

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

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

CASE NO. NEPR-AP-2020-0025

SUBJECT:

LUMA's Reply to LECO's Opening Brief

LUMA'S REPLY TO LECO'S OPENING BRIEF

TO THE HONORABLE PUERTO RICO ENERGY BUREAU:

COME NOW LUMA Energy, LLC ("ManagementCo"), and **LUMA Energy ServCo, LLC** ("ServCo"), (jointly referred to as the "Operator" or "LUMA"), and respectfully state and request the following:

I. Introduction

As set forth in the procedural calendar set by this honorable Puerto Rico Energy Bureau ("Energy Bureau") in a Resolution dated May 23, 2023 ("May 23rd Resolution"), LUMA hereby addresses the legal brief filed by the Local Environmental and Civil Organizations ("LECO") on May 11, 2023, in this proceeding ("LECO's Brief").

As a threshold, matter LECO's Brief includes references to newspaper articles and other publications that this Energy Bureau has already ruled cannot be considered part of the record in this instant proceeding. *See* Resolution and Order dated August 17, 2023. LECO's Brief also includes references to publications and documents that were not admitted to the administrative record through pre-filed testimonies nor as exhibits during the Evidentiary Hearing. As explained

in this Brief, both those newspaper articles, publications, and documents, and the arguments that LECO supports with those publications should be disregarded and stricken from the record.

Secondly, this Energy Bureau should reject LECO's arguments to adopt penalties, deadbands, and an outage compensation scheme in connection with LUMA's Revised Performance Metrics Targets and Revised Annex IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("T&D OMA") filed on October 28, 2022 ("Revised Annex IX"). LECO has not identified any evidence capable of countering the opinions of LUMA's expert witnesses, who refuted LECO's proposal on penalties, deadbands, and an outage compensation scheme. In contrast, LECO's expert witnesses incorrectly relied on publications and principles regarding incentive ratemaking designed for for-profit utilities that do not apply to the Puerto Rico Power Authority ("PREPA") or LUMA as Operator of the Puerto Rico Transmission and Distribution System ("T&D System") per the T&D OMA. Furthermore, LECO's proposals lack economic theory support and are contrary to basic economic principles as established in this proceeding by an expert witness for LUMA, Dr. Juan Lara ("Dr. Lara").

Thirdly, LECO's proposal for LUMA to update the data used for LUMA's Revised Annex IX is also unavailing. This Energy Bureau should adopt LUMA's proposal for this Energy Bureau to approve an initial set of Performance Metrics and that further proceedings be pursued to review—once set—the Minimum Performance Levels and Targets (25%-150%) for the appropriate metrics with the benefit of new data and while considering changes in circumstances and the state of the T&D System. *See LUMA's Brief in Support of the Request for Approval of the Proposed*

Annex IX to the T&D OMA, LUMA's Performance Metrics Targets ("LUMA's Opening Brief"),
Section III. B.

Fourthly, LECO presents an unsupported and belated proposal of Targets and to add Key Performance Metrics. None of these proposals, which span twelve (12) pages of LECO's Brief, were submitted for the record, discussed during the lengthy discovery stage, nor presented through pre-filed testimonies. Moreover, these proposals were not addressed during the Evidentiary Hearing, subject to the Energy Bureau's examination or LUMA's cross-examination. LECO's pretense, at this juncture of the proceedings, infringes LUMA's due process rights and introduces new evidence to the record during a post-hearing argumentative phase. As argued in this Brief, the Energy Bureau should strike from the record and deny the aforementioned proposal by LECO.

Fifthly, LECO propounds unfounded objections to the Performance Metrics Targets included in the Revised Annex IX. Throughout its Brief, LECO attacks the credibility of various LUMA witnesses after a ruling by the Energy Bureau authorizing their testimonies and validating their statements; mischaracterizes the testimonies offered by LUMA's witnesses during the Evidentiary Hearing; constantly presents arguments based on a complete misunderstanding and lack of comprehension of the concepts that entail LUMA's Revised Annex IX; and seeks to undermine and annul the T&D OMA.

LECO's arguments to oppose LUMA's Performance Metrics Targets are meritless. The testimonies of LUMA's twelve (12) witnesses and two (2) expert witnesses, and the exhibits admitted during the Evidentiary Hearing, remain uncontested and were not substantively challenged or any evidence admitted for the record, as will be discussed in detail below. Thus,

LUMA respectfully renews its request that the Energy Bureau approve LUMA’s Revised Annex IX, and the Performance Metrics Targets included therewith.

II. Discussion

A. Renewed Objections to Documents and News Articles that are not Part of the Evidence Admitted for the Record.

On June 9, 2023, LECO filed a motion under the title *Local Environmental and Civic Organization’s Response to Resolution for official Notice and Request to Take Official Notice on Additional Information* (“LECO’s June 9th Motion”). In what is relevant to this discussion, LECO requested that this Energy Bureau take administrative notice of news and media articles, as well as “reports, PREB docket entries, Superior Court case entries, and information provided by LUMA.” The request included twenty-nine (29) documents, including motions, resolutions, and orders from Case No. CEPR-IN-2016-0002, NEPR-MI-2019-0007, NEPR-MI-2022-0001, and NEPR-AP-2020-0025. It also included seventeen (17) newspaper and media articles, a report from the National Renewable Energy Laboratory, and a report from the Federal Emergency Management Agency (“FEMA”). These documents were also referenced in LECO’s Legal Brief in this proceeding.

On June 29, 2023, LUMA filed a motion entitled *LUMA’s Response and Opposition to LECO’s Request on Taking of Administrative Notice*, whereby LUMA opposed LECO’s June 9th Motion and argued that LECO’s request infringed LUMA’s right to due process, as it purported to introduce new evidence to the record after the discovery process concluded, an evidentiary hearing was held, and the parties had filed legal briefs. Moreover, LUMA established that LECO did not comply with the requirements of Rules 201 & 202 of the Puerto Rico Rules of Evidence. LECO

did not establish the relevance or admissibility of the newspaper and media articles referenced in its Brief and the June 9th Motion. Additionally, they did not establish a relationship between the newspaper and media articles and the metrics that are part of this proceeding.

On August 17, 2023, this Energy Bureau issued a Resolution with the subject “Official Notice” (“August 17th Order”), whereby this Energy Bureau denied LECO’s request to take notice of the facts in the LECO’s June 9th Motion. This Energy Bureau stated that the evidentiary and public hearing closed on February 10, 2023, and February 17, 2023, respectively. The Energy Bureau concluded that it expected to receive the final arguments of the parties in their final legal briefs based on the evidence in the administrative record. *See* August 17th Order, p. 3. This Energy Bureau also stated that it did not contemplate that the parties could introduce evidence they should have presented during the previous phases of the administrative process. *Id.* As previously mentioned, this Energy Bureau denied LECO’s request to take official notice of the facts in the June 9th Motion.

Because LECO’s legal brief includes references to newspaper reports, documents, and publications that this Energy Bureau ruled in the August 17th Order cannot be considered as part of the record in this proceeding, LUMA requests that the Energy Bureau strike those references from the record and rule that the references and arguments included in LECO’s Brief that rely on the publications that this Energy Bureau excluded from the record, shall be disregarded. The documents and references that should be stricken from the record in alignment with the August 17th Order are:

REFERENCE

Footnote 5, page 2 of LECO’s Legal Brief – PREB, Notice of Investigation to Identify Opportunities to Improve Performance of the Puerto Rico Electric Power Authority, In Re: The Performance of the Puerto Rico Electric Power Authority Dkt, No. CEPR-IN-2016-0002 (Nov. 15, 2016).

Footnote 35, page 11 of LECO’s Legal Brief – LUMA, Disc. Resp. to PREB’s 11th Req. of Information - RFI-LUMA-AP-2020-0025-R11- PREB-05JAN23-018(c) and RFILUMA-AP-2020-0025-R11-PREB05JAN23-033(f) (Jan. 19, 2023).

Footnote 60, page 19 of LECO’s Legal Brief – PREB’s January 12, 2023, Order in Docket NEPR-MI2019-0007.

Footnote 100, page 29 of LECO’s Legal Brief – Fallece trabajador de empresa subcontratada por LUMA Energy, TELEMUNDO (March 21, 2023, 5:59 p.m.).

Footnote 104, page 31 of LECO’s Legal Brief – PREB, Resolution and Order at 4, PREB Dkt. NEPR-MI-2019-0007 (May 21, 2021).

Footnote 147, page 41, Puerto Rico Energy Efficiency Scenario Analysis Tool, National Renewable Energy Laboratory at 28 (Sept. 2021).

Footnote 167, page 45 of LECO’s Legal Brief – PREB, Resolution and Order, PREB Dkt. NEPR-MI2022-001 (Feb. 16, 2023).

<https://energia.pr.gov/wpcontent/uploads/sites/7/2023/02/20230220230216-MI20220001-Resolutionand-Order.pdf>. PREB. Resolution and Order, PREB Dkt. NEPR-MI2022-001 (April 3, 2023).

Footnote 215, page 59 of LECO’s Legal Brief – LUMA, Submission of Corrected Spreadsheets on Performance Metrics Quarterly Report for October through December 2022, and Corrected Data on Reliability Metrics for July through August 2022, PREB Dkt. NEPR-MI-2019-0007 (March 3, 2023). See Submission of Corrected Spreadsheets on Performance Metrics Quarterly Report for October through December 2022, and Corrected Data on Reliability Metrics for July through August 2022.

Footnote 219, page 61 of LECO’s Legal Brief – Patricia Mazzei, Why Don’t We Have Electricity?: Outages Plague Puerto Rico, N.Y. TIMES (Oct. 19, 2021).

Footnote 220, page 61 of LECO’s Legal Brief – Nina Lakhani, We want sun: the battle for the solar power in Puerto Rico, THE GUARDIAN (Oct. 18, 2021).

Footnote 222, page 61 of LECO’s Legal Brief – Massive power outage in Puerto Rico affects hundreds of thousands amid growing outrage, CBS NEWS (June 16, 2021).

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| Footnote 223, page 61 of LECO’s Legal Brief – María Luisa Paúl, Two major power outages in a week fuel fear in Puerto Rico – and memories of Hurricane María, THE WASHINGTON POST (June 18, 2021). |
| Footnote 224, page 61 of LECO’s Legal Brief – Puerto Ricans March to Protest Ongoing Power Outages After Privatization of Electric Grid, DEMOCRACY NOW! (Oct. 18, 2021). |
| Footnote 225, page 62 of LECO’s Legal Brief – Johnny Irizarry Rojas, Four years after María, Puerto Rico’s power grid still in shambles Commentary, Orlando Sentinel (Sept. 22, 2021). |
| Footnote 240, page 65 of LECO’s Legal Brief – LUMA, Motion for Partial Reconsideration of Resolution and Order of April 8, 2021, Motion Submitting Information in Support Thereof, and Requests for Clarifications, PREB Dkt. NEPR-MI-2019-0007 (April 28, 2021). |
| Footnote 241, page 65 of LECO’s Legal Brief –PREB, Resolution and Order at 17, PREB Dkt. NEPR-MI-2019-0007 (April 8, 2021). |
| Footnote 253, page 68 of LECO’s Legal Brief – Frances Rosario, Crece a ritmo acelerado la población envejeciente en la Isla, PRIMERA HORA (Dec. 8, 2022, 10:45 p.m.)- |
| Footnote 254, page 68 of LECO’s Legal Brief – “Decenas de ancianos abandonados en hospitales en Puerto Rico por la crisis, univision (July 14, 2016, 4:09 p.m.). |
| Footnote 259, page 69 of LECO’s Legal Brief – Demographers identify the causes, challenges of a rapidly aging Puerto Rico, PennState Social Science Research Institute, (Feb. 8, 2023). |
| Footnote 273, page 72 of LECO’s Legal Brief –Cooperativa de Agricultores del Suroeste – CASO Coop v. LUMA Energy Company et al, Civil No. MZ2023CV00024 (Court of First Instance, Mayagüez Superior Court, filed Jan 9, 2023); Herrero Domenech et al v. LUMA Energy, LLC et al. and Wendco of Puerto Rico Inc. et al, v. LUMA Energy, LLC et al., Civil Nos. SJ2022CV02868 and SJ2022CV03169. |
| Footnote 290, page 78 of LECO’s Legal Brief – FEMA, Programmatic Environmental Assessment for Public Facilities Infrastructure Recovery and Resiliency, Puerto Rico, FEMADR-4336-PR, FEMA-DR-4339-PR, FEMA-DR-4473-PR, (2022). |
| Footnote 304, page 82 of LECO’s Legal Brief –Daniella Silva and Nicole Acevedo, NBC News (Sept. 23, 2022); Molly Hennessy-Fiske, Los Angeles Times, “Amid power outages, hospitals pushed to their limits in Puerto Rico.” (Sept. 26, 2017). |

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| Footnote 305, page 82 of LECO’s Legal Brief –Arelis Hernandez, WASH. POST, Puerto Rico was promised billions for safe water. Taps and still running dry: A fragile power grid and haphazard backup system leave the island’s water system prone to collapse, (Dec. 8, 2022)-. |
| Fn. 306, page 82 of LECO’s Legal Brief –Kevin Crowe, USA Today, “In Comerio, Puerto Rico, Hurricane Fiona has left people without water, food and medicine: ‘we are not OK,’” (Sept. 21, 2022). |
| Footnote 307, page 83 of LECO’s Legal Brief – Arelis Hernandez, Washington Post, In graying Puerto Rico, the elderly face climate disasters alone, (Jan. 13, 2023). |

In a similar vein and in alignment with this Energy Bureau’s determination in the August 17th Order that LECO **cannot** introduce new evidence for the record, LUMA requests that this Energy Bureau strike and disregard the following publications and documents that LECO improperly seeks to introduce for the record through its Brief but were not admitted for the record through pre-filed testimonies nor admitted as exhibits at the Evidentiary Hearing. These are:

| REFERENCE |
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| Footnote 3, page 1 of LECO’s Legal Brief - Marga Parés Arroyo, Estudio del Departamento de Salud detalla que hubo un exceso de muertes en el 2022, ENDI, (Feb. 26, 2023). |
| Footnote 221, page 61 of LECO’s Legal Brief - Cathy Kunkel & Tom Sanzillo, Puerto Rico Grid Privatization Flaws Highlighted in First Two Months of Operation (August 2021). |
| Footnote 226, page 62 of LECO’s Legal Brief - Primera Hora, Presentan resolución para seguir reclamos por enseres dañados, (April 9, 2022). |
| Footnote 260, page 69 of LECO’s Legal Brief - U.S. CENSUS, Census Bureau Releases Estimates of Undercount and Overcount in the 2020 Census, (March 10, 2022), Peter V. Miller, Is there a future for surveys? At 205–212, Public Opinion Quarterly, Vol. 81, Special Issue, (2017). |
| Footnote 273, page 72 of LECO’s Legal Brief - Oscar J. Serrano, Restaurantes y abonados demandan a LUMA por daños tras apagón, Noticel, (April 27, 2022). |
| Footnote 301, page 81 of LECO’s Legal Brief - Noticel, “Senado: LUMA debe acreditar a abonados ingresos cobrados por alzas innecesarias en facturas”, (Oct. 9, 2022). |
| Footnote 303, page 82 of LECO’s Legal Brief - Estudio del Departamento de Salud detalla que hubo un exceso de muertes en el 2022, EL NUEVO DIA (Feb. 26, 2023). |

Footnote 332, page 88 of LECO’s Legal Brief - Also Marcel CastroSitiriche, ATG22 – Marcel Castro-Sitiriche – Critical Infrastructure, Equity, and Resilience.

Footnote 340, page 89 of LECO’s Legal Brief -Eliván Martinez Mercado, Puerto Rico Health Dept. Repeats Hurricane Maria’s Mistakes During Fiona With Patients Who Depend On Electricity, Centro de Periodismo Investigativo de Puerto Rico, (Sept. 25, 2022).

B. The Energy Bureau Should Reject LECO’s Proposals to Adopt Penalties and Deadbands and Request that Incentives be Paid for Excellent Performance as they are Based on a Concern Regarding Capital Investments and Profit Maximization that Does not Apply to LUMA or PREPA.

On page 3 of its Brief, LECO quotes its expert witness, Mr. Agustín Irizarry (“Mr. Irizarry”), for the proposition that LUMA’s utility business model is one pursuant to which capital investments and expanded sales are top priorities. LECO uses that **incorrect** statement to argue that this Energy Bureau should adopt penalties for underperformance, deadbands around adequate performance, and incentives for excellent performance.

The record of this proceeding establishes the uncontested fact that LUMA’s compensation, per the T&D OMA, **is not tied to increased sales or increased capital investments.** *See* T&D OMA, Article 7 (Compensation, Budgets). The T&D OMA reflects the reality that PREPA is a state-owned entity and does not have as its goals what Mr. Irizarry cites as “the traditional utility goal of maximizing utility-owned capital investment and increasing sales.” *Id.*, lines 210-213. As Mr. Branko Terzic (“Mr. Terzic”), LUMA’s expert witness, established in this proceeding, PREPA is not a profit-maximizing utility, *see* Exhibit 5 of the Evidentiary Hearing, p. 25, lines 506-507, p. 27, 545-546. Furthermore, Mr. Terzic noted that “LUMA does not own “capital investment,” and the OMA does not consider “increasing sales” in LUMA’s compensation.” *Id.* p. 12, lines 214-216. “Public-owned entities such as PREPA or municipally owned electric systems in the United

States of America do not have either a motivation for increased capital investment or increasing sales as goals. Public-owned systems are established to provide adequate and reliable service at the lowest cost with the fulfillment of public policy goals. This is the case in Puerto Rico where the legislation . . . does not mention of any goals relating to increasing capital investment or requiring sales increases.” *Id.*, p. 12, lines 233-235, p. 13, lines 236-246.

Because LECO’s proposal on penalties, deadbands, and incentives is based on the incorrect and unsupported view that LUMA seeks to prioritize capital investments and maximize profits, this Energy Bureau must reject the same.

C. The Energy Bureau Should Reject LECO’s Request for Adoption of Penalties.

On page 4 and Section III.A of its Brief, LECO renews its requests that this Energy Bureau adopt penalties if performance falls below a baseline, and also adopt “Gating Performance Metrics” and “Default Performance Metrics” in the style of those adopted by the Long Island Power Authority (“LIPA”) in its Second Amended Restated contract with the private operator Public Service Enterprise Group (“PSEG”) (hereinafter, the “LIPA contract”). LECO also suggests a penalty to reduce LUMA’s ability to earn the fixed fee that is LUMA’s contractual right under the T&D OMA and that the T&D OMA be terminated.

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

inappropriate due to its inconsistency with the legal framework adopted by the Government of Puerto Rico and pursuant to which the T&D OMA was executed. Additionally, adopting the mechanism proposed by LECO would alter the contractual representations according to which LUMA balanced the risk inherent to the T&D OMA and assumed the responsibilities and obligations outlined in the contract, *See Evidentiary Hearing, Vol. 1, February 7, 2023, p. 74, lines 21-25, p. 75, lines 1-4 (M. Hurtado English Portion); AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [2:06:50]*. LUMA hereby incorporates by reference the legal arguments raised in its *Opposition to LECO's Motion Requesting Imposition of Penalties in LUMA's Performance-Based Mechanism*, filed on June 23, 2022.

In its Brief, LECO did not identify any evidence capable of countering the opinions of LUMA's expert witnesses, Mr. Terzic and Dr. Lara, who refuted LECO's proposal on the adoption of penalties and the reward-penalty scheme proposed by LECO through its witnesses Mr. Irizarry and Mr. José Alameda ("Mr. Alameda"). LUMA incorporates by reference the arguments raised in Section III C of its Opening Brief filed on May 11, 2023, whereby LUMA established, with reference to the evidence submitted for the record, including the pre-filed testimonies and testimonies offered during the Evidentiary Hearings by Mr. Donald Hall ("Mr. Hall"), Mr. Mario Hurtado ("Mr. Hurtado"), Mr. Terzic and Dr. Lara, that this Energy Bureau should Reject LECO's Proposal on the Imposition of Penalties that is based on the LIPA Contract and that LECO's proposal is unsupported. LUMA's arguments are also based on the testimony of Dr. Lara, who refuted LECO's proposal of a reward and penalties scheme, showing that it is unsupported and contrary to basic economic principles.

In its Brief, LECO contends in cursory fashion that Dr. Lara and Mr. Terzic allegedly propose inconsistent views when they expound why LECO's proposed reward-penalty scheme should be rejected. LECO misconstrues Dr. Lara's and Mr. Terzic's testimonies and opinions. First, LECO ignores that Dr. Lara offered this Energy Bureau his expert opinion as an economist on the deficiencies and dangers of Mr. Alameda's proposed reward-penalty scheme, highlighting that Mr. Alameda's proposal lacks support in economic theory. In that context, as LUMA established in its Opening Brief, Dr. Lara explained that Mr. Alameda relied on literature that seeks to address concerns that solely apply to investor-owned utilities. Those concerns, however, are not present in this proceeding where the Energy Bureau is called upon to address performance incentive mechanisms applicable to PREPA, a publicly-owned electric power service company, and LUMA, which does not own assets of PREPA's T&D System and is not motivated by an interest in increased sales and profits. For example, during the Evidentiary Hearing, Dr. Lara explained that Mr. Alameda's direct expert testimony cites literature that is not applicable to Puerto Rico. The literature cited refers to a price gap mechanism that is not applicable to the existing Puerto Rico regulatory system. *See* Evidentiary Hearing Transcript, Vol. 1, February 7, 2023 (English Portion), p. 153, lines 6-13; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [2:14:01]. Particularly, Dr. Lara explained that Mr. Alameda "cites literature for Italy and for the United Kingdom and other places that talks about a price gap mechanism that's not the type of regulating system that we have in Puerto Rico. That's not applicable to the type of utility that operates in Puerto Rico, the electric system." Evidentiary Hearing Transcript, Vol. 1, February 7, 2023 (English Portion), p. 153, lines 7-11 AP-2020-0025 Evidentiary Hearing-

20230207_Meeting Recording 2 [2:14:07]. Dr. Lara further explained that “[f]or example, in the case of the paper by a couple of Italian economists about regulations in Italy, he makes a statement about how price gap mechanisms can improve efficiency in privatized for-profit utility. That’s not what we’re talking about here. So, you know, why bring that up? Why use that literature to bring up a case for an incentive system that is not the one that they have in Italy, either not any of the formulas that he mentioned, and it’s not what we’re talking about in Puerto Rico.” Evidentiary Hearing Transcript, Vol. 1, February 7, 2023 (English Portion), p. 153, lines 23-25, p. 154, lines 1-9 AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [2:14:56].

