -- me parece recordar multas
25 del Negociado de Energía Eléctrica, pero no --

1 Q. ¿Y penalidades como usted y el Dr.
2 Alameda han sugerido, un esquema de penalidades
3 atados a incentivos?

4 A. La estructura --

5 Q. ¿Lo conoce, si le aplica a PREPA?

6 MR. SEILHAMER: One last question.

7 THE WITNESS: La estructura de
8 métricas de desempeño no se había
9 desarrollado para la Autoridad de Energía
10 Eléctrica. El Negociado no había
11 desarrollado esa estructura para la
12 Autoridad de Energía Eléctrica.

13 MS. MERCADO: Gracias.

14 MR. SEILHAMER: Thank you.

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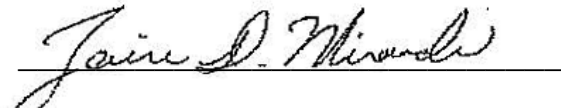
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CERTIFICADO DE LA TAQUÍGRAFA

YO, ZAIRA MIRANDA, E.R. Reporter, miembro de
Verbatim Reporting, LLC,

CERTIFICO que la transcripción que antecede es
un reflejo fiel y exacto de la grabación, según me
fuera entregada, del caso de epígrafe.

CERTIFICO además que no tengo interés
pecuniario en el resultado de este caso.


ZAIRA MIRANDA

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