Mr. Terzic expounded a similar view from the vantage point of his unique expertise as a regulator and scholar on incentive rate making and performance incentive mechanisms, to highlight the threshold mistake incurred by both Mr. Alameda and Mr. Irizarry for LECO, who incorrectly rely on publications regarding incentive rate making that is designed for for-profit utilities and do not apply to PREPA nor LUMA as Operator of PREPA’s T&D System that does not own assets. In its Brief, LECO ignores the uncontested explanations by Mr. Terzic, including that “PREPA is not maximizing profit and so there is no concern that PREPA would maximize profit; therefore, incentive rate making doesn’t work. PREPA . . . doesn’t have the profit maximization, it also is not pushing for higher sales because of not having a profit doesn’t mean higher sales, it wants the sales that customers need. So incentive rate making does not work for PREPA. *See* Evidentiary Hearing Transcript, Vol. 1, February 7, 2023 (English Portion), p. 137, lines 6-16; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [1:52:05]. In turn, “[f]or LUMA, the traditional performance-based rate making, incentive rate making doesn’t

work because LUMA doesn't own assets. And LUMA does not make a higher profit if PREPA's asset base increases. There is no tie-in with the size of PREPA were to double its asset base, there's no indicator that increases the profit to PREPA. Secondly, if there are increased sales by themselves, even if more revenue is gotten, that revenue goes to the citizens of Puerto Rico." *See* Evidentiary Hearing Transcript, Vol. 1, February 7, 2023 (English Portion), p. 137, lines 17-25, p. 138, lines 1-25, and p. 138, lines 1-2; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [1:52:53]. *See also* Evidentiary Hearing Transcript, Vol. 1 February 7, 2023 (English Portion), p. 147, lines 7-9, p; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [2:06:37] ("Incentive regulation doesn't apply as incentive regulation is established to curtail excess profits and to induce efficiency. . . . And so, because you're not profit driven, the efficiency induction isn't there for a nonprofit entity.").

LECO's attempt to discredit the testimonies of LUMA's witnesses is based on a false dichotomy that the experts diverged in their outlooks regarding the application of incentive ratemaking to LUMA and PREPA. As LUMA established in its Brief, the record shows that Dr. Lara and Mr. Terzic agree on the hallmark deficiencies of LECO's proposed penalty scheme and also agree that incentive rate making, as invoked by LECO in its proposal for a reward-penalty scheme, does not apply either to LUMA or PREPA. In attempting to portray a nonexistent divergence between the opinions of Dr. Lara and Mr. Terzic, LECO conveniently neglects to consider that the main hallmark of the opinions of these experts, whose opinions are uncontested on the record, is that the incentive rate-making principles that LECO uses to ground its proposal on penalties are inapplicable precisely because LECO's proposal draws from incentive ratemaking

mechanisms that have no bearing on PREPA and LUMA, because if system revenues increase, the increase benefits customers and not PREPA or LUMA.

On page 10 of LECO's Brief, they improperly portray Dr. Lara's concern regarding penalties in his testimony. LECO incorrectly states that Dr. Lara was concerned with LUMA avoiding penalties. However, Dr. Lara did not testify regarding a scenario involving LUMA's concern in avoiding penalties. More importantly, Dr. Lara testified on cross-examination that he had no opinion on whether LUMA management dreads losses more than it values bonuses. Evidentiary Hearing Transcript, Vol. 1, February 7, 2023 (English Portion), p. 221, lines 4-20, AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [4:50:10]. Both in his pre-filed testimony and on cross-examination during the Evidentiary Hearing, Dr. Lara explained that his opinion was based on economic theory to refute the proposal set forth by LECO through Mr. Alameda. Moreover, Dr. Lara clarified that his charge did not include analyzing LUMA. To wit, Dr. Lara testified the following:

Q. Let talk's about from your perspective as an economist. Let's talk generally for a company. Say a company's management dreads losses more than they value bonuses; how does that affect?

A. Well, the reason I'm making that statement here is that witness Alameda was asked about what is the proper balance between penalties and rewards in a scheme. And he didn't answer the question. He didn't talk about the issue of balancing those two. And he essentially presented the formula that implicitly assumes that you want to weigh both equally. And I'm saying, Why? He doesn't explain why you want to balance it in that particular manner. And why that would be efficient as opposed to the mechanism where, for example, you weight penalties more than rewards or vice versa. The point is, what the incentive effect of the scheme will be depends on what the behavior of the regulated entity is. And it's not talking about that at all. Even though that's the question he's being asked. . . .

Q. So you're not saying that an actual company that you have seen in your experience as a[n] economist has actually dreaded losses more than they value bonuses?

A. No. I am saying that this is standard economic analysis. When we talk about, for example, consumer behavior or firm behavior, in economic theory we know that you don't always react in the same way to all kinds of incentives. So[,] if you happen to dread losses more than you enjoy rewards then a scheme that treats rewards and losses in the same way may not be efficient.

Q. Later on in your opinion testimony right there on line 166 you mentioned that penalties could cause disproportionate attention to some metrics; is that right?

A. Correct.

Q. If penalties were imposed on LUMA as part of this scheme, what metrics specifically are you concerned will receive too much attention?

A. I didn't look into that. That wasn't my charge.

Evidentiary Hearing Transcript, Vol. 1, February 7, 2023 (English Portion), p. 221, lines 21-25, p. 222, lines 1-25, p. 223, lines 1-17, AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [4:50:23].

Additionally, LECO is mistaken in arguing that Mr. Terzic is allegedly unfamiliar with LUMA's proposal on Performance Metrics Targets. At the outset, in his pre-filed testimony, Mr. Terzic stated that he reviewed and considered LUMA's filing before this Energy Bureau titled LUMA's Revised Performance Metrics Targets, submitted on September 24, 2021. *See* Exhibit 5 of the Evidentiary Hearing, Rebuttal Testimony of Branko Terzic (February 16, 2022), p. 7, lines 123-125. Moreover, LECO obscures that Mr. Terzic's testimony centered on the fact that the proposal presented for consideration to this Energy Bureau arises from policy decisions made by

the Government of Puerto Rico on the performance indicators to be adopted and applied to the Operator of PREPA's T&D System. *See* Evidentiary Hearing Transcript, Vol. 1, February 7, 2023 (English Portion), p. 138, lines 20-25, p. 139, lines 1-13; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording [1:54:14]. *See also Id.* page 141, lines 11-16 ("My overall recommendation is it seemed to be reasonable that if the people of Puerto Rico through PPP and through PREPA had determined what their priorities were and had given the bidders the metrics that they wanted them to operate on, that would be a good place for this commission to start.") AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [1:59:05].

Ultimately, what LECO is proposing when it insists that this Energy Bureau adopt a reward-penalty scheme that remains refuted on the record, is that the Revised Annex IX be disregarded and the T&D OMA rewritten to eschew the public policy adopted by the Government of Puerto Rico in crafting, drafting and executing the T&D OMA, all to the detriment of settled legal principles in our legal system regarding certainty in legal contracts and protection of rights that arise out of a legally binding contract. LUMA opposes LECO's continued arguments in this process that seek to re-write and override the T&D OMA to add penalties that could deprive LUMA of its contractual right to earn the agreed-upon incentive payment and, *via fiat*, add new causes to terminate the T&D OMA.

The Constitution of Puerto Rico, which is Supreme law, *see* Const. PR, Art. II, Sec. 7, *see also* U.S. Const. Art. 1, Sec. 10, protects contracting parties from actions by government entities that impair contractual rights. *See e.g., Total Petroleum Corp. v. Autoridad de los Puertos*, 210 DPR 16, 27-29 (2022). Thus, regulatory authority over LUMA's performance cannot be used to

unsettle contractual expectations. LUMA cannot countenance continued attempts by LECO to upend the T&D OMA, which is a valid and binding contract that was approved by this Energy Bureau on June 17, 2020, when the Energy Bureau certified that the T&D OMA complies with Puerto Rico's public energy policy and the applicable regulatory framework, including Act No. 57 of May 27, 2014, as amended, known as the *Puerto Rico Energy Transformation and Relief Act* (“Act 57-2014”) and Act 17 of April 11, 2019 (“Act 17-2019”), among others. *See* Resolution and Order of June 27, 2020, Case NEPR-AP-2020-0002.¹

In this proceeding, this Energy Bureau has not issued an order advising LUMA that it will consider the adoption of a reward-penalty scheme that could, as LECO suggests, lead to a reduction of LUMA’s compensation or termination of the T&D OMA. If this Energy Bureau entertains LECO’s proposal, it will issue an arbitrary ruling in violation of LUMA’s right to due process, namely, the right of adequate notice, to confront a proposal by the Energy Bureau on penalties that could apply to determine LUMA’s ability and contractual right to earn the incentive fee and to have a decision be based on the administrative record. *See White Tel. Co. v. Fed. Commc'ns Comm'n*, 991 F.3d 1097, 1116 (10th Cir 2021) (citation omitted) (Due process guarantees include that individuals have adequate notice of actions that the state prohibits or requires); *Hernández v. Secretario*, 164 DPR 390, 394-95 (2005)(*recognizing* that the State is prevented from affecting through its actions the property or freedom interests of an individual in an unreasonable, arbitrary or capricious manner.); *Otero Mercado v. Toyota de Puerto Rico*, 163 DPR 716, 727-28 (2005)

¹ Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2020/06/Resolution-and-Order-NEPR-AP-2020-0002.pdf>.

(*outlining* the standard of substantial evidence in the administrative record and that an agency's determinations must be consistent with the totality of the evidence before the judge) (*citing Rebollo v. Yiyi Motors*, 161 DPR 69 (2004)); *Lopez v. Junta de Planificación*, 80 DPR 646, 670 (1958) (“[t]he right to a public hearing would be meaningless if [the administrative body] were allowed to base its decision on evidence received without the knowledge of the parties, outside the hearing, without giving the interested parties an opportunity to rebut or explain it by cross-examining or presenting other evidence to the contrary.”).

D. The Record Does Not Support LECO's Proposal that the Energy Bureau Adopt Deadbands.

In Section III. B of its Brief, LECO suggests, without reference to substantial evidence admitted for the record, that this Energy Bureau should amend the Revised Annex IX to adopt a deadband level pursuant to which no reward should be provided, and no penalty imposed. This Energy Bureau should reject LECO's statement outright, especially given that it is not accompanied by any developed proposal, much less a proposal supported by evidence. To the contrary, the uncontested evidence admitted in the administrative record requires that this Energy Bureau reject said proposal. To wit, Dr. Lara established in his pre-filed testimony the methodological deficiencies of the formula proposed by Mr. Alameda that includes a deadband:

The formula with a deadband of 0.5 standard deviations, measures how much performance varies from the side of the target. After 0.5 standard deviations, penalties and rewards increase in a linear fashion up to a maximum of \$5 million. Witness Alameda takes this formula from one of the documents he cites in his testimony . . . He does not provide any guidance as to how this formula could be applied to metrics in the Puerto Rico T&D System; in particular, he says nothing of what the critical numbers and parameters of the formula should be in the specific case of Puerto Rico's T&D System. He does not measure or analyze the effects of

a specific application of this formula to LUMA's operations, including benefits and costs to LUMA and the Regulator. Moreover, there is no acknowledgment or warning of possible perverse effects of penalties, much less guidance on how to avoid such effects in the calibration of a formula like the one cited, a matter that goes to the heart of the question posed regarding the balancing of rewards and penalties.

See Exhibit 6 of the Evidentiary Hearing, lines 131-143. Furthermore, Dr. Lara established that Mr. Alameda did not provide any formula with deadbands, but rather linear formulas. *Id.*, lines 410-412, 426, and 440-443. Thus, although LECO insists in its Brief that this Energy Bureau should adopt deadbands, the record lacks any basis for such a proposal for the Energy Bureau to consider.

E. Outage Compensation Scheme.

In Section III. C of its Brief and page 59, LECO contends that the Energy Bureau should approve an outage compensation scheme applicable to appliance damage due to voltage fluctuations. For that proposal, LECO mentions the pre-filed testimony of Dr. Alameda and a response to a discovery request issued by Mr. Irizarry. Furthermore, LECO mentions news reports on voltage fluctuations that are inadmissible hearsay, *see Pons v. Rivera Santos*, 85 DPR 524, 542 (1962) (as a general rule, articles and information included in newspaper articles are inadmissible when the offering party (here, LECO) presents them as evidence of the facts contained therein), and a statement presented by a citizen during the public hearings that the Energy Bureau held in this proceeding.

As a threshold matter, this Energy Bureau must strike from the record LECO's reference to a response issued in discovery by Mr. Irizarry allegedly regarding news reports on appliance damage. Particularly, LECO references on page 15 of its Brief, footnote 46, a response by Mr.

Irizarry on January 13, 2022, to a Request for Information issued by LUMA, page 68. That discovery response, however, **was not submitted as evidence during the evidentiary hearing and, thus, is not part of the administrative record.** The ruling of this Energy Bureau during the first day of the Evidentiary Hearing was that to admit discovery responses for the record, the parties needed to submit the documents as exhibits. *See* Evidentiary Hearing Transcript, Vol. 1, February 7, 2023 (English Portion), p. 161, lines 1-11; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [2:35:36]. LECO cannot purport to use its Brief to add documents to the administrative record where LECO omitted to present said hearsay evidence through pre-filed testimonies or during the evidentiary hearing. LECO's reference to the documentation mentioned by a witness in discovery is an improper attempt to subvert the hallmark principle that the decision in an administrative proceeding such as this shall be based on the record. *See* Section 3.1 of LPAU, 3 PR Laws Ann. § 9641 (2023) (codifying the right that a decision be made on the basis of the administrative record); *see also, e.g., Lopez v. Junta de Planificación*, 80 DPR 646. Discovery between the parties has not become part of the record unless this Energy Bureau admits the data or documents through the means provided to the parties: pre-filed testimonies and live testimony during the evidentiary hearing.

LUMA appreciates that this Energy Bureau received testimonials from citizens and individuals who appeared for a public hearing in this proceeding. As Operator of the T&D System, LUMA values the concerns of its customers, including those expressed by Mr. José Flores, as quoted by LECO in its Brief, regarding electricity prices and damage to appliances. However, for purposes of adjudicative proceedings such as this, where due process guarantees apply, LUMA

respectfully submits that testimonials offered in a public hearing, are not subject to discovery or cross-examination and, thus, should not be used as evidence, as suggested by LECO, to impose duties or obligations to LUMA or to amend the Revised Annex IX or the T&D OMA to require and impose an outage compensation scheme.

Furthermore, the evidence on the record refutes Alameda's proposed outage compensation scheme. To wit, Dr. Lara refuted Mr. Alameda's proposal, and LECO never countered Dr. Lara's testimony, nor does LECO address it in its Brief. To wit, Dr. Lara testified as follows:

[Alameda's] assertion is that the "model" for compensation which he proposes is followed by five states in the United States, but later in his detailed testimony, he shows no evidence that such five states actually follow the same mechanism he proposes (which is, itself, not clearly defined); in fact, the states he later cites use different mechanisms to compensate consumers for power outages, not one single model. Moreover, in his detailed testimony, witness Alameda does not present any evidence of the results and consequences of the practices for outage compensation in the states he cites or of the applicability of those experiences to Puerto Rico's T&D system.

See Exhibit 6 of the Evidentiary Hearing, p. 5, lines 76-90, and p. 6, lines 91-92.

As Dr. Lara testified: "[w]itness Alameda provides only a general description of an outage compensation scheme and does not propose any specific such scheme for Puerto Rico. His proposal is lacking in concreteness and amounts to little more than advising the regulator to consider the concept as a possible component of the Puerto Rico regulatory regime." *See* Exhibit 6 of the Evidentiary Hearing, p. 19, lines 382-385.

Furthermore, Dr. Lara established the theoretical deficiencies of Alameda's proposal, including that his proposal is based on the Coarse Theorem, which Mr. Alameda admits has not

been applied to an electric power utility. The deficiencies identified by Dr. Lara require that this Energy Bureau reject LECO's proposal of an outage compensation scheme:

Please state your response to Witness Alameda's Question 13 "Please describe the concept of outage compensation".

A: In his answer, witness Alameda states: "The well-known Coase Theorem from Nobel-Prize Ronald Coase (1991), postulated that liability should fall on those parties who can eliminate or mitigate the problem most cheaply. A desirable outcome is an efficient allocation of risk." Witness Alameda does not explain the relevance of the Coase Theorem to a system "where consumers can obtain restitution from LUMA for financial losses caused by problems with the T&D system that LUMA operates", as he proposes. His answer includes the statement that "a desirable outcome is an efficient allocation of risk", but he presents no evidence or theoretical basis to support the claim that an outage compensation scheme such as the one he describes impacts the efficient allocation of risk.

On page 75 of the answer to interrogatories to witness Alameda, which supplements his testimony, he expounds more on the Coase Theorem and states: "The Coase Theorem provides a framework for incentive-driven regulatory systems. The Coase Theorem allows for a solution that benefits both the consumers and companies when market inefficiencies arise. The Coase Theorem seeks to save both the consumers and companies money. PREB should further study the theorem and consider applying it to LUMA. While it may not have been —to my knowledge— applied to electric utilities, the PREB has a unique opportunity to implement this theorem.

In his answer to interrogatories, witness Alameda fails again to make a clear connection between the Coase Theorem and the desirability or usefulness of an outage compensation scheme, although he recommends that the Regulator consider applying the theorem to LUMA. **Note that witness Alameda admits that he has no knowledge of this theorem being applied to electric utilities.**

See Exhibit 6 of the Evidentiary Hearing, p. 18, lines 358-376, p. 19, lines 359-381 (emphasis added).

Finally, this proceeding involves Performance-Based Incentive Mechanisms and Targets for LUMA, pursuant to the agreement by the parties to the T&D OMA. *See, e.g.*, Resolution and Order of December 30, 2020, subject *Commencement of Proceedings for the Establishment of a Performance-Based Incentive Mechanism Targets*. It does not include potential mechanisms to compensate customers for appliance damages, nor has the Energy Bureau issued an order regarding its intent to consider and approve an outage compensation mechanism for PREPA. It thus follows that LECO's request is beyond the scope of this proceeding. Moreover, as this Energy Bureau is aware, the budgets approved by this Energy Bureau for the T&D System, including the FY2023 and FY2024 budgets, do not currently include a line item for an outage compensation scheme. Relatedly, LUMA and PREPA operate pursuant to a liability waiver approved by this Energy Bureau on May 31, 2021, in Case No. NEPR-MI-2021-0007, *In re Review of LUMA's Terms of Service*. LECO's proposal improperly ignores the approved budgets for the T&D System and the approved liability waiver.

F. The Energy Bureau Should Reject LECO's Request for Updated Data.

In Section IV of its Brief, LECO contends that this Energy Bureau should reject the revised Annex IX and LUMA's proposed Performance Metrics Targets because the proposal is based on inadequate or outdated data. The latter statement on the characteristics of the data used to prepare and submit the Revised Annex IX is incorrect, seeks to mislead and confuse, and should be rejected.

As the record shows, throughout this proceeding, including the filings of the Revised Annex IX of February 25, 2021, August 18, 2021, September and October 28, 2022, and in the

Evidentiary Hearing, LUMA referenced the data used for the proposed Performance Metrics Targets; identified areas of concerns regarding available data for metrics such as OSHA Recordable Incident Rate and Overtime; and explained that the passage of time since 2021, counsels in favor of revising the targets once PREPA exists Title III Bankruptcy under the federal statute known as PROMESA. Nowhere does the administrative record suggest, as LECO contends, that the data is inadequate or outdated for this Energy Bureau to approve the proposed Performance Metrics Targets and the Revised Annex IX. On the contrary, the record shows that LUMA has been transparent regarding the data and calculations. During the Evidentiary Hearing, held almost two years after LUMA initially filed the Revised Annex IX for consideration, LUMA proposed further revisions, including Minimum Performance Levels and Targets for appropriate metrics, with the benefit of new data and while considering changes in circumstances and the state of the T&D System.

Both the T&D OMA and applicable law provide for periodic revisions and allow LUMA to request that the Energy Bureau review approved Performance Metrics targets, *see* T&D OMA, Sections 7.1(d), 7.4, and Energy Bureau *Regulation for Performance Incentive Mechanisms*; *see also* Exhibit 11, section 2.9, p. 45. As Mr. Hurtado explained during the Evidentiary Hearing, LUMA's proposal is that the Energy Bureau should determine which metrics should be used to measure LUMA's performance, and then give LUMA an opportunity to re-evaluate the Minimum Performance Levels and Targets. *See* Evidentiary Hearing, Vol. 1, February 7, 2023, p. 50, lines 15-20 (M. Hurtado English Portion); AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [1:33:05]. LUMA is not proposing that the Energy Bureau re-open a process to

consider which metrics to include in Annex IX to the T&D OMA. *See* Evidentiary Hearing, Vol. 1, February 7, 2023, p. 53, lines 4-11 (M. Hurtado English Portion); AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [1:36:16]. The proposal is to recognize that some time has passed and that it is beneficial to consider data that was not available at the time prior to LUMA's taking over the operation of the T&D System and now is available. This review would avoid having a potentially large gap between the targets and LUMA's actual performance and the current state of the system. *See* Evidentiary Hearing, Vol. 1, February 7, 2023, pp. 99-100 and 101, lines 1-17 (M. Hurtado English portion), AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [2:38:28].

In terms of the Targets, LUMA proposes that there should be an opportunity to update and provide further information to the Energy Bureau, once a determination has been made on what metrics will be used to evaluate LUMA's performance and incentive fee payment. *See* Evidentiary Hearing, Vol. 1, February 7, 2023, p. 51, lines 19-25 (M. Hurtado English Portion), AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [1:34:34]. Regarding this topic, Mr. Hurtado testified as follows:

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

See Evidentiary Hearing, Vol. 1, February 7, 2023, p. 50, lines 3-25, p. 51, line 1 (M. Hurtado English portion), AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 1 [1:32:17].

As explained in LUMAs Brief, LUMA proposes that a key moment in time when Minimum Performance Levels and Targets should be revised is close to when PREPA exits Title III. Currently, that exit is expected to take place in mid-year 2024. *See* LUMA’s Brief, p. 21. At present, an entire revision of the Minimum Performance Levels and Targets to incorporate new data should not be considered. Such revision is not feasible and would serve to upend the processes followed in this case, ultimately depriving LUMA of procedural due process protections to have the decision be issued on the basis of the administrative record and receive adequate prior notice of the information that the Energy Bureau will consider and require to issue its determination. *See White Tel. Co.* 991 F.3d 1097; *Hernández v. Secretario*, 164 DPR 390, 394-95 (2005) (*recognizing that the State is prevented from affecting through its actions the property or freedom interests of an individual in an unreasonable, arbitrary or capricious manner.*); *Otero Mercado*, 163 DPR 716; *Lopez v.*, 80 DPR 646, 670.

G. LECO Incorrectly Characterizes Testimony Regarding the State of the T&D System and Improvements that may be Attained.

In another example of intentional efforts to confuse the record, on page 7 of its Brief, LECO argues that this Energy Bureau should reject the proposed Performance Metrics Targets because they may only lead to establishing a 20th-century utility. LECO contends that LUMA’s witness, Mr. Don Cortez (“Mr. Cortez”), urged that it is important first to attain a 20th Century T&D System, while witness Donald Hall allegedly testified that the most critical elements of a 21st Century System may be implemented right away. LECO’s interpretation of those testimonies is incorrect.

Contrary to what LECO claims, Mr. Hall did not testify that transitioning to a 21st-century utility is possible for all aspects of the T&D System and its performance. In reaction to statements by Commissioner Mateo and responding to an argumentative question based on an individual perception that there is no time to wait first to reach a 20th-century utility before PREPA's T&D System may exhibit the characteristics of a 21st-century utility, Mr. Donald Hall testified that: “[t]he metrics that we proposed can be reached. And there are some things that are happening in parallel. For instance, as the system is being rebuilt, distribution automation is being added, for instance, which is a 21st-century technology. So, some things can be in parallel; some things cannot, until additional pieces of the system are rebuilt and brought up to 20th century standards.” *See* Evidentiary Hearing, Vol. 1, February 7, 2023, p. 131, lines 20-25, p. 132, lines, 1-4; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [1:45:29].

In its Brief, LECO fails to consider this testimony of Mr. Hall, which shows that some work to allow the T&D System to exhibit characteristics of a 21st-century utility may be done in parallel while LUMA remediates the System, but other work cannot be completed during the needed and contractually mandated remediation phase. This testimony echoes what Act 120 of June 21, 2018, known as the *Puerto Rico Electric Power System Transformation Act* (“Act 120-2018”), Act 17 of April 11, 2019, known as the *Puerto Rico Energy Public Policy Act* (“Act 17-2019”), and the T&D OMA establish from the public policy and contractual perspectives: PREPA's frail and dilapidated T&D System needs rebuilding and remediation, and thus, its transformation requires a process and transition. As Mr. Hall testified and is established in the record through the testimonies of LUMA's witnesses and subject matter experts, including expert Mr. Terzic, the Proposed

Performance Metrics Targets are attainable, meet Puerto Rico's public policy, enable the transformation of the T&D System considering operational, funding and time constraints, and afford LUMA a reasonable opportunity to earn the contractual incentive fee. LECO's opposition to the Proposed Performance Metrics Targets grounded on its subjective but unsupported idea that a 21st-century T&D System is attainable immediately, is dissociated from reality, ignores the very statutes that LECO purports to invoke, and seeks to erase the provisions of the T&D OMA and the order of this Energy Bureau approving LUMA's System Remediation Plan ("SRP").

Moreover, LECO ignores the current state of the T&D System and the findings of the Puerto Rico Legislative Assembly in enacting Act 120-2018 and Act 57-2014, which establish that PREPA's T&D System was obsolete and could not be considered to bear the capacity and characteristics of a 20th-century utility.

LECO does not identify whether and which additional or different performance metrics targets may lead PREPA to reach the stature of a 21st-century utility if adopted and implemented during the first three years after PREPA exits bankruptcy. Moreover, LECO ignores the uncontested expert testimony of Mr. Terzic, who testified that "transformation requires appropriate budgeting and probably integrated resource planning which can be addressed by the PREB in separate proceedings where priorities can be set, and adequate budgets approved. I do not believe it is necessary to add numerous metrics at this time to the OMA, which was approved by PREPA, PPP, and LUMA and is under PREB supervision to meet PREPA's most pressing and immediate needs." *See Exhibit 5 of the Evidentiary Hearing, Rebuttal Testimony of Branko Terzic (February 16, 2022), p. 26, lines 534-538.*

Act No. 57 of May 27, 2014, known as the *Puerto Rico Electric Power System Transformation Act* (“Act 57-2014”), as amended by Act 17-2019, and the T&D OMA further public policy principles and mandates to transform PREPA. Those statutes and the T&D OMA, however, do not provide that one or more performance incentive mechanisms shall allow PREPA and its T&D System to attain characteristics of a 21st-century utility. On the contrary, the Legislative Assembly adopted a multi-faceted approach and process for that transformation. To wit, as the Statement of Motives of Act 120-2018 provides, the statute was meant to “begin the process to transform the Island’s electric power system into a modern, sustainable, reliable, efficient, cost-effective, and resilient to the ravages of nature. With the legal framework herein adopted, we move on to the next step: assessing the market and requesting proposals from companies interested in participating in the transformation of Puerto Rico’s electric power system.” The first step of PREPA’s transformation was the creation of Public-Private Partnerships, including the one established in the T&D OMA with LUMA as Operator of the T&D System.

Act 17-2019, in turn, established public policy objectives, a regulatory framework, and legal mandates to further the transformation of the electric power grid, recognizing a “lack of infrastructure maintenance, . . . inadequate distribution of generation vis-à-vis demand, . . . absence of the necessary modernization of the electrical system to adjust it to new technologies, energy theft, and [a] reduction of the Electric Power Authority’s personnel.” *See* Act 17-2019, Statement of Motives. The Legislative Assembly clearly stated in Act 17-2019 that it meant to *initiate* a transformation to exchange inefficiency for operational excellence. *Id.* Among the panoply of mechanisms to enable this first step to transform PREPA and electric power services in Puerto Rico,

Act 17-2019 amended Act 57-2014 to include performance-based regulation to “encourage energy companies to invest, in a cost-effective manner, in infrastructure, technology, the incorporation of distributed generation, renewable energy sources, and services that inure to the benefit of the electrical system and consumers.” Act 57-2014, Section 6.25B, 22 LPRA § 1054x-2 (2023). Act 57-2014, however, does not provide what LECO proposes: that in its inception, performance incentive mechanisms can only function if the performance incentive mechanisms immediately lead to transforming PREPA into a 21st-century utility despite the fact that PREPA, while it was administered as a public corporation, did not exhibit the qualities of a 20th-century utility.

As Mr. Branko Terzic established in his uncontested pre-filed testimony, per Act 120-2018, the qualities of a 20th-century electric utility were not found in PREPA operating under government-employed managers two decades into the 21st century. *See* Exhibit 5 of the Evidentiary Hearing, Rebuttal Testimony of Branko Terzic (February 16, 2022), p. 14, lines 259-262. Thus, at this time and in connection with the Revised Annex IX, “[t]he question for the members of the PREB is whether the initial metrics are adequate to get PREPA moving in the direction first of a viable 20th century utility before it can move to 21st century standards.” *Id.* p. 15, lines 289-291.

Through the T&D OMA, the Government of Puerto Rico sought to further the first step towards transforming the electric power grid. Said transformation, per the T&D OMA, is dependent, however, on foundational work that includes a plan to remediate the T&D System, known as the SRP, recognizing that: “certain components of the T&D System and the manner in which the T&D System is operated do not currently meet the standards of performance required under this Agreement, including the fact that certain matters related to the T&D System or T&D

System Sites and certain general operating and administrative practices may not comply with Contract Standards, and (B) a period of review, planning, remediation, repair and replacement will be required to enable Operator to achieve the Contract Standards.” *See* T&D OMA, Section 4.1(d). Per the T&D OMA, in alignment with the recognition by Puerto Rico’s Legislative Assembly on the neglected and dire state of PREPA’s electric power grid, LUMA developed, and this Energy Bureau approved on May 31, 2021, LUMA’s SRP that includes remediation initiatives that require work for several years and have milestones to be completed up to the year 2031. *See* Case No. NEPR-MI-2020-0019.

LECO ignores the aforementioned in pursuing a misguided and arbitrary position that a 21st-century public utility may be attained in the time frame of three years when the proposed Performance Metrics Targets would apply. LECO also chooses to ignore that LUMA operates the T&D System within budgetary constraints, and thus, funding resources to transform and remediate the T&D System and afford LUMA a reasonable opportunity to achieve the Performance Metrics Targets are constrained and limited by system revenues while at the same time, PREPA is still undergoing bankruptcy.

LECO’s insistence on the idea of a 21st-century electric power utility is misplaced. It shows LECO’s lack of knowledge of the intricacies of operating and transforming an electric power utility after decades of neglect. The Energy Bureau should reject LECO’s proposals in its Brief based on several layers of incorrect ideas and assumptions on the targets and performance levels that the Operator of the T&D System may achieve.

H. The Energy Bureau Should Reject the Proposal for Independent Monitoring.

In Section VI of its Brief, LECO argues that the Performance Incentive Mechanism to be adopted in this proceeding should include independent monitoring and verification of outage data.

LECO's proposal on independent monitoring was refuted by Mr. Terzic for LUMA, who showed that independent verification of performance data of PREPA is already available through this Energy Bureau's authority. Thus, there is no need to request one in the context of this proceeding. To wit, Mr. Terzic established in his pre-filed testimony in response to LECO's proposal of independent monitoring that "[t]he call for 'independent' monitoring is confusing as one must ask the question 'Independent of whom'? The PREB, as an independent regulator created by and under Puerto Rico law, is in its structure and establishment 'independent' of PREPA, LUMA and any other agency. That the PREB is independent is established by law:" See Exhibit 5 of the Evidentiary Hearing, Rebuttal Testimony of Branko Terzic (February 16, 2022), p. 17, lines 334-340.

LECO's proposal on disclosure of outage data is beyond the scope of this proceeding and ignores LUMA's submission of outage data in compliance with the orders of this Energy Bureau in Case NEPR-MI-2019-0007. See, e.g., *Submission in Compliance with Resolutions and Orders Dated October 7th and 20th 2022*. Furthermore, LECO does not put forth any supported argument to refute the uncontested testimony of Mr. Cortez on this topic, who testified that:

LUMA understands that this proceeding does not involve consideration of requirements to publish supporting data on the reliability indices that the Energy Bureau tracks in Case No. NEPR-MI-2019-0007. The Energy Bureau has the authority to audit the reliability indices calculations and the supporting data and to issue determinations on which data should be published, preserving confidentiality concerns to protect the T&D System

and the public. To the extent that Mr. Irizarry is here advocating for LUMA to publish information on available energy and consumption by customers, I note that LUMA provides customers information on consumption in the monthly bills and as part of the Quarterly Metric reporting in Case No. NEPR-MI-2019-0007. Also, LUMA has published in its website system load and generation capacity. Customers can now see the estimated peak load and estimated generation capacity for the day on the LUMA website. As LUMA informed in its Quarterly Report for the Second Quarter, FY 2022, filed with this Energy Bureau, LUMA developed a web-based map that, should a load shed event occur, shows the areas affected by load shedding and the estimated times for service restoration. The maps were refreshed with an update that captured all distributed generation installed until November 30th, 2021. The Mi LUMA webpage also includes maps on service interruptions and a list of clients without service.

Exhibit 24 of the Evidentiary Hearing (rebuttal testimony, Don Cortez, February 17, 2022), p. 15, lines 291-295.

Beyond stating in a conclusory fashion that they do not agree with the testimony of Mr. Cortez, LECO has not placed this Energy Bureau in a position to determine that the information that LUMA publishes, as explained by Mr. Cortez, should be deemed insufficient. Moreover, LECO did not establish the relevance of the publication of raw outage data to the approval by this Energy Bureau of the Revised Annex IX and the Proposed Performance Metrics Targets.

It bears noting that regarding this topic, LECO misstates the testimony of Mr. Hall during the Evidentiary Hearing. Contrary to what LECO argues, Mr. Hall did not testify that any professional engineer may double-check outage data. Instead, in response to the question, “If raw outage data was released, a professional engineer who was versed in 1366 would be able to calculate reliability metrics using that data; is that right?,” Mr. Hall testified that “[t]hey would also have to understand the data elements in the particular database that’s released. All of OMS systems have different data schemes and names for the same elements.” *See Evidentiary Hearing,*

Vol. 1, February 7, 2023, p. 240, lines 7-15; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [5:10:29].

I. The Energy Bureau Must Strike from the Record LECO's Unsupported and Belated Proposal of Targets and Cursory Proposal to Add Key Performance Metrics.

On page 19 and pages 94 through 105 of its Brief, LECO introduces new proposals that **lack any support on the record** and were not presented for consideration through pre-filed testimonies or during the Evidentiary Hearing. On this occasion, LECO's statements and requests involve proposed Minimum Performance Levels and Targets for Performance Metrics and a request to add Key Performance Metrics.

In a cursory sentence on page 19 of its Brief, LECO requests that this Energy Bureau include Distributed Interconnections, Energy Efficiency, Demand Management, and Vegetation Management as Key Performance Metrics. LUMA vehemently objects to a belated and unsupported request by LECO that amounts to bad faith and obstinate conduct. It cannot be overstated that the only proposal under consideration is the Revised Annex IX to the T&D OMA. Neither this Energy Bureau, LECO, nor the Independent Consumer Protection Office ("ICPO") submitted counterproposals, much less a counterproposal regarding Key Performance Metrics.

Then, on pages 94 through 105, in the Section labeled "conclusion," LECO proposes that this Energy Bureau "impose" metrics in accordance with proposals stated therewith. LECO proposes baselines, target thresholds, elimination of incentives for certain metrics, and suggests assignment of points for reaching targets based on what LECO labels "best-case scenario," minimum performance levels, and point deductions for failing to meet minimum performance

levels. **None of these proposals that span 12 pages of LECO's Brief were submitted for the record, discussed in discovery, nor presented through pre-filed testimonies. These proposals, without a doubt, were not addressed during the Evidentiary Hearing nor subject to examination by the Energy Bureau or cross-examination by LUMA.**

As the record shows, LECO had ample opportunity to conduct discovery in this proceeding and file expert testimony. LECO submitted the testimonies of two expert witnesses, Mr. Alameda and Mr. Irizarry. LECO's experts **did not propose that this Energy Bureau add Key Performance Metrics and did not even suggest assigning points for reaching targets, minimum performance levels, and point deductions for failing to meet minimum performance levels that LECO put forth in its Brief.** The only proposals submitted for consideration by LECO were the reward-penalty scheme suggested by Mr. Alameda, *see* Exhibit 8 of the Evidentiary Hearing (pre-filed testimony, Alameda), and the pre-filed testimony of Mr. Irizarry that includes nine (9) recommendations, *see* Exhibit 7 of the Evidentiary Hearing (pre-filed testimony, Irizarry). LECO's experts did not propose nor support the targets, target thresholds assignment of points, point deductions, and method distinguishing between best- and worst-case scenarios that LECO suggests in its Brief. LECO's proposal is unsupported, in addition to having been presented belatedly. LUMA can only surmise that LECO has presented these proposals at this stage with the conscious intent to undermine this process and deprive LUMA of any opportunity to confront and refute the proposals.

As this Energy Bureau is aware, LUMA filed fourteen (14) rebuttal testimonies that address in detail the pre-filed testimonies of Mr. Alameda and Mr. Irizarry, in addition to filing rebuttals

by two expert witnesses, Mr. Terzic and Dr. Lara. LUMA exercised its right to confront the evidence and proposals by LECO at every stage: through discovery, pre-filed testimonies, and during the Evidentiary Hearing. Respectfully, LECO's attempt to introduce new proposals and evidence in a final Brief should be considered vexatious and an intentional disregard of the orders of this Energy Bureau in this proceeding that set procedural calendars that allowed LECO to opportunely present testimonies and proposals that were subject to discovery and consideration in an Evidentiary Hearing and that clearly state that final briefs are meant to present arguments based on the evidence that has been presented for the record. *See, e.g.*, Resolutions and Orders of June 4, 2021, July 2, 2021, August 9, 2021, September 27, 2021, October 20, 2021, January 14, 2022, February 15, 2022, September 16, 2022, and October 14, 2022. As this Energy Bureau ruled in the August 17th Order, "the evidentiary and public hearings closed on February 10, 2023, and February 17, 2023, respectively. The parties engaged in the phase of filing their final legal briefs and respective replies. This phase is argumentative. The Energy Bureau expects to receive the final arguments of the parties based on the evidence in the administrative record. It does not contemplate that the parties indiscriminately and substantially introduce evidence they should have presented during the previous phases of the administrative process." *See* August 17th Order, p. 3.

LECO's belated request infringes LUMA's rights to due process, as it introduces new evidence to the record after the discovery process concluded, an evidentiary hearing was held, and at a stage where the parties are only allowed to submit argumentation based on the evidence submitted for the record. A decision to accept LECO's proposal to adopt Key Performance Metrics, targets, target thresholds, point assignments, and a system to deduct points that were not

considered during the course of this proceeding would undermine LUMA's rights under the T&D OMA and constitute arbitrary action in violation of procedural and substantive due process protections, *see López y otros v. Asoc. de Taxis de Cayey*, 142 DPR 109, 113 (1996) (Due process in the administrative sphere requires a fair and equitable process that guarantees and respects the dignity of the individuals concerned); *Henríquez v. Consejo Educación Superior*, 120 DPR 194, 202 (1987) (“The requirements of due process offer protection to regulated parties against administrative arbitrariness.”). Admitting new proposals not subject to discovery nor presented for consideration through pre-filed or live testimonies, violates LUMA's rights to due process, as it completely impairs its right to examine the evidence and refute the same. *See Álvarez v. Junta de Condómines*, 121 DPR 896 (1988) (“a fundamental requirement of the due process of law is the opportunity to present evidence and argue and to be able to rebut contrary evidence”); *Asoc. de Taxis de Cayey*, 142 DPR 109, 115 (*stating* that the right to a public hearing would be meaningless if the administrative agency were allowed to base its decision on evidence outside the hearing without allowing the parties to rebut or cross-examine new evidence or present other evidence to the contrary).²

LUMA requests that this Energy Bureau strike from the record and deny the aforementioned requests by LECO to add Key Performance Metrics and for this Energy Bureau to

² In footnote 58 of its Brief, LECO argues that Abandonment Rate cannot be considered a Key Performance Metric because it is not included in the original Annex IX to the T&D OMA. LECO is mistaken. The T&D OMA defines “Key Performance Metrics” as those metrics ‘Key Performance Metrics’ to be agreed upon during the Front-End Transition Period and set forth in Annex IX (Performance Metrics).” During the Front-End Transition Period, Abandonment Rate was included in the Revised Annex IX as a Key Performance Metric and has been included as such since LUMA's filing of February 25, 2021, in this proceeding. LECO once again shows that it misunderstands this process and the T&D OMA.

impose the targets, target thresholds, assignment of points, and deduction of points that LECO proposed for the first time in this proceeding in its final Brief. LUMA also moves this Energy Bureau to impose sanctions on LECO for vexatious behavior pursuant to Section 10.2 of Regulation 8543, Regulation on Adjudicative, Notice of Non Compliance, Rate Review and Investigation Proceedings (“When a party acts temerarily, the Commission may order the full or partial reimbursement of expenses incurred by the Commission for professional services hired during the adjudicative proceedings, as well as the reimbursement of any expenses incurred by other parties or the Commission as the result of frivolous conduct.”).

J. This Energy Bureau Should Reject LECO’s Arguments Regarding Assigned Weights.

LECO also takes issue with the weight assigned to the Proposed Performance Metrics Targets. *See* LECO’s Brief, pages 17-19. In a cursory fashion, LECO claims that LUMA does not give appropriate weight to the most important metrics. LECO, however, does not provide any justifications based on applicable law, regulatory requirements, or evidence admitted for the record, to support its subjective and unprincipled stance that most important metrics do not have appropriate weight. In fact, LECO does not define nor explain with reference to applicable law, regulatory requirements, or evidence admitted for the record, the terms “appropriate weight” and “most important metrics.” LECO does not even identify which metrics may be considered “most important” or why.

LECO’s subjective and unsupported claims do not trump, as a matter of law, the weight of the evidence in the administrative record that includes a proposal that assigns base points and weights (included in LUMA’s Revised Annex IX). The record includes the uncontested testimony

of Mr. Hurtado, who explained that the assigned weights are the product of discussions and decisions with the Government of Puerto Rico and reflect the state of the T&D System and the programs that LUMA would adopt within budgetary constraints:

I think there are a couple of things that influence weight. One was what was the weight that was in the original OMA, in the draft, Annex IX. And then in some cases there were discussions specifically about the weight with the P3 Authority, about what was appropriate weighting, given the state of the utility in that area that we had found, and the information that we gathered during the front-end transition or the programs that we were planning to put into our budgets moving forward.

See Evidentiary Hearing, Vol. 1, February 7, 2023 (English Portion), p. 173, lines 1-14; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [3:08:42].

It must be noted that LECO advances an incorrect reading of the testimony of Mr. Hurtado to suggest that the assigned weights should be construed as being at odds with the importance of the proposed Performance Metrics. During the Evidentiary Hearing, in response to questions on how the assigned weights for the safety metrics align with LUMA's goal to prioritize safety, Mr. Hurtado explained that the assigned weights do not mean to suggest that some metrics [or performance areas] are important and others are not. The fact is that all of the performance areas covered by the Proposed Performance Metrics Targets are important and further important goals for LUMA as Operator of the T&D System in accordance with the provisions of the T&D OMA and public policy. As Mr. Hurtado explained, the weighting assigned "is a result of a process based on the data. And . . . based on the discussions and the feedback and revisions that we received from the P3." *See* Evidentiary Hearing, Vol. 1, February 7, 2023 (English Portion), p. 174, lines 12-15; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [3:10:16]. LECO

intentionally misleads in its Brief as it ignores the whole of the testimony of Mr. Hurtado on this topic. In this regard, Mr. Hurtado testified as follows in response to questions by LECO's counsel:

Q. So, Mr. Hurtado, if we were to look at the effective weights and we were to see that OSHA metrics have a lower effective weight than other metrics like, say, how quickly LUMA picks up the phone, when you abandon the ring or are on a phone call; how can you reconcile that with LUMA's goal to prioritize safety? Is LUMA really prioritizing safety over picking up the phone if the effective weight of the OSHA metrics is lower than picking up the phone's metric?

A. No. It has to do with math. So[,] there is 30 base points for customer service; 50 for the technical, safety and regulatory; and 33 for finance. So, there's more metrics in the technical, safety and regulatory. And so, the weighting is a result -- it has to add up to the 60. And so[,] it's not necessarily a reflection, as I mentioned already, that we think that safety is less important than the J.D. Power customer survey for residential, for example. That's not the case.

See Evidentiary Hearing, Vol. 1, February 7, 2023 (English Portion), p. 174, lines 17-25, p.175, lines 1-13; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [3:10:50].

The record refutes LECO's contention in its Brief that the Proposed Performance Metrics Targets may be construed as somehow not prioritizing employee safety or prioritizing answering the phone over employee safety. As explained above, the record is clear that the assigned weights result from mathematical formulas and a function of the number of metrics per each category. The weights are not designed nor intended to measure the relative importance of the performance categories or Performance metrics. Moreover, Mr. Hurtado explained at length the importance of LUMA and any utility of employee safety, thereby rejecting the notion that safety is not being prioritized. *See* Evidentiary Hearing, Vol. 1, February 7, 2023 (English Portion), p. 176, lines 2-

K. LUMA’s Performance Metrics Targets

1. Safety Performance Metrics³

a. LUMA’s Witness Is Entirely Credible.

LECO contends that the testimony in support of LUMA’s Safety Performance Metrics is prefabricated and, therefore, not credible. *See* LECO’s Brief, p. 22. LECO claims that although LUMA presented three witnesses who held different positions at LUMA and did not have the same qualifications or experiences, the testimony was unaltered. *Id.*

First, LUMA requested authorization to substitute the testimony of Mr. Jorge Meléndez (“Mr. Meléndez”), LUMA’s designated witness for the Safety Performance Metrics, due to the fact that he was no longer employed by the company. As such, Mr. Curtis Clark (“Mr. Clark”), Functional Lead of Emergency Preparedness for LUMA, was designated as the witness to testify in support of and in connection with those metrics. LUMA noted that Mr. Clark adopted the testimonies already offered by Mr. Meléndez and had not altered the substance of those testimonies. *See Motion Requesting Authorization to Substitute Pre-Filed Testimonies* dated January 26, 2023. On February 1, 2023, the Energy Bureau issued a Resolution in which it determined that based on the redline submitted by LUMA that compared the testimonies of Mr. Meléndez and Mr. Clark and considering that the modifications did not alter the substance of the

³ LECO repeatedly refers to LUMA’s Safety Performance Metrics as “Labor” metrics, in what seems an intent to rename those metrics. LUMA vehemently objects to said characterization.

original testimonies, the Energy Bureau received and accepted Mr. Clark's pre-filed testimonies. *See* Resolution dated February 1, 2023. Because the Energy Bureau already ruled on this same issue in favor of admitting Mr. Clark's testimony, it should reject LECO's suggestion that an inference be drawn that the testimonies are not credible based on the fact that company representatives with different professional backgrounds adopted the testimonies.

Second, LECO seems to ignore the concept of a witness designated to testify as a corporate representative. A corporate representative, while testifying, bounds the corporation because the testimony represents the corporation's knowledge, not that of the individual testifying. The corporate representative acts as the voice of the corporation; thus, the corporation "appears" vicariously through said witness. The responsibility of a corporation when designating a corporate witness is to make available a witness prepared to answer questions within the scope of the topics to be the subject of examination. Since the commencement of this proceeding, LUMA has designated corporate witnesses to testify in the different areas of its operation in which Performance Metrics are being proposed. Those individuals were selected based on their knowledge of the areas subject to discussion and their position at LUMA.

Specifically, Mr. Clark has worked in various environmental, safety, quality, and emergency response roles within utility companies for the past 14 years. *See* Exhibit 19 of the Evidentiary Hearing, Direct Testimony of Curtis Clark (January 24, 2023), p. 2, lines 11-12. Throughout his roles with LUMA since June 2021, Mr. Clark has prepared, verified, and submitted the Health, Safety, and Environmental performance metrics, including those reported to the Energy Bureau in Case NEPR-MI-2019-0007. *Id.*, lines 17-20. He was also a part of the LUMA team in

charge of reviewing the baselines and targets for safety metrics to be included in the Revised Annex IX submitted to this Energy Bureau on February 25, 2021, and August 18, 2021. *Id.*, p. 2, lines 20-23, and p. 3, line 24.

Further, Mr. Clark has experience managing a team of professionals to ensure that organizational environmental and quality systems were established to minimize the operational impact on the environment and that work completed conformed to customer and regulatory requirements, including validating and approving the organizational health, safety, environmental and quality metric data for submission to senior leadership and external stakeholders. *See* Exhibit 19 of the Evidentiary Hearing, p. 3, lines 27-33. Therefore, Mr. Clark has the appropriate qualifications and experience to testify as a LUMA corporate representative on the Safety Performance Metrics.

Mr. Clark is knowledgeable of the data and work papers already offered to this Energy Bureau as part of his employment duties. He was the person within LUMA who could testify on the specific topics covered initially by Mr. Meléndez’s testimony. The testimony offered by LUMA’s witness for the Safety Performance Metrics is not prefabricated. To the contrary, it is credible and reflects the position of the company in connection with those metrics and has been consistent since the commencement of this instant proceeding.

b. LUMA’s Safety Performance Metrics

i. LUMA’s Safety Performance Metrics Comply with the Energy Bureau’s Regulatory Principles

LECO alleges that the proposed Safety Performance Metrics contradict the regulatory principle embodied in Section 7.1 of Regulation 9137 because there are already OSHA standards

in place for employee safety, and there are non-financial incentives as proposed by some studies. See LECO's Brief, pp. 24-25.⁴

As a threshold matter, it must be clarified that Mr. Clark testified that those principles were considered in developing all performance recommendations. See Evidentiary Hearing Transcript, Vol. 2, February 8, 2023 (English Portion), p. 278, lines 16-21; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:02:52]. Although he personally did not review the specific document when developing the performance entries, Mr. Clark indicated that he was aware of the principles as a key consideration in the process. *Id.*, p. 278, lines 22-25, p. 279, lines 1-5; AP-

⁴ Section 7.1 Principles for Establishing Performance Incentive Mechanisms.

The Energy Bureau shall apply the following principles in establishing Performance Incentive Mechanisms:

- A) The Energy Bureau's policy goals and desired outcomes, including but not limited to:
 - 1) The volatility and affordability of the electric power service rates;
 - 2) The economic incentives and investment payback;
 - 3) The reliability of the electric power service;
 - 4) Customer service and commitment, including options to manage electric power costs available to customers;
 - 5) Customers' access to the Electric Power Service Companies' information systems including, but not limited to, public access to information about the aggregated customer energy consumption and individual consumers' access to the information about their energy consumption;
 - 6) Compliance with Metrics to achieve the energy efficiency standards established in Act 17-2019;
 - 7) Compliance with the Renewable Portfolio Standard and rapid integration of renewable energy sources, including the quality of the interconnection of resource located in consumers' properties;
 - 8) Infrastructure maintenance;
 - 9) Compliance with federal and local environmental policies, as applicable; and
 - 10) Other relevant policy goals established by the Energy Bureau.
- B) Performance Incentive Mechanisms should induce behavior consistent with public policy that would not otherwise occur to a sufficient degree in the absence of the Performance Incentive Mechanism.
- C) Performance Incentive Mechanisms shall be clearly defined, easily interpreted, and easily verified.
- D) Performance Incentive Mechanisms shall focus on performance areas within reasonable control of affected Companies.
- E) Performance Incentive Mechanisms shall be designed to maximize net benefits for customers. Where benefits and costs are quantifiable, the net benefits should be greater than the Financial Incentive payments.
- F) Performance Incentive Mechanisms shall provided the affected Company with no more total financial incentives than are needed to align their performance with the public interest.
- G) Performance Incentive Mechanisms should complement the existing financial incentives for each affected Company, without under- or over- compensating them for achieving the desired outcomes.

2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:03:07]. Thus, LECO's assertion that Mr. Clark admitted that the principles did not directly inform the development of these metrics is misleading and unfounded.

As for the controversy on the necessity of incentives-based Performance Metrics, during the Evidentiary Hearing, Mr. Clark stated that OSHA has a series of regulations for the operation of electrical T&D Systems that outline specific safety rules for the hazards that workers are exposed to. *See* Evidentiary Hearing Transcript, Vol. 2, February 8, 2023 (English Portion), p. 282, lines 4-8; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:07:49]. The principal mechanism is compliance enforcement of those specific regulations to maintain the public interest and reduce recordable injuries. *Id.*, lines 9-12; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:08:00]. They can inspect if there is evidence of non-compliance with an OSHA regulation. *Id.*, p. 282, lines 16-19; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:08:22]. Based on that inspection, they will evaluate the applicable regulations. If out of compliance with the regulations, they have administrative tools, including warnings or fines. *Id.*, lines 20-25; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:08:30]. However, Mr. Clark explained that LUMA felt that treating the OSHA Recordable Incident Rate as a Performance Metric was critically important as this area needed significant improvement compared to the performance of PREPA and the industry averages. *Id.*, p. 280, lines 1-8; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:04:41].

Mr. Clark further stated that LUMA does not have a financial incentive to make the targeted improvements without a performance metric. *See* Evidentiary Hearing Transcript, Vol. 2,

February 8, 2023 (English Portion), p. 281, lines 7-8; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:06:25].⁵ For example, OSHA does not set minimum performance standards, baselines, or targets to impose penalties. OSHA is not in the business of setting specified percentages in the reduction of recordable incidents or fatalities that a utility must meet. *See* Exhibit 20 of the Evidentiary Hearing, Rebuttal Testimony of Curtis Clark (January 24, 2023), p. 6, line 115, and p. 7, lines 116-117. OSHA sets standards that must be met, and on a case-by-case basis, OSHA investigates recordable incidents and imposes penalties if it determines that the employer incurred in violations. *Id.*, p. 7, lines 117-119. Also, OSHA does not impose penalties for all recordable incidents, nor does OSHA impose penalties for failure to meet minimum performance standards. LECO's expert witness, Mr. Irizarry, recognized that even though having a safe work environment is an indispensable business requirement, what OSHA establishes are minimums. *See* Evidentiary Hearing Transcript, Vol. 2, February 8, 2023 (Spanish Portion), p. 12, lines 17-20; AP-2020-0025 Evidentiary-20230208_Meeting Recording 2 [2:23:00]. That is, the record is clear as to the distinct role that OSHA regulations play and the purposes that Performance Metrics related to safety play in connection with Performance Incentive Mechanisms as the ones proposed by LUMA that arise out of the T&D OMA.

Also, although Mr. Clark indeed testified that there have been many studies that have indicated that improved safety performance generally results in improvements in other metric

⁵ It should be clarified that throughout his testimony at the Evidentiary Hearing, Mr. Clark did not "hesitate," as LECO tries to portray. *See* LECO's Brief, p. 24. The Energy Bureau's consultant requested Mr. Clark to speculate whether, in the absence of a performance incentive mechanism, LUMA would achieve the target performance levels. Mr. Clark's response was that he did not know. *See* Evidentiary Hearing Transcript, Vol. 2, February 8, 2023 (English Portion), p. 280, lines 9-16; AP-2020-0025 Evidentiary-20230208_Meeting Recording. Clearly, Mr. Clark was presented with a speculative scenario to which he declined to speculate.

areas, he admitted not being particularly familiar with those studies in order to elaborate on that idea during the Evidentiary Hearing. *See* Evidentiary Hearing Transcript, Vol. 2, February 8, 2023 (English Portion), p. 281, lines 9-18; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:06:32]. Therefore, contrary to LECO's assumption, no evidence on the record establishes that because Mr. Clark showed awareness that there are non-financial incentives as proposed by some studies, LUMA's Safety Performance Metrics contradict the principles in Regulation 9137.

OSHA's standards are minimums that need to be met but do not necessarily induce behavior consistent with public policy that would not otherwise occur to a sufficient degree in the absence of the Safety Performance Metrics. The Safety Performance Metrics promote precisely going beyond and above the bare minimum in a measurable and quantifiable manner. Certainly, LUMA has a legal obligation to meet OSHA's safety standards; however, adopting the Safety Performance Metrics would aid in improving those safety standards to more than what is legally required. LECO would have to agree that incentivizing the improvement of safety standards beyond those legally required will ultimately benefit LUMA's workforce and customers.

ii. LECO's Objection to the Incentive Mechanism and Request for the Imposition of Penalties are Unwarranted

LECO argues that any incentive reward for meeting or exceeding the minimum standards on employee safety is unwarranted. *See* LECO's Brief, p. 26. First, LECO claims, without any support on the record, that it is a wasteful use of public funds, as LUMA needs to comply with these safety standards under OSHA and local law. *Id.* Second, LECO alleges that the incentive mechanism provides LUMA with a percentage of the incentive fee for every percentage of the

improvement, even if that improvement is just barely above the minimum threshold. *Id.*, p. 27. Finally, LECO contends that penalties should be applied to these performance metrics. *Id.*, p. 28.

As discussed in the previous section, OSHA's standards are minimums but do not necessarily induce behavior consistent with public policy that would not otherwise occur to a sufficient degree in the absence of the Safety Performance Metrics. Even though LUMA has a legal obligation to meet OSHA's safety standards, adopting the Safety Performance Metrics would aid in improving those safety standards to more than what is legally required. Therefore, the Safety Performance Metrics aim to achieve more than the safety standards under OSHA and local law. LUMA does not understand why LECO vehemently opposes incentivizing reaching beyond the bare minimum.

Moreover, during the Evidentiary Hearing, Mr. Clark testified that there were values included in the original T&D OMA under the OSHA total recordable injury rate. *See* Evidentiary Hearing Transcript, Vol. 2, February 8, 2023 (English Portion), p. 495, lines 18-21; AP-2020-0025 Evidentiary-20230208_Meeting Recording 2 [4:30:35]. Therefore, the incentive mechanism framework for the Safety Performance Metrics was not only LUMA-sided but was agreed upon by PREPA and the P3A.

Additionally, LECO contradicts itself in opposing the safety metrics. That is, LECO keeps asserting that financial incentives for the Safety Performance Metrics are unwarranted because, ultimately, LUMA is obliged to follow OSHA standards and local law. In contrast, however, LECO favors the imposition of penalties for poor performance regarding safety. To wit, LECO argues that financial incentives are wasteful in light of the duty to comply with OSHA. However,

LECO advocates for the imposition of penalties despite the fact that OSHA may levy sanctions on LUMA if LUMA violates safety regulations.

LECO's proposition is flawed in that it seeks penalties for certain performances they characterize as poor, but they have not defined what poor performance is. To be clear, LECO does not even state if poor performance is equivalent to not following OSHA standards and local law.

Mr. Clark presented a pre-filed rebuttal testimony on the topic of penalties, establishing that, like all utilities and other employers, LUMA falls under OSHA regulations and is subject to penalties and fines for noncompliance. Thus, imposing additional penalties will not promote incremental improvement in performance and could instead amount to double or multiple penalties. *See* Exhibit 20 of the Evidentiary Hearing, Rebuttal Testimony of Curtis Clark (January 24, 2023), p. 5, lines 79-82. It bears noting that the uncontested testimony of LUMA's expert witness, Dr. Lara, establishes that penalties may have perverse effects and are not guaranteed to encourage better performance. *See* Exhibit 6 of the Evidentiary Hearing, p. 6, lines 98-107.

Although OSHA does not impose penalties for all recordable incidents, nor does OSHA impose penalties for failure to meet minimum performance standards, on a case-by-case basis, OSHA investigates recordable incidents and imposes penalties if it determines that the employer incurred violations. *See* Exhibit 20 of the Evidentiary Hearing, p. 7, lines 118-121. It depends on the circumstances. As to a specific violation, OSHA has a large number of regulations that could result in fines and penalties. *See* Evidentiary Hearing Transcript, Vol. 2, February 8, 2023, p. 288, lines 2-6; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:14:42]. It is a given that for OSHA to impose penalties, a prior investigation must occur, concluding that the employer

incurred a violation. An OSHA violation could result in fines and penalties depending on the circumstances. However, if LECO's pretense is to subject LUMA to penalties, even when OSHA understands there should be none, they purport to subject LUMA to penalties for a standard that not even OSHA would apply, after carrying out a process following the standards set by law and regulation. LECO's argument that because there is no impediment to establishing incentives, there should not be an impediment to imposing penalties is overly simplistic, unsupported, and irresponsible, at best.

LUMA's proposed safety metrics serve purposes different from those served by penalties, such as those that OSHA has the authority to impose. Incentives for safety metrics encourage the utility to improve safety metrics beyond the minimum threshold, whereas penalties are only useful for deterring poor performance in this area. *See* Exhibit 20 of the Evidentiary Hearing, p. 5, lines 82-86. LUMA's proposed metrics, baselines, and targets will allow LUMA and the Energy Bureau to assess LUMA's safety performance compared to PREPA's prior performance and compare LUMA's performance with utilities.

As their final argument, LECO indicates that to say that termination of the T&D OMA is a penalty for underperforming Safety Performance Metrics is a gross stretch of the contractual stipulation. However, as Mr. Clark stated, termination of the T&D OMA is the severest of penalties. To his knowledge, other utilities do not face a similar type of penalty. *See* Exhibit 20 of the Evidentiary Hearing, p. 6, lines 98-99. For example, the proposed Key Performance Metric on OSHA fatalities, with a baseline and target of zero (0) fatalities, is a good example of the unsoundness of LECO's proposal that penalties be imposed if minimum standards are not met. *Id.*,

lines 99-102. This Key Performance Metric tracks all work-related recordable incidents. For example, if LUMA were to experience a higher recordable incident rate than described in the baseline during three consecutive Contract Years, LUMA could be faced with the harshest of penalties: the cancellation of the T&D OMA. *Id.*, lines 102-106. There is no gross stretch of the contractual stipulation.

iii. LUMA’s Safety Performance Metrics Baselines and Targets are Appropriate.

LECO argues that the baseline rates for the Safety Performance Metrics in LUMA’s proposal vary from those the Energy Bureau issued in a Resolution and Order dated May 21, 2021, in Case No. NEPR-MI-2019-0007. *See* LECO’s Brief, p. 31. LECO claims that LUMA is setting the bar for its performance, arguably the lowest possible threshold, and receiving monetary incentives for reaching a degree of normalcy by using data from the worst years of PREPA performance. *Id.*, p. 32. In addition, LECO alleges that LUMA’s targets do not follow the industry standard. *Id.*, p. 33.

In his pre-filed direct testimony, Mr. Clark explained that for the submitted proposed OSHA-related Performance Metrics, LUMA evaluated the PREPA OSHA 300 and 301 Logs, and the PREPA Injury and Illness Data Reports, including a “Casi” report that PREPA began recording at the end of 2019. The data includes GENCO, Administration, and Transmission & Distribution records. *See* Exhibit 19 of the Evidentiary Hearing, lines 99-103. In fact, the “Casi” report and the data pertaining to the PREPA Injury and Illness Data Reports, were included as an exhibit of Mr. Clark’s pre-filed direct testimony. *Id.*, lines 39-41.

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

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

As mentioned before, LECO contends that by using data from the worst years of PREPA performance, 2017 to 2019, LUMA is setting the bar for its performance, arguably the lowest possible threshold. *See* LECO’s Brief, p. 32. LECO states that such a time period included two hurricanes, PREPA’s bankruptcy petition, and a series of earthquakes. However, LECO seems to ignore the baselines established by the Energy Bureau in a Resolution and Order dated May 21, 2021, in Case No. NEPR-MI-2019-0007 were based on data from July 2019 through June 2020. *See* Resolution and Order dated April 8, 2021, issued in Case No. NEPR-MI-2019-0007. From

July 2019 through June 2020, PREPA's bankruptcy was still ongoing; there were a series of earthquakes and the COVID-19 pandemic. Considering either LUMA's or the Energy Bureau's selected time periods, the data available is from periods not subject to entire normalcy in operations.

As to the proposed Safety Performance Metrics targets, during the Evidentiary Hearing, Mr. Clark testified that based on the assessment of the data in the programs that LUMA was proposing as part of the System Remediation Plan, it was determined that targets for the Safety Performance Metrics could be set more aggressively. *See* Evidentiary Hearing Transcript, Vol. 2, February 8, 2023 (English Portion), p. 273, lines 4-8; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [0:55:20]. For example, the targets originally proposed for Year 5 in the T&D OMA were then proposed for Year 3 in LUMA's Revised Annex IX. *Id.*, lines 9-11. **Mr. Clark indicated that it was determined that performance improvements could be achieved faster with the proposed increment program. In other words, a more accelerated course is being presented as part of LUMA's Revised Annex IX.** *Id.*, lines 12-16; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [0:55:42].

Per Mr. Clark, LUMA's proposed OSHA Recordable Incident Rate target improvements were first compared to Edison Electric Institute ("EEI") industry standards, then by assessing feasibility from PREPA's current state related to health and safety matters. *See* Evidentiary Hearing Transcript, Vol. 2, February 8, 2023 (English Portion), p. 274, lines 21-25; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [0:57:23]. The EEI is a collection of private transition industry distribution operators. Organizations voluntarily provide their occupational

injury data using similar metrics to the ones proposed by LUMA. *Id.*, p. 275, lines 7-13; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [0:58:02]. To the best of Mr. Clark's knowledge, the industry average total reportable injury rate is approximately 2.5 for this given year. *Id.*, lines 15-18. A strategy was developed to lead LUMA to an Incident Reduction near 50% from the baseline in Year 3. *See* Exhibit 19 of the Evidentiary Hearing, lines 188-189, and Exhibit 11 of the Evidentiary Hearing, p. 25. A similar approach to the OSHA Recordable Incident Rate Performance Metric was adopted in the OSHA Fatalities Performance Metric to lead LUMA to an Incident Reduction of nearly 50% from the baseline in Year 3. *Id.*, lines 189-191, and Exhibit 11 of the Evidentiary Hearing, p. 25. A similar approach to the OSHA Recordable Incident Rate Performance Metric was adopted in the OSHA DART Rate Performance Metric to lead LUMA to an Incident Reduction near 50% from the baseline in Year 3. *See* Exhibit 11 of the Evidentiary Hearing, p. 26.

As to OSHA Severity Rate Performance Metric, Mr. Clark explained that its targets have a high degree of fluctuation, depending on external factors. *See* Evidentiary Hearing Transcript, Vol. 2, February 8, 2023 (English Portion), p. 285, lines 5-8; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:11:36]. LUMA has programs in the System Remediation Plan that have a large impact on the overall trend and improvement of Severity Rate Targets. *Id.*, lines 9-13; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:11:36]. However, there will always be a higher degree of variability in how the target is calculated. In any given year, one or two specific injuries can cause the Severity Rate to increase significantly. *Id.*, lines 14-19; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:11:36]. External factors cause a higher

degree of variability, but it is still significantly within the limits of a utility's control to develop programs to improve the trend. *Id.*, lines 20-23; AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 [1:11:36]. Since the targets of the OSHA Severity Rate Performance Metric rely significantly on external factors outside LUMA's control, targets were set to improve performance but provide flexibility to the extenuating circumstances that exist on a case-by-case basis. *See* Exhibit 19 of the Evidentiary Hearing, lines 192-194.

LUMA has extensively demonstrated the parameters used to determine the proposed targets for its Safety Performance Metrics. The targets submitted for the approval of the Energy Bureau were more aggressive than initially envisioned. Precisely, what was originally planned to be achieved after five (5) years was later decided it could be reached within three (3) years. For the OSHA Recordable Incident Rate, OSHA Fatalities, and OSHA DART Rate Performance Metrics, LUMA resolved to establish targets with a fifty percent (50%) reduction between the first year and the third year. The record thus negates LECO's contention that LUMA is setting the bar for its performance, arguably the lowest possible threshold.

c. The Public Safety Performance Metrics Proposed by LECO Are Not Viable in the Current State of the T&D System.

In his rebuttal pre-filed testimony, Mr. Clark explained that incidents due to public wrongdoing violations do not imply any LUMA wrongdoing. *See* Exhibit 20 of the Evidentiary Hearing, p. 6, lines 163-164. For many public safety incidents, legal processes are conducted to determine responsibility after an extensive review of the relevant facts. *Id.*, lines 164-166. In this proceeding, LUMA objected to LECO's proposed metric on public safety due to the inexistence

of a clear and quantifiable correlation between public safety incidents and LUMA's performance, which would allow tracking of those incidents.

In turn, LECO argues in its Brief that its proposed public safety performance metric should be approved because even though LUMA's opposition is based on external factors, other metrics proposed by LUMA are also affected by external factors. *See* LECO's Brief, pp. 34-35. This is a very simplistic and unsubstantiated argument. Moreover, LECO does not point to any evidence admitted during the Evidentiary Hearing to establish a correlation between their proposed public safety performance metric and LUMA's proposed Performance Metrics that are affected by external factors.

Additionally, LECO claims that since LUMA was provided with a "Liability Waiver", it is exempt from responsibility for third-party damage, including gross negligence or willful misconduct. *See* LECO's Brief, p. 35. LECO then concludes that any potential legal processes to determine LUMA's responsibility over public safety incidents are limited, if not inexistent. *Id.* It is clear, that LECO does not comprehend the language of the "Liability Waiver" approved by the Energy Bureau in *In Re: Review of LUMA's Terms of Service (Liability Waiver)*, Case No. NEPR-MI-2021-0007. The "Liability Waiver" expressly states that such a waiver will not exempt LUMA in case of gross negligence or willful misconduct. *See* Resolution and Order dated May 31, 2021, in Case No. NEPR-MI-2021-0007. The "Liability Waiver" exempts liability under the terms and conditions established therein. Therefore, LECO's assertion that the "Liability Waiver" makes any potential legal processes against LUMA inexistent or limited is based on ignorance of the language of what was approved by the Energy Bureau and is incorrect.

2. Interconnections Performance Metric

LECO manifested that the Energy Bureau should reject LUMA's Net Energy Metering ("NEM") Project Activation Duration Performance Metric in favor of the metrics proposed by Mr. Agustín Irizarry, LECO's expert witness. *See* LECO's Brief, p. 35. Specifically, Mr. Irizarry recommends the implementation of the Interconnection Approval Performance Incentive Mechanisms implemented in Hawaii to promote the reduction of total interconnection time for distributed energy resources under 100 kW in capacity. *Id.*, p. 36. LECO claims that Mr. Wood's rebuttal testimony did not explicitly disagree with the implementation of Hawaii's interconnection metrics in Puerto Rico. *Id.*

Mr. Lee Wood, former Director of Business Transformation for LUMA, submitted a pre-filed rebuttal testimony objecting to LECO's proposed metric. Mr. Wood explained that the structure proposed by LECO acknowledges that only certain parts of the interconnection process are within the utilities' control; it is based on average approval times and corrects for outliers. *See* Exhibit 21 of the Evidentiary Hearing Rebuttal Testimony of Lee Wood (February 17, 2022), p. 21, lines 430-431. In these ways, the metric is better designed and more appropriate than the other metrics previously suggested, such as total installed capacity. However, further review would be required to understand whether it is appropriate to apply in Puerto Rico. For instance, the appropriate threshold in Puerto Rico would likely be <25 kW to reflect local regulations. *Id.*, p. 21, lines 432-435. Mr. Wood further testified that the DG Portal that LUMA inherited does not allow for tracking approval times for each process step with this granularity level. *Id.*, p. 21, line 436, and p. 22, line 437. Until then, LUMA cannot establish a reasonable baseline for this metric

or begin tracking progress against it. *Id.*, p. 22, lines 440-441. Thus, LECO is incorrect in portraying that Mr. Wood agreed with LECO's proposed interconnection metric. Mr. Wood merely stated that further review would be needed to determine whether it is appropriate for Puerto Rico, considering the current conditions of the Puerto Rico electric system and existent regulations.

LECO also hints that LUMA's failure to meet its anticipated completion date for the DG Portal demonstrates the need for penalties to keep LUMA on track. *See* LECO's Brief, p. 37. In support of this allegation, LECO refers to the discussion at the Puerto Rico Senate prior to the approval of Act 17-2019. *Id.*

LECO seems to confuse the purpose and requirements under Act 17-2019 and the aim of the DG Portal. Act 17-2019 does not establish a requirement for LUMA to maintain a DG Portal, nor any penalties in that regard. The Regulation for Interconnecting Generators with the Electric Distribution System of the Puerto Rico Electric Power Authority and to participate in Net Metering Programs, Regulation No. 8915 of February 6, 2017, of PREPA ("Regulation 8915"), defines the DG Portal as the Internet or World Wide Website created to process the electronic filing of all required documents and monitor the evaluation, endorsement, and approval of DG interconnection. This site also allows the customer to sign the agreements required electronically. *See* Section II.UU of Regulation 8915. In essence, PREPA must create and maintain an electronic registry system or updated database with the inventory of the distributed generation systems interconnected with the electric grid. This registry must include, for each interconnected DG, the personal information of the account holder, the location and technical information of the DG, and the description of the electric infrastructure to which the DG interconnects with PREPA's electric

system. In accordance with the public policy of transparency, PREPA must publish a version of this database on its Internet portal in which the customers' personal information is deleted. *See* Section III.T of Regulation 8915.

It is not in controversy that LUMA fully complies with Regulation 8915 and the requirements established therein for the DG Portal. Mr. Wood testified that because the draft Generation and Microgrid Interconnection Regulation requires a level of tracking, LUMA is preparing to develop a new DG Portal to meet this requirement. *See* Exhibit 21 of the Evidentiary Hearing, p. 22, lines 437-439. LUMA is proactively working to develop a new DG Portal in anticipation of future regulatory requirements. *Id.*, p. 22, lines 441-442. Hence, LUMA is actively preparing its DG Portal in anticipation of what could be new regulation requirements as proposed in the draft Generation and Microgrid Interconnection Regulation, which has not been enacted yet.

Contrary to what LECO argues, any delays in updating the DG Portal to comply with future not adopted regulations do not warrant any imposition of penalties on LUMA. Moreover, the Energy Bureau has not commenced any proceedings against LUMA for non-compliance in this regard, nor has it imposed any penalties. Simply, LECO is mistaken in its allegation.

Further, LECO alleges LUMA's NEM Project Activation Duration Performance Metric fails to meet the Energy Bureau's requirements in several ways. *See* LECO's Brief, p. 37. First, they claim the metric would not incentivize improvement year after year. *Id.*, p. 38. Second, LECO claims that with its targets, LUMA failed to calculate the "highest level of efficiencies and savings" as ordered by the Energy Bureau. *Id.* Third, they claim that LUMA's NEM Project Activation Duration Performance Metric conflicts with the metric LUMA reports in other dockets. *Id.* Finally,

LECO claims that LUMA's proposed metric includes a minimum performance level below that required by law. *Id.*, p. 39. All of LECO's contentions are incorrect.

As ordered by the Energy Bureau in a Resolution and Order dated August 1, 2023, Mr. Wood submitted a pre-filed direct testimony in support of the NEM Project Activation Duration Performance Metric. He indicated that the metric was proposed because it directly measures LUMA's performance related to NEM service activation. *See* Exhibit 23 of the Evidentiary Hearing, Direct Testimony of Lee Wood (October 28, 2022), p. 7, lines 179-180. The most effective way that LUMA can currently support customer adoption of DG is to activate the NEM tariff as expeditiously as possible, ensuring each application meets regulatory and technical requirements. *Id.*, p. 8, lines 187-189.

Second, Mr. Wood further stated that over the past several years, there had been a steadily increasing number of new NEM applications submitted to the utility each month, which makes it difficult to predict and control program performance. *See* Exhibit 23 of the Evidentiary Hearing, p. 8, lines 195-197. Also, the expedited project application process is still very manual and labor-intensive. *Id.*, line 216. Additionally, Mr. Don Cortez, a witness for LUMA, explained that LUMA's proposed Target threshold is considered aggressive, considering that circumstances beyond LUMA's control influence the average number of days to activate NEM projects. For example, the number of NEM cases is increasing on a monthly basis, and that increase is dictated by the customers and other reasons that LUMA does not control. *See* Exhibit 26 of the Evidentiary Hearing, Direct Testimony of Don Cortez (January 23, 2023), p. 5, lines 89-92, and p. 6, line 93. This was supported by Mr. Wood, who testified at the Evidentiary Hearing that, based on the

review of the numbers, more applications came in, which was an explanation for the increase in the average time for activation. *See* Evidentiary Hearing Transcript Vol. 2, February 8, 2023 (English Portion), p. 370, lines 4-11; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [0:41:13]. In some cases, those circumstances account for a considerable amount of time that renders it unfeasible to track in days completion. Therefore, by proposing its target thresholds for the NEM Project Activation Duration Performance Metric, LUMA considered market behavior and current resources, as explained above, aiming for the “highest level of efficiencies and savings.”

Third, as explained by Mr. Wood during the Evidentiary Hearing, the metric tracked in Case No. NEPR-MI-2019-0016 for interconnections progress, which is reviewed every quarter, is a legacy metric that calculates the average duration for any activation during the period **for cases that were submitted in that period. Thus, the statistics do not include all the cases that arrived in the previous period or two years ago.** *See* Evidentiary Hearing Transcript, Vol. 2, February 8, 2023 (English Portion), p. 390, lines 17-25, p. 391, lines 1-9; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [1:14:42]. On the contrary, LUMA’s proposed performance metric in this proceeding is a more rigorous method that includes all applications completed in a particular year, **regardless of when they were submitted.** *See* Evidentiary Hearing Transcript, Vol. 2, February 8, 2023 (English Portion), p. 391, lines 12-16; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [1:16:01]. Mr. Wood testified that right now, there are basically two different metrics. Therefore, the targets that LUMA put forward in the performance metrics cannot be compared directly with the information on interconnections

included in the quarterly reports filed in Case NEPR-MI-2019-0016. *Id.*, p. 394, lines 19-25; AP-2020-0025 Evidentiary-20230208_Meeting Recording 2 [1:21:35]. The legacy metric in that docket looks at just the cases that were completed in this period and filed in this period, and that ignores everything that was filed before, and that is why it is a bit misleading. *Id.*, p. 401, lines 17-21; AP-2020-0025 Evidentiary-20230208_Meeting Recording 2 [1:32:09].

LUMA's NEM Project Activation Duration Performance Metric aligns with the public policy target and sets targets to improve performance. *Id.*, p. 400, lines 12-14; AP-2020-0025 Evidentiary-20230208_Meeting Recording 2 [1:29:59]. Therefore, as explained by Mr. Wood, the NEM Project Activation Duration Performance Metric is more rigorous in that all applications are completed, not limited to the fact that they were submitted in the same year as completed. The proposed metric captures everything, is more accurate, and avoids being misleading.

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

LECO errs by alleging that LUMA's proposed metric included a minimum performance level below that required by law. The Puerto Rico Net Metering Program Act, Act No. 114-2007,

as amended (“Act 114-2007”), requires that PREPA credits every participant of NEM not later than thirty (30) days after having notified the certification of the distributed generator installed by a professional engineer or expert electrician. 22 PR Laws ANN. § 1015. The clear language of the law requires LUMA not to surpass a 30-day threshold. LUMA’s NEM Project Activation Duration Performance Metric minimum performance target does abide by the language of Act 114-2007. In addition, it is a very aggressive metric, particularly considering that it is an initial proposal for three years.

Considering the above, the NEM Project Activation Duration Performance Metric proposal remains unchallenged. LECO’s counterproposal does not consider circumstances beyond LUMA’s control that are expected. In some cases, those circumstances account for a considerable amount of time that renders it unfeasible to track in days completion. Thus, the Energy Bureau should approve the proposed NEM Project Activation Duration Performance Metric.

3. Energy Efficiency and Demand Response Performance Metrics

As to the Energy Savings as Percent of Total Energy Sales Performance Metric and the Peak Demand Savings as a Percent of Total Peak Demand Performance Metric (“EE&DR”), LECO claims the proposed metrics do not include other metrics that measure customer participation in the programs to be implemented and benefits specifically aimed at the low and moderate-income population. *See* LECO’s Brief, p. 43. However, during the Evidentiary Hearing, Mr. Irizarry was prompted by Commissioner Ugarte whether he knew of other jurisdictions in which they measured as metric customer participation in the programs, to which Mr. Irizarry answered he did not know. *See* Evidentiary Hearing Transcript, Vol. 2, February 8, 2023 (Spanish

Portion), p. 22, lines 12-17; AP-2020-0025 Evidentiary-20230208_Meeting Recording 2 [2:44:52]. Moreover, Mr. Irizarry's proposal on benefits specifically aimed at the low and moderate-income population is moot. The Resolution and Order dated January 21, 2022, issued by the Energy Bureau in the proceeding *In Re: Regulation for Energy Efficiency*, Case No. NEPR-MI-2021-0005 established that 25% of the Energy Efficiency budget must be allocated to low-income customers, consequently establishing a mechanism to promote prioritization of programs providing benefits to low-and-moderate-income customers. *See* Exhibit 22 of the Evidentiary Hearing, p. 9, lines 172-177.

Further, LECO alleges that incentives should not be paid for meeting the minimum. *See* LECO's Brief, p. 43. They claim that LUMA assigns one of the lowest amounts of base points and one of the lowest percentages of effective weight. *Id.*, p. 44. LECO proposes that the Energy Bureau impose penalties on LUMA when the minimum standards and targets are not met. *Id.*, p. 47. LECO also proposes that if the Energy Bureau decides to include an incentive or reward mechanism for these metrics, the funds provided to LUMA should be conditioned to be used for the actual achievement of the energy efficiency goal of 30% energy savings. *Id.*

Mr. Wood indicated that the proposed targets for the Energy Savings as Percent of Total Energy Sales Performance Metric are based on forecasted energy sales. This is because the programs and budgets needed to achieve these targets are determined prior to the beginning of each year. The actual energy sales may vary from the forecast; however, the programs and their budgets will not be able to fluctuate up or down mid-year to align with fluctuations in actual sales during the year. *See* Exhibit 23 of the Evidentiary Hearing, p. 9, lines 240-244. The first and

second-year Targets for this metric (0.1% and 0.25%) were set at a level aligned with the Regulation for Energy Efficiency and are designed to facilitate a reasonable ramp-up of program performance during the early years of program delivery. *Id.*, p. 10, lines 271-273.

Additionally, Mr. Wood expounded that the proposed Peak Demand Savings as a Percent of Total Peak Demand Performance Metric is the industry standard metric for tracking the performance of peak demand savings from traditional ratepayer-funded Demand Side Management (“DSM”) programs. *See* Exhibit 23 of the Evidentiary Hearing, p. 11, lines 300-301. Although the baseline for this metric should reflect the level of peak demand savings historically achieved by DSM programs administered by the utility but, given that the utility has never delivered DSM programs, the baseline is currently 0%. *Id.*, 304-306. Thus, LECO errs in arguing that this Performance Metric will allow LUMA to earn a percentage of Base Points for minimum performance.

In addition, LECO’s proposal to divert the funds awarded as an incentive to LUMA to be used to achieve the energy efficiency goal of 30% energy savings is not an incentive. Basically, LECO is proposing to increase LUMA’s operational budget to achieve the energy efficiency goal of 30% energy savings if LUMA reaches the Targets set for the metric. This proposal is entirely new and is not supported by any evidence on the record. It was not even addressed at the Evidentiary Hearing, although LECO had the opportunity to cross-examine Mr. Wood and confront him with this proposal. Moreover, it is a budgetary proposition that makes operational funding contingent on achieving a set of Targets. LUMA contends this kind of contingency is not what the Energy Bureau envisions for the success of any of LUMA’s operational programs.

Furthermore, LECO contends that if activity-based metrics were to be established in this proceeding, incentive fees would be unwarranted, and only penalties should be put in place. LECO's Brief, p. 46. LUMA opposes the adoption of activity-based metrics in this proceeding. Nothing on the record of this proceeding supports a determination to impose activity-based performance metrics on LUMA. In this proceeding, which was ongoing while this Energy Bureau adopted the EE Regulation and considered LUMA's Proposed Transition Period Program Plan for Energy Efficiency and Demand Response("TPP," filed on June 21, 2022, and approved on February 16, 2023, *Case In re Energy Efficiency and Demand Response Transition Period Plan*, No. NEPR-MI-2022-0001), this Energy Bureau did not issue an order requiring activity-based performance metrics on EE&DR, nor did the Energy Bureau submit a proposal on specific activity-based performance metrics.

Moreover, the uncontested record rejects the adoption of activity-based metrics. To wit, on cross-examination by Energy Bureau consultants, Mr. Wood explained why activity-based metrics **are not proper at this time:**

Q. But LUMA did not decide to propose activity-based metrics within its revised Annex IX is that correct?

A. That's correct. We did review a list of activity-based metrics and for various reasons, we didn't feel that they would be the best suited metrics. I can elaborate if you want. I think that's the question that you asked.

Q. Yes, thank you. And if you could elaborate, please.

A. At this point as of today, we still don't know which programs the Bureau will approve and which ones they don't. And so, the determination of which programs are approved and any program design decisions or modifications that are made during the regulatory review process will potentially affect

which programs we're launching, the nature of those programs, and what activities would measure their performances. So, with that uncertainty we first had uncertainty just figuring out which metrics or which programs. And then, more importantly, the -- we suspect and assume that after the transition period we will switch to performance-based or outcome-based metrics, such as the ones we've proposed, which are the standard metric. It can take some time for us to develop the tracking procedures, the policy procedures, the protocols to. . . institutional and organizational infrastructure, so to speak, to measure progress against a performance metric and the targets. And so, we would prefer to start off with these metrics which we believe are going to be in use more than two years from now; get ourselves used to meeting those metrics; develop the supporting analyses manual, such as a technical reference manual, protocols, and so on, needed to meet this metric from the beginning as opposed to switching midstream.

See Evidentiary Hearing Transcript, Vol. 2, February 8, 2023 (English Portion), p. 360, lines 6-25; p. 361, lines 1-22 AP-2020-0025 Evidentiary-20230208_Meeting Recording 2 [00:24:50].

As Mr. Wood testified, at the time that LUMA proposed performance metrics targets on EE and DR (October 28, 2022), this Energy Bureau had not determined the programs it would approve for implementation in the Transition Period. Consequently, it was not proper or reasonable to propose activity-based metrics in this proceeding.

4. This Energy Bureau Should Reject LECO's Proposal to Adopt Additional Interconnections and EE&DR Metrics.

LECO requests that the Energy Bureau reject LUMA's proposed Performance Metrics for Interconnections and EE&DR. In turn, LECO petitions to add those metrics recommended by Mr. Irizarry for EE&DR, those adopted by the Hawaii Public Utilities Commission on Interconnections and EE&DR, and those envisioned by Regulation 9367 on Energy Efficiency. *See* LECO's Brief, pp. 97-98.

As a threshold matter, it should be noted that LECO did not submit rebuttal testimony objecting to LUMA's Performance Metrics for Interconnections and EEE&DR. Moreover, LECO did not include in Mr. Irizarry's expert witness direct testimony any of the metrics it now outlines in its Brief as metrics envisioned by Regulation 9367. Therefore, LECO purports to introduce belated objections and proposals at this juncture in the proceedings. The Energy Bureau should strike those references from the record.

Regarding the metrics adopted by the Hawaii Public Utilities Commission on Interconnections, Mr. Wood submitted a pre-filed rebuttal testimony objecting to LECO's proposal. Mr. Wood explained that the structure proposed by LECO acknowledges that only certain parts of the interconnection process are within the utilities' control; it is based on average approval times and corrects for outliers. *See* Exhibit 21 of the Evidentiary Hearing, p. 21, lines 430-432. As Mr. Wood established, further review would be required to understand whether it is appropriate to apply the proposed metric in Puerto Rico. For instance, the appropriate threshold in Puerto Rico would likely be <25 kW to reflect local regulations. *Id.*, p. 21, lines 432-435. Mr. Wood further testified that the DG Portal that LUMA inherited does not allow for tracking approval times for each process step with this granularity level. *Id.*, p. 21, line 436, and p. 22, line 437. Until then, LUMA cannot establish a reasonable baseline for this metric or begin tracking progress against it. *Id.*, p. 22, lines 440-441.

In response to LECO's request for penalties on Interconnections, Mr. Wood stated that the interconnection of net metering customers is not entirely dependent on LUMA. It also requires that customers make sure that the documents that are part of the request for the interconnection

project are submitted to LUMA in a complete manner at the validation stage. *See* Exhibit 22 of the Evidentiary Hearing, p. 6, lines 95-98. About 35% of the submitted interconnection requests must be corrected at the validation stage because they are incomplete or include incorrect information. The required documents are necessary to verify that the security and integrity of the network are not affected by the interconnection and to correctly identify the account to be activated in the Net Metering Program. *Id.*, lines 98-102. Incomplete and incorrect applications delay the processing of the applications and ultimately delay activating net metering to customers. *Id.*, lines 102-103. LUMA also experiences delays in the process of replacing meters, when customers fail to appear for site visits, even after repeated attempts by LUMA personnel to reschedule. LUMA should not be penalized for events outside its control, that were inherited from the previous operator, or that are dependent on the diligence of others. *Id.*, lines 103-107.

Second, the metrics recommended by Mr. Irizarry for EE&DR were adequately contested by Mr. Wood in a rebuttal pre-filed testimony. Mr. Wood testified that Mr. Irizarry has proposed conventional metrics for traditional rate-payer-funded incentive programs. LUMA does not currently have any such incentive programs. Therefore, these metrics do not provide relevant indicators of LUMA's performance. *See* Exhibit 22 of the Evidentiary Hearing, p. 10, lines 185-187. LUMA cannot directly affect and measure progress toward energy reduction targets until programs are developed, and a consistent funding source or cost-recovery mechanism is established. *Id.*, lines 187-189.

Third, regarding the metrics adopted by the Hawaii Public Utilities Commission for EE&DR, Mr. Wood presented a rebuttal testimony in which he explained that these are the same

type of energy savings target metrics suggested by Mr. Irizarry's examples in Table 4 of his direct testimony, just applied specifically to the low to moderate income sector. *See* Exhibit 21 of the Evidentiary Hearing, p. 23, lines 461-462. These metrics are applicable to standard demand-side management incentive programs with consistent, stable, 1-3-year customer funding cycles. *Id.*, lines 462-464. LUMA does not have such programs. Therefore, these metrics should not be contemplated until there is a stable funding source, programs are being implemented, and performance is designed to be measured. *Id.*, lines 464-466. Furthermore, the Energy Bureau's January 21, 2022, Resolution and Order delays the implementation of metrics based on savings targets until after the Transition Period. *Id.*, lines 468-470.

Finally, LECO counter proposes, for the first time in this proceeding, a target structure for LUMA's Energy Savings as Percent of Total Energy Sales Performance Metric and the Peak Demand Savings as a Percent of Total Peak Demand Performance Metrics. This new proposal was not part of any evidence admitted at the Evidentiary Hearing. These target structures are for a 3-year period and include concepts such as "best-case scenario," "target threshold," and "worst-case scenario." *See* LECO's Brief, pp. 98-99. However, LECO has not explained the methodology behind these categories, how it reached the values under each one, and pursuant to which data they are proposing these specific values. As such, LECO's proposed target structure for LUMA's Energy Savings as Percent of Total Energy Sales Performance Metric, and the Peak Demand Savings as a Percent of Total Peak Demand Performance Metrics should also be stricken and denied as unsupported and belated.

5. Vegetation Management Performance Metric

LECO claims the testimony offered by Ms. Diane Watkins for the Vegetation Maintenance Miles Completed Performance Metrics is prefabricated and based on LUMA's interests and not on the expertise of the named witness. *See* LECO's Brief, pp. 48-49.

First, LUMA requested authorization to substitute the testimony of Mr. Brent Bolzenius, LUMA's designated witness for the Vegetation Maintenance Miles Completed Performance Metric, due to changes in the internal and management structure of LUMA's Vegetation Management Program. As such, Ms. Diane Watkins, Vice President, Vegetation and Work Management for LUMA, was designated as the witness to testify in support of and in connection with those metrics. LUMA noted that Ms. Watkins adopted the testimonies already offered by Mr. Bolzenius and had not altered the substance of those testimonies. *See Motion Requesting Authorization to Substitute Pre-Filed Testimonies* dated January 26, 2023. On February 1, 2023, the Energy Bureau issued a Resolution in which it determined that based on the redline submitted by LUMA and considering that the modifications did not alter the substance of the original testimonies, the Energy Bureau received and accepted Ms. Watkins' pre-filed testimonies. *See* Resolution dated February 1, 2023. Thus, the Energy Bureau ruled on this issue in favor of admitting Ms. Watkins' testimony.

Second, LECO seems to ignore the concept of a witness designated to testify as a corporate representative. A corporate representative, while testifying, bounds the corporation because the testimony represents the corporation's knowledge, not of the individual testifying. The corporate representative acts as the voice of the corporation; thus, the corporation "appears" vicariously

through said witness. The responsibility of a corporation when designating a corporate witness is to make available a witness prepared to answer questions within the scope of the topics to be the subject of examination. Since the commencement of this proceeding, LUMA has designated corporate witnesses to testify in the different areas of its operation in which performance metrics are being proposed. Those individuals were selected based on their knowledge of the areas subject to discussion and their position at LUMA.

Prior to joining LUMA, Ms. Watkins had experience leading a company's strategic development and execution of its wildfire mitigation plan. The plan included enhanced vegetation management practices, system hardening, and conservative operations in high-risk threat areas, among other activities. *See* Exhibit 29 of the Evidentiary Hearing (Direct Testimony, Diane Watkins, January 24, 2023), p. 2, line 23, and p. 3, lines 24-26. Therefore, Ms. Watkins has the appropriate qualifications and experience to testify as a LUMA corporate representative on the Vegetation Management Performance Metrics.

Ms. Watkins is knowledgeable of the data and work papers already offered to this Energy Bureau as part of her employment duties. She was the person within LUMA who could testify on the specific topics covered initially by Mr. Bolzenius's testimony. The testimonies submitted by Ms. Watkins did not vary substantially from the subject matter covered by the original witness, as shown from the redline versions submitted to the Energy Bureau in good faith. The testimony offered by LUMA's witness for the Vegetation Management Performance Metrics is not prefabricated but is credible and reflects the position of the company regarding those metrics, which has been consistent since the commencement of this instant proceeding. Even though Ms.

Watkins disagreed with a previous discovery response offered by Mr. Bolzenius, this goes precisely to the credibility of Ms. Watkins as a witness and the fact that her testimony is not prefabricated at all. Further, LECO did not address these issues during the cross-examination of Ms. Watkins at the Evidentiary Hearing, which the Energy Bureau afforded them time to conduct.

As to the Vegetation Maintenance Miles Completed Performance Metric, LECO claims that LUMA's proposed metric does not include secondary distribution lines. *See* LECO's Brief, p. 50. They also allege LUMA has not met the burden of proof that the metric proposed would improve the system if they had not analyzed the data as to the secondary distribution lines. *Id.*, p. 51.

On this topic, Ms. Watkins explained that secondary distribution lines that include street light service lines and pole-to-house service drops, among others, are not included as these types of lines have a small overall impact on the reliability of the system, and the maintenance miles data associated with secondary Distribution lines is difficult to identify and track. *See* Exhibit 29 of the Evidentiary Hearing (Direct Testimony, Diane Watkins, January 24, 2023), p. 6, lines 109-113. This does not mean that the vegetation in secondary lines will not be addressed. Evidentiary Hearing, Vol. 2, February 8, 2023 (English Portion), p. 347, lines 21-24; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:41:21-2:41:30]. LUMA has other measures in place to ensure that that work is done. Exhibit lines 119-122. Evidentiary Hearing, Vol. 2, February 8, 2023 (English Portion), p. 347, lines 12-15; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:40:53-2:41:00]. Secondary lines do not have to be included in the metrics for LUMA to perform that work. Evidentiary Hearing, Vol. 2, February 8,

2023 (English Portion), p. 347, lines 13-15; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:41:00-2:41:05]. Many of the secondary lines are underbuilt on the primary lines, meaning that the primary line is on top, and the secondary is below in the same right-of-way. Thus, if LUMA maintains the primary, the secondary is also there. Evidentiary Hearing, Vol. 2, February 8, 2023 (English Portion), p. 343, lines 16-20; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:34:56-2:35:12]. In light of the above, it is LUMA's position that there is no evidence on the record to support LECO's contention that studies on secondary lines should be required if this Energy Bureau determines to impose a Vegetation Management Performance Metric and adopt LUMA's proposal.

Also, LECO contends that the Energy Bureau should require LUMA to set a minimum performance level based on an estimate of the worst-case scenario using the data LUMA has already compiled. *See* LECO's Brief, p. 52. They object to the proposed first-year minimum performance level, considering the system has over 18,000 transmission and primary distribution lines. *Id.*, p. 51. LECO, however, does not disclose the source from which they can support a statement that the system has over 18,000 transmission and primary distribution lines. Notwithstanding, LUMA considered the actual recent historical number of Vegetation Maintenance Miles Completed by looking at the historical data that was available for a full year, Fiscal Year 2022. *See* Exhibit 29 of the Evidentiary Hearing, lines 115-122. In Fiscal Year 2022, LUMA completed over 900 miles of total reactive, corrective, and preventive vegetation maintenance. Evidentiary Hearing, Vol. 2, February 8, 2023 (English Portion), p. 343, lines 17-25; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:34:56-2:35:27].

LUMA determined that it was reasonable for the Target to be set greater than the 900-plus miles that were completed in Fiscal Year 2022 in order to represent an increase over the previous year's performance. *See* Evidentiary Hearing, Vol. 2, February 8, 2023 (English Portion), p. 344, lines 1-5; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:35:28-2:35:45].

LECO further argues that the Energy Bureau should require that LUMA provide a revised metric focused on completing difficult tasks. *See* LECO's Brief, p. 53. LECO claims that incentives for vegetation management should be limited to hard-to-reach vegetation management targets. *Id.* LECO proposes that easy-to-reach should be excluded from any incentives, and failure to do maintenance on most lines adjacent to roads or highways that could be considered easy-to-reach must be penalized. *Id.*, p. 54.

This Energy Bureau should reject LECO's proposal, which is based on Mr. Irizarry's additional testimony of March 22, 2022, p. 13, lines 11-17 and lines 19-24, *see* Exhibit 9 of the Evidentiary Hearing, and his testimony in the evidentiary hearing, *See* Evidentiary Hearing, Vol. 2 (Spanish), p. 6, lines 18-20 AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 2 [2:12:32], that an incentive for vegetation management should only be awarded in connection with hard-to-reach targets. It is important to note that Mr. Irizarry was not qualified as an expert on vegetation management practices. Thus, his recommendations should not be given the weight of expert opinions nor more weight than the testimony of Ms. Watkins for LUMA.

The uncontested record shows vegetation management aims to ensure safe and reliable service to all customers regardless of access, limitations, or perceived ease of access to vegetation work. *See* Exhibit 28 of the Evidentiary Hearing, p. 5, lines 74-76. Contrary to LECO's proposal,

there are many “hard-to-reach targets” along roadside transmission and distribution infrastructure or within short distances of roads. *Id.*, lines 76-78. Examples include vegetation located in back yards, and in urban areas where the only access points are through or over a home or building. *Id.*, lines 78-79. Thus, equipment and debris must pass over or through the domicile to address the tree-risk electrical conductors; or where vegetation is located roadside and where the conditions warrant multiple days of work to remediate risk to the overhead conductor. *Id.*, lines 79-82. The Puerto Rico T&D System is fragile, and the vegetation conditions are poor across the entire island. *Id.*, lines 82-84. Whether vegetation work is easily accessible or “hard-to-reach,” LUMA is committed to finding the best way to complete the necessary vegetation work regardless of whether the Targets are “hard-to-reach” or considered roadside. *Id.*, lines 86. The work location is entirely subjective and should not be the only factor in setting goals. *Id.*, lines 86-87.

Similarly, this Energy Bureau should reject LECO’s contention that the Energy Bureau requires LUMA to identify the relative difficulty for vegetation maintenance for each line or region, *see* Exhibit 9 of the Evidentiary Hearing, p. 13, lines 26, and p. 14, lines 1-2. Mr. Irizarry’s recommendation is impractical. *See* Exhibit 28 of the Evidentiary, p. 6, line 94. The “relative difficulty” concept he proposes is entirely subjective. *Id.*, lines 94-95. Moreover, Irizarry does not provide a basis for this “concept.” *Id.*, lines 95-96. There are no industry standards, definitions, or criteria for “relative difficulty” in vegetation management. *Id.*, lines 96-97. Additionally, the configuration of most electrical feeders or circuits will have a combination of roadside, backyard, and cross-country sections of line within the same feeder or circuit. *Id.*, lines 97-99. Vegetation management on a day-to-day basis is not as categorically encapsulated as Mr. Irizarry tries to

portray in his testimony. *Id.*, lines 99-100. Mr. Irizarry's concerns that LUMA would only complete easily accessible work is incorrect as it is uncontested on the record that LUMA intends to address vegetation management work across the system regardless of the challenges, including access to specific work sites. *Id.*, lines 100-103.

6. Reliability Metrics

In connection with the System Average Interruption Frequency Index (SAIFI) and System Average Interruption Duration Index (SAIDI) Performance Metrics, LECO argues that this Energy Bureau should adopt targets that are different from those that LUMA proposed in the Revised Annex IX. The threshold problem with LECO's proposal of new or different targets is that no such proposal was presented for consideration by this Energy Bureau during discovery, through pre-filed testimonies, or during the evidentiary hearing. The only proposal that is uncontested on the record is LUMA's. LUMA hereby incorporates by reference the discussion and legal argumentation set forth in Section II. I. of this Brief, *supra*, where LUMA established that LECO is precluded at this stage from setting forth belated proposals for targets that were not presented for discussion in a prior stage of this proceeding and as to which LUMA was not afforded the opportunity to conduct discovery, file written testimonies and confront any witnesses who support that proposal.

LUMA requests that this Energy Bureau strike and disregard LECO's proposal on page 57 of its Brief, whereby it proposes alternate minimum performance levels for SAIDI and SAIFI, suggesting that the Minimum Performance Level be set at what LUMA has proposed should be

the 25% tier and that LUMA's proposal for the 150% tier "should be target."⁶ It bears noting that **LECO did not accompany its proposal of alternate targets with any reference to the record nor any sworn testimony.** It is clear that the proposal is wholly unsupported, and LECO seeks a determination that will not be based on the administrative record, which is a requirement of the LPAU, Section 3.1 of LPAU, 3 PR Laws Ann. § 9641.

On pages 55 and 56 of its Brief, LECO incorrectly suggests that for SAIDI and SAIFI, LUMA could earn Base Points toward and incentive payment for performance below that which is expected of LUMA. LECO further claims that LUMA would earn Base Points for worst-case performance. That is incorrect. In fact, LECO puts forth an incorrect characterization of the testimony of Mr. Cortez on the topic of Minimum Performance Levels and the 25% threshold of performance that allows LUMA to earn a percentage of Base Points. Contrary to what LECO suggests, Mr. Cortez did not testify that a target threshold was chosen to award points for worst-case performance. In response to a question by the Energy Bureau's consultant that alluded to a "percentage of minimum performance" and the concept of "worst-case performance," Mr. Cortez corrected the consultant to clarify that LUMA did not develop a target based on worst-case performance: Q: "So when you say worst-case performance that outlines what the percentage of minimum performance that would be a zero percent that's the second column? A: "not worst-case performance, but worse-case scenario for us to improve. If we had more problems on the grid than

⁶ Moreover, the suggestion that the 150% Tier "should be target," is incomprehensible and shows a willful disregard to LUMA's proposal given that LUMA' proposed Performance Metric Targets do not include a generic threshold under the rubric of "target" but is comprised of a Target Threshold, A Minimum Performance Level and then thresholds tied to improvements to earn percentages of the Base Points.

we anticipated, then that was our minimum target. *See* Evidentiary Hearing, Vol. 2, February 8, 2023 (English Portion), p. 315, lines 3-11, AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [1:54:16-1:55:42]. On page 56 of its Brief, LECO cites the question posed to Mr. Cortez but chose to omit Mr. Cortez’s response and instead substituted the witness’ response with arguments and unsupported conclusions. That is, LECO manipulated what transpired in the hearing by omitting from its Brief the response provided by the witness. This is an unbecoming attempt to mislead that should not be tolerated from attorneys who are held to high standards in legal proceedings.

LECO also ignores the weight of the uncontested testimony of Mr. Cortez, whereby he explained the process employed by LUMA to set the Minimum Performance Level and Targets for SAIDI and SAIFI. In fact, Mr. Cortez testified in response to a question by the Energy Bureau consultant that “these targets would be a strong incentive . . . do everything possible to get the projects done and the funding . . . understanding the factors that are out of your control . . .” Evidentiary Hearing, Vol. 2, February 8, 2023 (English Portion), p. 314, lines 1-6; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [1:52:56]. Thus, Mr. Cortez clearly established that the targets would induce performance to complete projects needed to improve the reliability of the T&D System, thereby negating any inference that the targets would provide incentives for unsatisfactory performance.

Other examples of the uncontested testimony that LECO ignores in its Brief include the explanation provided by Mr. Cortez stating that in setting the Targets, LUMA considered the unknowns, the fact that the health of the T&D System was not documented by PREPA, which led

LUMA to do some visual assessments to use its judgment then to determine that the rest of the T&D System was in similar or worse condition. *See* Evidentiary Hearing, Vol. 2, February 8, 2023 (English Portion) p. 304, lines 24-25, p. 305, lines 1-8; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording [1:35:14-1:35:55]. LUMA also looked at the budget constraints and, using its experience and reliability improvement and systems, determined that it could achieve a 30 percent improvement by year 3 in SAIFI, and a 40 percent improvement in SAIDI by year 3 and then LUMA used its experience to adjust how much improvement could be achieved per year. *See* Evidentiary Hearing, Vol. 2, February 8, 2023 (English Portion), p. 305, lines 9-17; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [1:35:55-1:36:24]. This testimony not only shows that LECO misconstrues the evidence on the record on the targets proposed in the Revised Annex IX for SAIDI and SAIFI, but also refutes LECO's unsupported contention that there may be a scenario where LUMA may earn Base Points towards the incentive fee without having improved reliability.

On pages 57 and 58 of its Brief, LECO requests that this Energy Bureau should add CAIDI as a metric because Mr. Irizarry allegedly provided compelling explanations in his pre-filed testimony. In its Brief, however, LECO does not discuss the claimed compelling explanation with reference to the record. This Energy Bureau should hold that LECO waived that argument for failure to include any developed explanation. *See on the principle of waiver of arguments not developed in opening briefs, U.S. v. Zannino*, 895 F.2d 1, 17 (1st Cir. 1990) (“issues adverted in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.”).

In any event, the uncontested record refutes LECO's suggestion that CAIDI should be included as a Performance Metric in connection with LUMA's Revised Annex IX. First, Mr. Cortez testified during the Evidentiary Hearing, that the revised IEEE Standard 1366 of 2022, also cautions against using CAIDI as a metric. *See* Evidentiary Hearing, Vol. 2, February 8, 2023 (English), p. 298, lines 21-24, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 1 [1:27:09]; *see also* Evidentiary Hearing, Vol. 2, February 8, 2023 (Spanish Portion), p. 33, line 25, p. 34, lines 1-4; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [1:19:32]. As LUMA established in its Opening Brief, this Energy Bureau should decline to follow the recommendations of Mr. Irizarry, an expert witness for LECO, to add CAIDI. Mr. Irizarry has not operated Puerto Rico's T&D System nor been a PREPA employee, *see* Evidentiary Hearing, Vol. 1 (Spanish), p. 71, lines 11-14, p. 72, lines 9-10 AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 2 [3:03:55], and thus lacks the experience and knowledge of the System that LUMA's personnel and Mr. Cortez have and are necessary to assess the applicability and usefulness of this metric. As established by Mr. Cortez, Dr. Irizarry did not consider in his testimony the need for the grid to be transformed regarding CAIDI. *See* Exhibit 24, lines 493-494. Second, in its Brief filed on May 11, 2023, in this proceeding, ICPO agreed with LUMA's proposal to eliminate CAIDI from Annex IX to the T&D OMA.

On pages 59 and 60 of its Brief, LECO includes a table with calculations on "SAIDI mpr," Energy Not Served, and Value of Lost Load. LECO claims that the proposed calculation is based on a response to a discovery request that LUMA issued in this proceeding (RFI-LUMA-AP-2020-0025-PREB-R1-10SEPT21-022). However, in its Brief, LECO also admits that it employed

different calculations for the values on “SAIDI mpr” and Energy Not Served. LUMA requests that the Energy Bureau strike from the record those calculations that are not supported by evidence submitted for the record or pre-filed testimonies. The discovery response that LECO references on page 60 of its Brief, RFI-LUMA-AP-2020-0025-PREB-R1-10SEPT21-022, was not admitted as an Exhibit during the Evidentiary Hearing. Moreover, LECO did not present evidence throughout this proceeding regarding the calculations found on page 60 of its Brief. Thus, LUMA was not afforded an opportunity to refute the same prior to the close of the Evidentiary Hearing. Given LECO’s brazen attempt to continue to introduce new evidence for the record, LUMA hereby echoes, once again, the ruling of this Energy Bureau issued in the August 17th Order stating that legal briefs are not to be used as conduits to introduce new evidence:

As known, the evidentiary and public hearings closed on February 10, 2023, and February 17, 2023, respectively. The parties engaged in the phase of filing their final legal briefs and respective replies. This phase is argumentative. The Energy Bureau expects to receive the final arguments of the parties based on the evidence in the administrative record. It does not contemplate that the parties indiscriminately and substantially introduce evidence they should have presented during the previous phases of the administrative process.

August 17th Order, p. 3.⁷

On page 62 of its Brief, LECO, once again, misconstrues the testimony of Mr. Cortez. On this occasion, LECO argues that in his pre-filed rebuttal testimony, Mr. Cortez explained that he had examined “LECO’s evidence of voltage fluctuations.” For that proposition, LECO references

⁷ Available at <https://energia.pr.gov/wp-content/uploads/sites/7/2020/06/Resolution-and-Order-NEPR-AP-2020-0002.pdf>.

as support lines 419-465 of Mr. Cortez's pre-filed rebuttal testimony. LECO's portrayal of said portion of Mr. Cortez's rebuttal testimony is incorrect. Mr. Cortez did not reference having reviewed "LECO's evidence of voltage fluctuations." Rather, Mr. Cortez disagreed with the opinion of Mr. Irizarry, who claimed that severe voltage fluctuations had been experienced since LUMA took over operations of the T&D System. Mr. Cortez refuted the testimony of Mr. Irizarry, and his responses to discovery, and established that this Energy Bureau should reject Mr. Irizarry's statements. To wit, Mr. Cortez testified as follows:

Mr. Irizarry did not provide any voltage measurements or other data to support his statement concerning severe voltage fluctuations, even during discovery, rather general statements pointing to unscientific information. Therefore, I must assume this statement is nothing but speculation and hearsay. In response to discovery, Mr. Irizarry stated that this statement was supported by his personal experience as a citizen in Puerto Rico and his training as an engineer. In my professional experience, to issue an opinion on the occurrence of voltage fluctuations and a decrease in power quality, one would have given precise information on the sample of the houses affected by voltage fluctuations or power quality issues and not from a perception based on personal experience. This statement is flawed as it has inherent biases.

Second, voltage fluctuations occur as part of the normal operation of every power system and determining which are normal and which are severe requires knowledge of the level and duration of the fluctuation, which requires analysis of voltage measurements at the service point to the customer(s) where suspected fluctuations occurred. These measurements can be provided by modern AMI systems. Since meaningful collection of voltage data is not practical from the currently implemented customer metering system, there is no data available to determine the validity of this statement.

Exhibit 24, lines 427-443.

Regarding voltage fluctuations, LECO also argues that during the Evidentiary Hearing, Mr. Cortez testified that he could not issue an opinion to refute LECO's statements on voltage

fluctuations, power quality, or appliance damages. That is also incorrect. During the Evidentiary Hearing, Mr. Cortez testified the following, which LECO did not consider in its Brief:

- LUMA could not find support for Mr. Irizarry’s contention on severe voltage fluctuations; *see* Evidentiary Hearing, Vol. 2, February 8, 2023 (English Portion), February 8, 2023, p. 491, lines 9-13, AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 2[4:26:24].
- LUMA cannot issue an opinion on Mr. Irizarry’s claims on severe voltage fluctuations because the information on which houses were allegedly affected by the voltage fluctuations or voltage issues that Mr. Irizarry mentioned is not available; *see* Evidentiary Hearing, Vol. 2, February 8, 2023 (English Portion), February 8, 2023, p. 492, lines 1-16, AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 2 [4:27:08].

Both Mr. Cortez’s pre-filed rebuttal testimony and his testimony at the Evidentiary Hearing show that LECO’s failure to file for the record the information regarding which houses or localities suffered alleged severe voltage fluctuations or issues with power quality at a particular point in time, render it impossible for LUMA –and this Energy Bureau– to determine the occurrence, nature, and extent of the voltage fluctuations. The cited testimonies of Mr. Cortez refute the opinion of Mr. Irizarry. Moreover, Mr. Irizarry’s opinion was not explained or supported, and thus requires that this Energy Bureau deem unproven and unsupported LECO’s claims in its Brief, that outage compensation and penalties should be imposed in this proceeding due to voltage fluctuations that allegedly occurred after LUMA began operating the T&D System.

In sum, none of the arguments set forth by LECO in its Brief regarding the reliability metrics proposed by LUMA serve to undermine LUMA's proposed Targets for SAIDI and SAIDI nor the proposal to eliminate CAIDI as a Performance Metric. Furthermore, this Energy Bureau should reject as unsupported the claim that severe voltage fluctuations have occurred since LUMA began operating the T&D System. This Energy Bureau should reject LECO's contention that the unproven scenario of severe voltage fluctuation justifies the imposition of an outage compensation mechanism and penalties.

7. Customer Satisfaction Performance Metrics

a. The J.D. Power Customer Satisfaction Survey (Residential and Business) is the Most Accurate and Efficient Tool to Measure Customer Satisfaction.

LECO contends that the J.D. Power Customer Satisfaction Surveys should not be used by LUMA to establish benchmarks because it only allows customer feedback on this metric through a medium that is inaccessible. *See* LECO's Brief, p. 67. They also allege that the methodology behind the survey excludes a large part of the population, mainly older adults who are not as dexterous with online surveys as younger adults. *Id.*, p. 69.

Ms. Jessica Laird, Vice-President of Customer Experience for LUMA, submitted a pre-filed rebuttal testimony addressing the arguments posed again by LECO. Ms. Laird has been involved in the development of surveys for over ten years. *See* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (English Portion), p. 640, lines 23-24; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [00:06:18]. She testified that email is the survey method that J.D. Power uses for its Electric Utility Syndicated Studies across North America. According to Ms.

Laird's experience, digital channels (mobile device, laptop, P.C.) are the most widely used and cost-effective means to conduct these studies. *See* Exhibit 42 of the Evidentiary Hearing, Rebuttal Testimony of Jessica Laird (February 17, 2022), p. 14, lines 273-277.

Ms. Laird indicated that as of December 31, 2021, 609,982 customers had registered an electronic MiLUMA account, and the MiLUMA app has been downloaded 451,127 times. *See* Exhibit 42 of the Evidentiary Hearing, p. 15, lines 295-297. At that time, LUMA had almost half of the customer base signed up on MiLUMA – which means that almost half of the customer base had active e-mail. That is sufficient data to represent a customer base. *Id.*, p. 21, lines 419-421. LUMA shares information from its customer database for those customers that have authorized LUMA and PREPA to share their e-mail addresses. *Id.*, p. 12, lines 225-226. For the surveys conducted from the fourth quarter of 2020 until the fourth quarter of 2021, LUMA shared 543,682 email addresses with J.D. Power. J.D. Power then runs the email addresses through a set of queries to achieve a unique sample size. *Id.*, lines 232-234. Customers are dynamic in how they interact with their utility company, and the demographics of the customers should not be assumed based on the method and media they use to communicate with LUMA. *Id.*, p. 15, lines 286-288. J.D. Power conducts e-mail surveys due to the high response rates received through this type of survey.

As further evidence, Ms. Laird stated that the so-called in-person surveys (in which potential respondents are intercepted, screened, and interviewed in person) can be both time-consuming and expensive. Another concern is that the in-person interviewers may influence the responses. Further, they can potentially suffer from geographic and demographic limitations on who can be interviewed. *See* Exhibit 42 of the Evidentiary Hearing, p. 17, lines 332-336. In Ms.

Laird's experience, surveying in person can be challenging due to the time it takes to complete the survey and people's limited time when visiting a commercial office. Also, an in-person survey would require a pre-screening selection process to be conducted on-site before a customer is selected to respond to an in-person survey in a LUMA commercial office. *Id.*, p. 18, lines 346-350.

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

During the Evidentiary Hearing, Ms. Laird testified that the majority of customers have emails, and the survey is used to get a sample representation of all customers. LUMA sends over to J.D. Power all the email addresses of customers that are registered with LUMA. Currently, there are over 750,000 customers signed with LUMA. However, this number changes daily. *Id.*, p. 622, lines 9-15; AP-2020-0025 Evidentiary-20230209_Meeting Recording 1 [2:31:58].

Ms. Laird explained that J.D. Power, on an annual basis, sends out 100,000 surveys using a sample selected at random. Each quarter J.D. Power sends 25,000 randomly selected customers, who were not previously selected. The number of customers that respond to those 25,000 becomes your sample size. On average, there have been over a thousand customers that respond each

quarter. *See* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (English Portion), p. 624, lines 10-19; AP-2020-0025 Evidentiary-20230209_Meeting Recording 1 [2:34:45].

LECO presented the testimony of Mr. Irizarry as its expert witness. However, Mr. Irizarry testified at the Evidentiary Hearing that he did not have experience designing, conducting, or analyzing customer satisfaction surveys. *See* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (Spanish Portion), p. 41, lines 2-16, and p. 42, lines 18-22; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [1:26:56-1:27:18 & 1:28:03-1:28:29]. He also admitted that Ms. Laird provided the PREPA data in her direct testimony, despite stating in his pre-filed direct testimony that the metric should be stricken due to not being sufficient data for thorough analysis because no PREPA data on customer satisfaction was available. *See* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (Spanish Portion), p. 47, lines 22-25, and p. 48, lines 1-3; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [1:36:33-1:36:51]. LUMA respectfully contends that Mr. Irizarry is not a capable nor credible expert witness on the topic of customer satisfaction surveys.

Although LECO contends that the methodology behind the survey excludes a large part of the population, mainly older adults who are not as dexterous with online surveys as younger adults, they did not offer any evidence at their Evidentiary Hearing that supports such a conclusion. *See* LECO's Brief, p. 69. Then, LECO continues to assume that a survey firm with better knowledge of Puerto Ricans may well have found that phone, mail, or a different method would receive better results at the same cost. *Id.* Again, this is an unfounded conclusion, unsupported by any evidence brought forward by LECO. Moreover, Mr. Irizarry admitted to not being an expert in the subject

matter. Nor does he have any experience designing, conducting, or analyzing customer satisfaction surveys, including experience in the methodology used in customer satisfaction surveys. LECO does not have the expertise to determine whether a particular surveying method is proper or not.

LECO also alleges that Ms. Laird refused to provide the full results of the J.D. Power Customer Satisfaction surveys when asked. *See* LECO's Brief, p. 66. They claim that LUMA refused to provide the results of its survey, the costs of the survey, or the survey's data. *Id.*, p. 67. LECO throws these allegations without any reference to the evidence admitted in the Evidentiary Hearing. Not a single exhibit or reference to the audio of the Evidentiary Hearing is mentioned in support of those allegations. Notwithstanding, Ms. Laird did indeed provide the J.D. Power Customer Satisfaction results for the years 2020 and 2021. *See* Exhibit 42 of the Evidentiary Hearing, p. 13, lines 252-262, and p. 14, lines 263-266. Second, Ms. Laird testified that in Puerto Rico, using a customer satisfaction survey by a qualified professional survey firm is a contractual requirement under the T&D OMA. The contractual requirement is shown in Annex I (Scope of Services), Annex IX (Performance Metrics), and Annex X (Calculation of Incentive Fee) of the T&D OMA. The condition in the T&D OMA regarding the use of a qualified professional survey firm was put into the contract directly by the P3 Authority. *Id.*, p. 8, lines 141-147. J.D. Power was explicitly listed as the vendor in the T&D OMA. *Id.*, line 152; *see also* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (English Portion), p. 627, lines 1-3; AP-2020-0025 Evidentiary-20230209_Meeting Recording 1 [2:37:24]. As such, LUMA was contractually precluded from considering any alternate survey choices.

As for the targets, Ms. Laird explained that those for the J.D. Power Customer Satisfaction Surveys (Residential and Business) Performance Metrics were developed by reviewing the LIPA agreement, which showed that after the agreement was implemented, the scores of the J.D. Power Survey demonstrated a slow improvement over time. However, Ms. Laird noted in her testimony that the LIPA utility was in significantly better condition than PREPA. *See* Exhibit 41 of the Evidentiary Hearing, lines 111-115. Moreover, the scores for the two categories in the surveys of Price and Quality & Reliability were the two lowest scores, both of which will take time to create significant improvements. *Id.*, lines 110-118. Further, Ms. Laird testified that operational indicators such as reliability metrics, price, wait times, and billing accuracy indicate that PREPA was not performing at the same level as its comparable utilities; therefore, the poor results are indicative of performance. *Id.*, lines 106-108. Therefore, LUMA's targets in this category consider the current and near-future conditions of the T&D System when compared to other well-established electric companies in the industry and their respective survey results.

LECO has not offered a substantive challenge to the J.D. Power Customer Satisfaction Surveys (Residential and Business) Performance Metrics. Its witness has no experience in the subject matter, offering unsubstantiated opinions and statements. Considering that the J.D. Power Customer Satisfaction Surveys (Residential and Business) Performance Metrics were not effectively challenged by LECO, LUMA requests the Energy Bureau to adopt them as proposed in this proceeding.

b. LECO Confuses that the Purpose of LUMA's Customer Complaint Rate Performance Metric is to Measure Customer Satisfaction.

As to the Customer Complaint Rate Performance Metric, LECO claims the metric does not measure whether customers are satisfied. *See* LECO's Brief, p. 70. They allege that LUMA's understanding of the Energy Bureau's customer complaint process is mistaken by not including RV dockets. *Id.*, p. 71. LECO also argues that informal complaints should be categorized and included as part of the metric to avoid a limited complaint rate. *Id.*, p. 72.

Ms. Melanie Jeppesen, Director of Billing Services for LUMA, submitted a pre-filed direct testimony supporting the Customer Complaint Rate performance metric. She explained that the Customer Complaint Rate Performance Metric is a measure of LUMA's ability to resolve customer complaints or issues without a customer feeling they need the involvement of the Energy Bureau. *See* Exhibit 43 of the Evidentiary Hearing, Revised Direct Testimony of Melanie Jeppesen (September 24, 2021), lines 143-145. Ms. Jeppesen also testified that there is a foundational issue with expecting that the Customer Complaint Rate metric measures customer satisfaction. *See* Exhibit 44 of the Evidentiary Hearing, p. 11, lines 225-226. The Customer Complaint Rate metric is not a measure of customer satisfaction. *Id.*, lines 226-227. The objective of the metric is to reduce the number of formal complaints. *Id.*, p. 11, line 227, and p. 12, line 228. Customer satisfaction calculated by surveying a statistical sample of customers from the total customer population provides a crucial measure of satisfaction. *Id.*, p. 12, lines 231-232. For example, the JD Power survey indicates utility performance and customer sentiment across six categories. *Id.*, lines 232-233. This method provides for a robust gauge of customer satisfaction across a utility's

broad customer base. *Id.*, lines 234-235. Moreover, she also testified during the Evidentiary Hearing that the metric is part of the overall portfolio from a customer satisfaction perspective, but, in fact, it measures how effective a utility is at resolving the complaints that arise within the administrative process. *See* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (English Portion), p. 669, lines 19-24; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [0:54:01]. Thus, LECO seems to confuse the purpose of the Customer Complaint Rate Performance Metric and scientifically measuring customer satisfaction.⁸

Ms. Jeppesen explained that to develop the Customer Complaint Rate performance metric, LUMA looked at the number of complaints received by the Energy Bureau from 2017 to 2020. After reviewing data from March 2020 through February 2021, it was determined that this period was not a strong depiction of operations at PREPA compared to the historical data reviewed over the last four years. The time from May 2019 to February 2020 was selected as it represents the most normal period of operations since Hurricane María and prior to the onset of the pandemic. *Id.*, lines 77-82. As a result, Ms. Jeppesen explained that the proposed baseline was set considering the total number of complaints received by the Energy Bureau with the classification of NEPR-QR from May 2019 to February 2020 as it is the most normal period of operations for PREPA in the last four years. *See* Exhibit 43 of the Evidentiary Hearing, lines 89-92. This resulted in a baseline of 10.5. *Id.*, lines 91-92. Ms. Jeppesen stated that the baseline represented the calculation

⁸ LECO leaps to the conclusion that problems with voltage and outages are related to customer satisfaction, so much so that customers have filed lawsuits against LUMA. *See* LECO's Brief, p. 72. They refer to *Cooperativa de Agricultores del Suroeste-CASO Coop v. LUMA Energy Company et al.*, Civil No. MZ2023CV00024, a case filed before the Puerto Rico Court of First Instance. However, Plaintiff, in that case, filed a petition for voluntary dismissal with prejudice of the Complaint. *See* Docket Entry No. 38 of Civil No. MZ2023CV00024.

of the metric using the data from May 2019 to February 2020, annualized for twelve months, with the baseline set at 146 complaints annually, or 10.5. *Id.*, lines 85-87.

During the Evidentiary Hearing, to questions posed by counsel for the ICPO, Ms. Jeppesen responded that she would like to make sure the information provided in relation to the “NEPR-QR” cases included in the worksheet submitted with her pre-filed direct testimony was accurate. *See* Evidentiary Hearing Transcript, Vol. 3. February 9, 2023 (English Portion), p. 653, lines 17-18; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [0:32:44]. As a result of the discussion that ensued in the Evidentiary Hearing on whether the Customer Complaint Rate Metric could include cases that the Energy Bureau classifies as “NEPR-RV” proceedings, LUMA proposed to include both complaints classified as “NEPR-QR” and “NEPR-RV” in the calculation of the total number of complaints in the Customer Complaint Rate Performance Metric. This alternative calculation takes into consideration key concerns expressed by the Energy Bureau Commissioners during the Evidentiary Hearing on the desirability that the Customer Complaint Rate Performance Metric measures a comprehensive view of customer complaints, including those in which a customer may be appealing a decision or determination by the utility.

In support of this proposal, LUMA included, as Exhibit B to *LUMA’s Brief in Support of the Request for Approval of the Proposed Annex IX to the T&D OMA, LUMA’s Performance Metrics Targets* (“LUMA’s Brief”), a Sworn Statement executed by Ms. Jeppesen with an Excel workbook as Exhibit C. As noted by Ms. Jeppesen in Exhibit B, the overall calculation methodology will remain the same. This is the total number of customer complaints divided by the total customer count (approximately 1,480,000 customers) multiplied by 100,000. The baseline

will comprise the same time period originally proposed from May 2019 through February 2020 annualized. *See* Exhibit B of LUMA’s Brief, Sworn Statement of Melanie Jeppesen, ¶8.

The revised calculation of the proposed Minimum Performance Level and Targets for Years 1, 2, and 3 of the Customer Complaint Rate Performance Metrics is proportional to the original values included in the Revised Annex IX. *See* Exhibit B of LUMA’s Brief, Sworn Statement of Melanie Jeppesen, ¶20. The values increased proportionally as a result of the inclusion of the “NEPR-RV” complaints for May 2019 to February 2020 and the addition of the four new “NEPR-QR” complaints to the calculation of the baseline. *Id.* The targets follow the same proportion between percentages and years as the original proposal, that is, a straight-line trajectory, *Id;* *see also* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (English Portion), p. 567, lines 9-23; AP-2020-0025 Evidentiary-20230209_Meeting Recording 1 [1:01:07]. The proposed baseline, Minimum Performance Level, and Targets for the Revised Customer Complaint Rate Performance Metric were included in the Excel workbook accompanying Ms. Jeppesen’s Sworn Statement, in a worksheet labeled “Table Metric.” *See* Exhibit B of LUMA’s Brief, Sworn Statement of Melanie Jeppesen, ¶21; Exhibit C attached to Ms. Jeppesen’s Sworn Statement.

As explained by Ms. Jeppesen in her Sworn Statement, even though LUMA is proposing to include both complaints classified as “NEPR-QR” and “NEPR-RV” in the calculation of the total number of complaints in the Customer Complaint Rate performance metric, LUMA still has concerns regarding the potential for fluctuations in the filing of those complaints due to external factors (fuel cost increases, natural disasters, rate changes, etc.). *See* Exhibit B of LUMA’s Brief, Sworn Statement of Melanie Jeppesen, ¶13. It is typical for these types of events to impact not just

customer perception leading to complaints, but actual complaints due to a customer's individual experience resulting from these other factors. *Id.* That is why LUMA maintained the same baseline period between May 2019 and February 2022 and used the same methodology for the Minimum Performance Level and target thresholds.

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

In support, Ms. Jeppesen provided data for PREPA from 2017 to 2020, in which claims for high electricity consumption were the reason customers filed informal complaints for 58% of the claims. *Id.*, lines 89-91. Moreover, she noted that consideration must be given to the fact that a customer who files an informal complaint can later file a formal complaint, creating two different complaints, and two counts towards the metric, based on the same set of facts or the same event.

Id., p. 6, lines 105-108. This rebuttal testimony by Ms. Jeppesen is uncontested. Thus, LUMA respectfully proposes that the record does not support a proposal to include informal complaints in LUMA’s proposed Customer Complaint Rate Metric.

LUMA respectfully contends that LECO’s arguments in opposition to the Customer Complaint Rate Performance Metric are not supported by any evidence in the record of this instant proceeding.

c. The Data Presented by LUMA for the Customer Service Performance Metrics Aligns with the Time Periods the Energy Bureau Considered for Baselines.

LECO proposes that the data presented for the Customer Service Metrics, including the J. D. Power Metrics and Abandonment Rate, is outdated and should be rejected. *See* LECO’s Brief, pp. 73-74. As discussed previously, this Energy Bureau should adopt LUMA’s proposal for this Energy Bureau to approve an initial set of Performance Metrics and that further proceedings be pursued to review —once set— the Minimum Performance Levels and Targets (25%-150%) for the appropriate metrics with the benefit of new data and while considering changes in circumstances and the state of the T&D System. *See LUMA’s Brief in Support of the Request for Approval of the Proposed Annex IX to the T&D OMA, LUMA’s Performance Metrics Targets* (“LUMA’s Opening Brief”), Section III. B.

Ms. Laird testified that the Average Speed of Answer Performance Metric baseline was calculated using data from Fiscal Year 2019 to March 2020. LUMA determined that data from Fiscal Year 2020 would not support a reliable baseline due to the data being available for a period of six months only, the reported abandonment varies from month to month due to COVID-19 and

the onboarding of new outsource vendors, and the lack of visibility into three separate call routing systems. *See* Exhibit 41 of the Evidentiary Hearing, lines 151-156. The baseline proposed by LUMA is based on data from PREPA that was available when the baseline was submitted to the Energy Bureau in February 2021. *See* Exhibit 42 of the Evidentiary Hearing, p. 18, lines 360-361, and p. 19, lines 362.

To develop the proposed baseline for the Abandonment Rate Performance Metric, Ms. Laird expounded that the data from three separate contact center platforms (PREPA, Insight, and Telecontacto) was reviewed. *See* Exhibit 41 of the Evidentiary Hearing, lines 175-176. The baseline was calculated using data from Fiscal Year 2019 to March 2020. LUMA determined that data from Fiscal Year 2020 would not support a reliable baseline, due to the data being available for a period of six months only, the reported abandonment varies from month to month due to COVID-19 and the onboarding of new outsource vendors, and the lack of visibility into three separate call routing systems *Id.*, lines 178-183. As such, LUMA set the baseline using the PREPA contact center data based on subject matter experience and the under-industry standards results. As a result, LUMA reduced the abandonment rate by 2% to achieve an immediate improvement. *Id.*, lines 187-189. It should be noted that the Abandonment Rate Performance Metric was not challenged by any of the testimonies submitted by the intervenors' witnesses during the Evidentiary Hearing, including LECO.

On page 74 of its Brief, LECO cites statements made by individuals during the public hearing regarding customer satisfaction. LUMA strives for customer satisfaction in all areas of its operation and appreciates the opinions of its customers. However, those experiences provided by

three individuals cannot be extrapolated to assume their experiences are the norm or a representation of LUMA's average performance. Although part of the proceeding, the persons who testified at the public hearing were not subject to stating their testimony under oath or being cross-examined, contrary to the many witnesses that appeared in the Evidentiary Hearing. LUMA should be measured against the empirical data it presents periodically on its performance in areas related to customer service.

7. Finance Performance Metrics

a. LUMA's Finance Performance Metrics Are Based on the Data Available.

LECO claims that PREPA's understaffing impacted its ability to collect on accounts, and thus, LUMA should not use PREPA data for the Days Sales Outstanding ("DSO") Performance Metrics. *See* LECO's Brief, p. 76. According to LECO, LUMA's DSO metric should not be based on nine months of PREPA's worst performance years due to understaffing and underinvestment, but it should follow industry standards. *Id.* For example, LECO asserts that the closure of many commercial offices in 2019 affected DSO numbers. *Id.* Finally, LECO claims that the projections of decreased electric demand in Puerto Rico would have an adverse impact on DSO. *Id.*, p. 77. LECO's statements are unsupported and must be rejected.

Mr. Juan Fonseca ("Mr. Fonseca"), Manager, Revenue Department for LUMA, submitted a pre-filed direct testimony in support of the two proposed DSO metrics. He expounded that the data used to calculate the baseline was the common industry standard DSO calculation for Sales, Receivables, and days of analysis. *See* Exhibit 58 of the Evidentiary Hearing, Direct Testimony of Juan Fonseca (August 17, 2021), lines 75-76. After analyzing four (4) years of data, LUMA used

Fiscal Year 2019 data from the Monthly Report to the Governing Board (“MOR”) to calculate the baseline, as it represents a standard period for customer collection data. *Id.*, lines 79-80. After analyzing the data, LUMA discovered that PREPA did not perform any disconnections after Hurricane María until May 2019. *Id.*, lines 80-82. With these considerations, the most stable period for baseline calculations (normal period of operation) for DSO: General Customers Performance Metric was from May 2019 to March 2020. *Id.*, lines 84-86. As for the DSO: Government Customers Performance Metric, Mr. Fonseca explained that since PREPA did not provide the necessary information for the process of evaluation of government accounts, LUMA examined the data for the period from March 2020 to July 2020. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 71, lines 12-25; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:03:55].

Also, LECO’s arguments ignore that during the Evidentiary Hearing, Mr. Fonseca explained that LUMA did not use years previous to 2017 to determine the DSO baseline because the information was not available. The only information available for the analysis was from 2017. If more information was available, it would have been included, but PREPA did not provide it. Thus, LUMA presented all the information it could gather from the PREPA board of the governing site. *See* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (English Portion), p. 753, lines 5-14; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [4:38:28].

As demonstrated above, LUMA’s DSO General Customers Performance Metric was based on a stable period for baseline calculations (normal period of operation). The DSO Government Customers Performance Metric was based on the only available data. Thus, LECO’s contention

that LUMA chose PREPA's worst-performing years to establish the DSO General and Government Customers' Performance Metrics is unsubstantiated. Moreover, LECO does not refer to any evidence admitted on the record that supports its allegations that PREPA's understaffing and the closure of many commercial offices in 2019 affected DSO numbers, nor that projections of decreased electric demand in Puerto Rico would have an adverse impact on the DSO. In fact, this last assertion shows a lack of understanding of DSO. The DSO is a metric to measure how many days the utility will collect what it bills. *See* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (English Portion), p. 755, lines 3-6; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [4:41:22].

Finally, LECO did not establish the correlation between an energy reduction, the closure of commercial offices and/or understaffing, and an increase in the DSO. Nor does LECO signal evidence of the record that can support such allegations. Therefore, the Energy Bureau should reject LECO's arguments.

For the aforementioned reasons, LECO's arguments do not impact the DSO Performance Metrics presented by LUMA.

b. LECO has not Challenged the Operating Budget, Capital Budget, Federally Funded, and Capital Budget, Non-Federally Funded Budget Performance Metrics.

In its Brief, LECO did not challenge LUMA's proposed finance metrics, Operating Budget, Capital Budget, Federally Funded, and Capital Budget, Non-Federally Funded (jointly for purposes of this discussion, "the Budgets Performance Metrics"). LECO includes but a few lines of unprincipled concerns in its Brief, stating that LUMA should not receive an incentive payment

for staying within budget. *See* LECO’s Brief, p. 78. LECO, however, did not support that proposition and ignored the uncontested testimony on the record that supports these metrics.

The performance objective of the Budgets Performance Metrics is to incentivize effective cost management. *See Id.*, p. 32, Exhibit 59 of the Evidentiary Hearing (Direct Testimony, Mr. Kalen Kostyk of August 17, 2021), lines 70, 87-88 and p. 34, lines 101-102. They measure the ability to stay within budget. *See* Exhibit 11 of the Evidentiary Hearing, p. 32, p. 34, Exhibit 59 of the Evidentiary Hearing, line 71, lines 87-88 and 103. The uncontested record shows that LUMA’s Targets for the Operating Budget, Capital Budget – Non-Federally Funded –, and Capital Budget-Federally Funded were set with the intention to manage and strengthen the resiliency of the T&D System effectively. *See* Exhibit 59 of the Evidentiary Hearing, lines 165-167. LUMA intends to spend all its budgeted amounts to assist in stabilization efforts. *Id.*, lines 167-168.

LECO is mistaken in suggesting that LUMA may use the budget amendment process to manufacture a scenario to stay within the applicable budget. As the Revised Annex IX provides, the Baseline for the binary Budgets Performance Metrics is 100% of the approved Budget for the relevant Fiscal Year. Moreover, if LUMA exceeds an approved budget, it will not earn incentive points in connection with the relevant binary Budgets Performance Metric. Thus, the Budget Performance Metrics are not designed for LUMA to adjust the approved budgets to changed circumstances to earn an incentive payment.

It is important to note that the budget amendment process set forth in Section 7.3(e) of the T&D OMA is triggered in the distinct circumstance where LUMA “becomes aware that T&D Pass-Through . . . are expected to exceed” the Operating Budget and Capital Budget for such

Contract Year. Only then is LUMA required to “promptly notify PREB and Administrator and prepare and submit to PREB a proposed amended Operating or Capital Budget. *See* Section 7.3(e) of the T&D OMA. That is, when an adjustment to customer rates is needed and, therefore, the Operating Budget and/or Capital Budget do not comply with the 2017 Rate Order. Thus, the process applies to a distinct scenario that does not include the hypothetical circumstance that LECO suggests may lead to manufacturing a compliant budget for incentive purposes.

Finally, LECO is also mistaken in arguing on page 79 of its Brief, that the 2% Excess Expenditures may be deemed to disincentivize LUMA from staying within Budget. Per Section 7.4(b) of the T&D OMA, the Excess Expenditures shall, at all times, be otherwise compliant with the applicable Rate Order. Consequently, LUMA has an incentive to stay within Budgets, including the Excess Expenditures, lest it not earn points towards the incentive payment for the relevant Budgets Performance Metric.

In sum, none of the arguments set forth by LECO in less than two pages of its Brief regarding the Budget Performance Metrics, provide any support for rejecting the Budgets Performance Metrics. LUMA hereby incorporates by reference the discussion in support of the Budgets Financial Metrics, set forth in its Opening Brief.

c. LUMA’s DSO Performance Metrics Establish Targets Based on the State of the T&D System and Historical Performance.

LECO argues that LUMA’s proposed Metric Targets on DSO are too timid and easy to achieve. *See* LECO’s Brief, p. 79. LECO highlights that LUMA is proposing a 2% reduction in DSO for years 1, 2, and 3, meaning it will take 53 years to reach industry standards. *See id.* Also,

LECO alleges that LUMA's request proposing relief from the DSO metrics for 3-6 months after a non-payment moratorium is lifted is unreasonably long. *Id.*, p. 80.

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

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

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

imposed moratorium periods and for 3-6 months after the moratorium has been lifted as it is a trailing indicator. *Id.*, lines 110-113.

As Mr. Fonseca testified, it is proper to compare the Puerto Rico economy and poverty lines with Latin American countries that have similar poverty line percentages, and political and cultural structures. *See* Exhibit 58 of the Evidentiary Hearing, lines 117-119. The latest census data establishes the poverty line at 43.5% in Puerto Rico, versus the 13.1% for the U.S. average or the 19.7% in Mississippi, which is the worst poverty line in the U.S. *Id.*, lines 119-121. Mr. Fonseca further explained, in response to questions by Associate Commissioner Antonio Torres, that Puerto Rico has a 40% poverty level. *See* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (Spanish Portion), p. 81, lines 20-21; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:17:59].

There are other economic indicators that are not comparable to the United States in terms of economics and the ability of customers to pay for the service. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 81, lines 21-25, and p. 82, lines 1-2; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:18:03]. Mr. Fonseca testified that the proposed minimum level of 148 days responds to the number of comparable Brazilian companies. Such a number was comparable to PREPA's number when it operated. *See* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (Spanish Portion), p. 83, line 25, and p. 84, lines 1-8; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:20:21].

For those reasons, Mr. Fonseca testified during the Evidentiary Hearing that LUMA established a minimum Target of 148 days for the DSO: General Customers Performance Metric.

See Evidentiary Hearing Transcript, Vol., 3, February 9, 2023 (Spanish Portion), p. 69, lines 6-7; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:01:52]. The number was obtained by comparing similar electric utilities to PREPA. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 69, lines 11-14; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:02:05]. That same number is the Minimum Performance Level of two companies located in Brazil. Those companies had the same level of clients and the same level of poverty. *See* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (Spanish Portion), p. 69, lines 23-25; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:02:46].

As for the DSO: Government Customers Performance Metric, Mr. Fonseca explained that the Minimum Performance Level of 850 days was obtained considering PREPA's historical data due to the specific peculiarities of the government in Puerto Rico. *See* Evidentiary Hearing Transcript, February 9, 2023 (Spanish Portion), p. 85, lines 24-25, and p. 86, lines 1-24; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:22:28].

During the Evidentiary Hearing, LECO asked questions precisely on the 2% reduction in DSO for years 1, 2, and 3, and that it would take 53 years to reach industry standards. Mr. Fonseca answered that it would never happen in Puerto Rico. *See* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (English Portion), p. 755, lines 17-25, and p. 756, line 1; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [4:42:04]. He explained that "Law 57 requires from the get-go, you already have 30 days that you cannot collect. So, the customer has the right to object that bill. So, from the start you already have 30 days. So, you're saying all customers are going to pay in 15 days, including government? It is not real because the poverty lines and the

inflation and all of that, it is not a pragmatic approach”. *Id.*, p. 756, lines 4-13; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [4:42:40].

Regarding LECO’s statement that LUMA’s request proposing relief from the DSO metrics for 3-6 months after a non-payment moratorium is lifted is unreasonably long, during the Evidentiary Hearing, the Energy Bureau issued a bench order instructing LUMA to clarify in writing the request included in its proposed Annex IX, pp. 35 through 37, on the relief from the “Day Sales Outstanding” Performance Metrics for three (3) to six (6) months after a moratorium period has been lifted. *See* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (Spanish Portion), p. 145, lines 9-23, and p. 146, lines 3-19; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [5:30:01-5:30:42].

On February 21, 2023, LUMA filed a *Motion in Compliance with Bench Orders Issued During the Evidentiary Hearing*. LUMA submitted supporting information on its proposal for relief from the “Day Sales Outstanding” Performance Metrics for three (3) to six (6) months after a moratorium period has been lifted. *See Motion in Compliance with Bench Orders Issued During the Evidentiary Hearing* dated February 21, 2023. In terms of the proposal for relief from the “Day Sales Outstanding” Performance Metrics for three (3) to six (6) months after a moratorium period has been lifted, LUMA explained that it does not affect the metric other than allowing for LUMA’s performance to be assessed during a normal period of operations that accurately represents performance that LUMA can control. LUMA proposes relief from these non-payment moratoriums mandated periods because they are government-mandated, and LUMA can no longer carry out the complete dunning process that includes disconnections. Said dunning process is an

integral part of the internal efforts to improve DSO. The relief does not impact the effective weight of the metric due to a non-payment moratorium unless the non-payment moratorium period lasts the entire Contract Year, in which case the metric would be excluded for the Contract Year. The effective weight would be re-distributed among the other metrics within the Financial Performance category (in line with the base points assigned to each of the other metrics within this category. *See Motion in Compliance with Bench Orders Issued During the Evidentiary Hearing* dated February 21, 2023, Exhibit 1, p. 1.

LUMA's proposal for the DSO General and Government Customers metrics remains uncontested as no intervenor challenged the proposed metrics. Nor did any of the intervenors submit substantive commentaries or objections to the information submitted by LUMA in the *Motion in Compliance with Bench Orders Issued During the Evidentiary Hearing* dated February 21, 2023. Absent any filed objection, LUMA requests that LECO's argument on this topic in LECO's Brief be stricken from the record.

d. LECO's Allegations on LUMA's Ability to "Game the System" Through Loopholes is Unfounded.

On pages 80 through 81, LECO includes a series of unconnected and run-on statements that are not connected to the Revised Annex IX or LUMA's Proposed Performance Metrics Targets. They should be rejected and stricken as irrelevant.

In one of the run-on statements, LECO contends that LUMA can artificially appear to be meeting DSO targets if it fails to issue invoices for technical losses and theft. *See* LECO's Brief, p. 81. LECO also claims that a separate metric that requires sending out bills within a reasonable time could promote energy justice and accessibility. *Id.*

LECO has not presented any evidence that supports its statement that LUMA can artificially appear to be meeting DSO targets if it fails to issue invoices for technical loss and theft. Notwithstanding, during the Evidentiary Hearing, Mr. Fonseca testified that technical losses and theft do not affect DSO numbers because there is a rider for it in the customer bill. That is to say, there is a provision for it in the customer bill. *See Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (English Portion), p. 760, lines 12-17; AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [4:47:55].* Thus, LECO's argument has no factual or logical basis.

Regarding billing, LECO seems to propose a new performance metric that was not included in its experts' testimonies nor in any other evidence that has been admitted in this instant proceeding. As such, any reference to a metric that requires sending out bills within a reasonable time should be stricken from the record.

Finally, it bears noting that LECO incorrectly states that LUMA overcharges for fuel prices. That statement lacks support on the record and should be stricken. It also willfully ignores that LUMA does not own or operate generation facilities or purchase any fuel for generation. The Final Rate Order of 2017 and PREPA's tariff book require the calculation of the Fuel Charge Adjustment ("FCA") and Fuel Oil Subsidy ("FOS") riders to ensure the pass-through of fuel used in the generation of energy by PREPA and the power purchased from private generators, without any markup, profit or additional charges that would benefit PREPA. As Operator of PREPA's T&D System, and in furtherance of its duties over system regulatory matters under Section 5.6 of the T&D OMA, LUMA is tasked with the preparation of quarterly reconciliations regarding fuel costs and calculated factors to recover fuel costs. The Energy Bureau determines, *via* resolutions

and orders, the fuel costs to be recovered or paid by customers. LUMA does not determine fuel costs. It is incorrect to state that it overcharges customers for fuel costs.

8. Major Outage Event Metrics

In Section XIV of its Brief, LECO opposes LUMA's proposed Major Outage Event Metrics ("MOE Metrics"). According to LECO, the MOE Metrics should include a metric for restoration of power. *See* LECO's Brief pp. 83 and 84. LECO also construes that the MOE Metrics would allow LUMA to earn an incentive for alleged "ministerial tasks" or "tasks of limited utility" and that "entire phases of major outage operations will not be "performed." *Id.*, p. 84. LECO, however, does not include any accepted definition based on regulations, applicable law, or prudent utility or regulatory practices for the terms that it expounds as if they were technical terms or accepted terms in the electric power industry or connection with Performance Metrics Indicators. That is, LECO does not define nor provide any support for the proposition that "ministerial tasks" or "tasks of limited utility" have any relevance to this proceeding or should be considered in the process of approving the Proposed MOE Metrics. Similarly, LECO's Brief does not include any argument or explanation based on the administrative record for the proposition that if the MOE Metrics are approved, "entire phases of major outage operations will not be "performed." There is simply no support for the latter proposition, which should be rejected on its face.

LECO's position is but an unsupported opinion by entities and persons not versed in emergency response and the operations of an electric power utility, regarding the importance of the three categories of the proposed MOE Metrics. The major flaw in LECO's arguments is that **LECO did not put forth any evidence, expert evidence, or otherwise, for its propositions that**

the MOE Metrics do not further public policy, involve ministerial tasks, or assign points towards an incentive payment in an arbitrary manner. This Energy Bureau should reject LECO's arguments that ignore the evidence in the administrative record regarding the MOE Metrics and are just rationalizations by non-expert entities that do not have any experience in preparing for and responding to major outage events, and that did not submit any expert testimony to support their claims.

The uncontested testimonies of LUMA's witnesses, who are experts in the field of Emergency Preparedness and Response, Mr. Terri Tonsi and Mr. Abner Gómez, establish and refute the unprincipled arguments by LECO's counsels who oppose the MOE Metrics from the vantage point of laypersons that have not studied nor applied prudent utility practices for responding to emergencies. The MOE Metrics are part of the prudent management of outages and incentivize utilities to be better prepared and have an optimal response during major events as disasters become more frequent across the world. *See* Exhibit 64 of the Evidentiary Hearing, Rebuttal Testimony, Terry Tonsi February 1, 2022, lines 149-152. Tracking, monitoring, and measuring these metrics is essential as they act as a road map to provide LUMA with valuable tracking mechanisms throughout a major event and enable LUMA to prioritize key objectives and allow LUMA to perform a post-event debrief and review its response in order to improve over time. *Id.*, lines 153-157.

Moreover, the Order issued by the New York Public Service Commission ("NY PSC") on December 23, 2013, in Case 13-E-0140, *Approving the Scorecard for use by the Commission as a Guidance Document to Assess Electric Utility Response to Significant Outages* ("NY PSC Order

on MOE Scorecard”), which was followed in adopting the MOE Metrics, establishes beyond reproach that MOE Metrics, such as the ones proposed by LUMA, are critically important to improving performance to reduce the impacts of storm events and increase customer safety and security. *See* NY PSC Order on MOE Scorecard, pp. 2, 3, 27.

In adopting the NY PSC Order on MOE Scorecard, the NY PSC explained that “[r]ecent experience has shown that it is difficult to perform an assessment of the utility response to major storm events or outages without the capability to define and apply the constituent metrics for preparation prior to the event, operational response during and after the outage event, and utility communications to customers and community leaders as the event and recovery from the event are occurring.” *Id.*, p. 3. With this framework on the importance of applying performance metrics indicators to preparation for and response to major events, the NY PSC adopted three categories of performance metrics: preparation phase, operational response, and communications. Those are the same categories included in LUMA’s MOE Metrics, and LECO opposes disregarding the evidence on the record and the reasoning applied by an expert regulator such as the NY PSC. The MOE Metrics aid in furtherance of those purposes, in alignment with public policy, to ensure that PREPA and LUMA are prepared to face emergency events and are held accountable for their performance.

Although LECO suggests that the MOE Metrics are defective because a metric to measure the restoration of power was not proposed, they did not submit any evidence to support such a performance metric. LECO conveniently ignores that the MOE Metrics include several metrics to enable LUMA to restore power: downed wires, damage assessment, crewing, estimated time of

restoration, ETR accuracy for 90% of service restoration, municipality coordination, utility coordination, Emergency Operations Center (“EOC”) Coordination, safety, and mutual assistance. *See* Exhibit 11, pp. 40-43. As Mr. Tonsi testified LUMA’s operation and the MOE Metrics are designed to enable LUMA to restore power safely and efficiently: “we don’t stop until the last customer is restored.” Evidentiary Hearing, Vol. 4, February 10, 2023 (English Portion), p. 823, lines 11-12, p. 824, lines 6-7; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:09:31].

LECO also errs when it suggests that LUMA has not explained how the MOE Metrics will apply if a Major Outage Event (“MOE”) hits one area of Puerto Rico or when the MOE ends. That is incorrect. The record is clear regarding when the MOE begins and ends for purposes of the MOE Metrics and what qualifies as an MOE.

As stated in Sections 1.3.4 and Section 2.8 of LUMA’s Revised Annex IX, the MOE Metrics apply during Major Outage Events defined as:

an event as a result of which (i) at least two hundred and five thousand (205,000) T&D Customers are interrupted for more than 15 minutes or (ii) at any point in time during the event, there are one thousand five hundred or more ($\geq 1,500$) active outage events for the T&D System, which are tracked in the Outage Management System (OMS). The major outage event is deemed ongoing so long as the interruptions/outages continue to remain above the stated cumulative amounts, in each case for a period of twenty-four hours or longer (≥ 24) and are caused by an act of God. If such an act of God is a storm, the storm must be designated as a named storm by the U.S. National Weather Service or a State of Emergency declared by the Government of Puerto Rico. The major outage event shall be deemed to have ended when the cumulative number of T&D customers remaining interrupted falls below ten thousand (10,000) for a continuous period of eight (8) hours.

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

Mr. Terry Tonsi testified during the Evidentiary Hearing, that the MOE Metrics apply when LUMA is faced with something “major[,] it’s something major that happens to the system. And the way it’s defined is there are 205,000 customers that are interrupted, which signifies a very significant event for a utility, for more than 15 minutes, and then it has more than 1,500 outage jobs that are tracking through the whole mess. And within that, it has to be an act of God. So[,] to be classified as a Major Outage Event it has to be an act of God. So[,] it can’t be something that’s a failure that’s from lack of maintenance or an error or a third-party interference. It has to be an act of God.” *See* Evidentiary Hearing, Vol. 4, February 10, 2023 (T. Tonsi English), p. 809, lines 24-25 and p. 810, lines 1-13; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [0:53:50]. “The Major Outage Event metrics are triggered when there’s a Major Outage Event. And during that period of time in which there is a Major Outage Event metric, that’s when they would apply during that time. The Major Outage Event is when there’s a very large number of customers that are interrupted for -- . . . what we’ve seen is when it’s triggered when here’s a large number of customers, more than 205,000 customers out of the total of 1.4 million so it’s significant. And then it continues under the definition until 10,000 customers -- less than 10,000 customers have their service restored for more than eight hours. That’s just for the [Major Outage] for that period of time, for the application of those Major Outage Event metrics. *See* Evidentiary Hearing, Vol. 4, February 10, 2023 (M. Hurtado English Portion) p. 832, lines 24-25 and p. 833, lines 1-25; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:22:58].

As Mr. Hurtado testified during the Evidentiary Hearing, the proposal is meant to be practical and equitable: to apply the MOE in lieu of the regular metrics, for the duration of the

MOE and considering the nature and extent of the MOE. *See* Evidentiary Hearing, Vol. 4, February 10, 2023 (M. Hurtado Spanish Portion) p. 29, lines 12-19; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [2:19:07]. Mr. Hurtado further explained, “that during a Major Outage Event . . . the Major Outage Event metrics apply. When you are not in a Major Outage Event, they don’t apply. And that’s a simple line that can be drawn because you know when the event happened[,] and you know when it ends.” *See* Evidentiary Hearing, Vol. 4, February 10, 2023 (M. Hurtado English Portion), p. 854, lines 18-25, p. 855, lines 1-8 AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:50:55]. Furthermore, the testimonial evidence establishes that traditionally utilities are measured on metrics during typical daily operations and not measured on their performance during emergencies. “[Thus] . . . [the MOE Metrics provide] a way to hold utilities accountable -- in this specific case, hold LUMA accountable for performance during an emergency. In the absence of having th[e] [MOE Metrics], then, because they are extraordinary events for most of the metrics, they just wouldn't count during an emergency.” This testimony is uncontested and refutes LECO’s assertions that LUMA has not justified the circumstances pursuant to which the MOE Metrics would be triggered to allow LUMA the opportunity to earn the Incentive Fee per the T&D OMA. *See* Evidentiary Hearing, Vol. 4, February 10, 2023 (English Portion), p. 854, lines 18-25, p. 843, lines 8-17; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:50:55].

Furthermore, this Energy Bureau should reject LECO’s objection to the proposal that during an MOE, the “regular” Performance Metrics do not apply, and instead, LUMA may earn the Incentive Fee if it achieves the MOE Metrics. LECO’s only argument in support of this

objection is that LUMA did not show that the NY PSC Order on MOE Scorecard includes a provision identical to LUMA's proposal on the applicability of MOE Metrics. LECO ignores the uncontested record showing that the NY PSC Order on MOE Scorecard was used as guidance.

More importantly, LECO overlooks that LUMA did not unilaterally establish the mechanism for the MOE Metrics to apply to its ability to earn the Incentive Fee. Rather, it is a mandate included in the T&D OMA, whereby the parties to the T&D OMA agreed in Section 7.1(c)(vi) that "[i]f any Major Outage Event (including, for the avoidance of doubt, a Major Outage Event that is a Force Majeure Event) prevents Operator from achieving one or more of the Performance Metrics, Operator shall be entitled to earn the Incentive Fee for the period that such Major Outage Event continues as long as, and to the extent that, Operator achieves the Major Outage Event Performance Metrics during such period of time." LECO's insistence to ignore the T&D OMA is telling LECO has not adopted principled nor reasonable suggestions or concerns in this proceeding, but rather chose to view LUMA's proposals from the prism of its subjective opposition to the T&D OMA, in total disregard of a legally binding contract executed by the Government of Puerto Rico.

LECO also suggests that the MOE Metrics will somehow facilitate inequity in LUMA's response to emergencies based on the geographic locality of the customers. That proposition is not supported by the record. In response to a question on the Estimated Time of Restoration ("ETR") MOE Metric and the restoration process, Mr. Tonsi explained the complexities of restoring power to certain customers and denied that the 10% of customers that remain without service after 90% of customers are restored, live in a particular geographic location.

On pages 86 and 87 of its Brief, LECO cites a portion of the testimony of Mr. Tonsi on response time between a reported downed wire and initiation of appropriate action, where Mr. Tonsi explained that, facially, 18 hours sounds fairly large. LECO does not develop any coherent argument from that portion of Mr. Tonsi’s testimony. However, it is important that this Energy Bureau consider Mr. Tonsi’s full testimony on this topic and his explanation of why the proposed response times for downed wires are adequate and prudent. To wit, in his pre-filed testimony, Mr. Tonsi explained that appropriate action “involves deploying a broad range of employee and external resources, geared towards remediating any danger as quickly as possible.” Exhibit 63 of the Evidentiary Hearing, Direct Testimony, Mr. Terry Tonsi (August 17, 2021), p. 6, lines 108-110. Because there is no established industry standard for responding to reported downed wires and a lack of data or any baseline performance data, the basis for the initial performance Targets reflects [LUMA’s] best estimate of the current state, yet with a stretch in comparison to undocumented unsubstantiated past performance, and intentions to drive improvement over time. *See id.*, p. 10, lines 150-153. The different categorizations between three to five days (response time, 18 hours), five to ten (response time, 36 hours), and greater than ten days (response time, 60 hours) were taken from the New York Power Commission’s Scorecard. Evidentiary Hearing, Vol. 4, February 10, 2023 (English Portion), p. 814, lines 24-25; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [0:59:48]. “The longer the event, there’s more complexity, there’s more damage. And so that’s why it’s written in this three- to five-day event, we’re Targeting at a max that we’ll respond within 18 hours to a downed wire. Now, that sounds fairly large. **But you’ve got to think of the system that we’re playing with today. It’s a very fragile, there’s**

lots of hazards out there. And it will be we will shoot first, it's a target.” *Id.* p. 815, lines 2-11; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [0:58:49] (emphasis added). Mr. Tonsi also explained that LUMA took “into consideration what we knew of the system, the system health, and all of the basically unsafe conditions that present itself today.” *Id.* p. 816, lines 4-7; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:01:16]. Therefore, the testimonies of Mr. Tonsi refute LECO’s suggestion that the targeted response times for downed wires are unreasonably long or should be rejected.

Relatedly, on page 87 of its Brief, LECO misrepresents Mr. Tonsi’s testimony on the types of crews that may respond to downed wires and the role of wire guards. Mr. Tonsi provided the testimony in response to questions by Associate Commissioner Silvia Ugarte. LECO does not include any argument in connection with this testimony, just a conclusory suggestion, unaccompanied by evidence or expert testimony, that a wire guard may respond to downed wires in fewer than 18 hours. LECO is not an expert on this topic, and thus, its comment should be rejected as a conjecture by a layperson. This Energy Bureau should only consider the opinion and testimony of Mr. Tonsi, the subject matter expert, who submitted pre-filed testimony and testified during the Evidentiary Hearing regarding the difference between a wire guard and downed-down crews. During the Evidentiary Hearing, Mr. Tonsi explained that wire guards do not have the technical ability to respond to downed wires:

The wire guard crews are employees and it could be some external employees as well, but we’ll focus on internal right now. So those are the ones without the credentials to work on the system. So those are the ones who did some training and they actually guard the line. They keep the safe distance, which is, you know, seven years employed, top 50 for safety. So, they will keep any customers or clients or anybody away from those

facilities until the wire-down crew -- and the wire-down crew is the crew that actually has the technical ability that can work on the system, can ground it and make it safe, bring the line up or cut it clear so it's safe for all.

Evidentiary Hearing, Vol. 4, February 10, 2023 (English Portion), p. 827, lines 8-25; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:14:27].

The afore-cited testimony of Mr. Tonsi shows that LECO is mistaken when it suggests that LUMA did not explain why wire guards cannot work on downed lines. LECO cannot use arguments by counsel to disregard the expertise of LUMA's employees, the only experts and technicians who submitted evidence of the record regarding and are qualified to set and follow safety and technical protocols in LUMA's response to an MOE and downed wires.

In yet another example of unsupported arguments devoid of references to the evidence admitted for the record, LECO contends that the proposed safety metric is flawed because it is a metric to record safety incidents that allegedly, will not incentivize performance to protect employee safety. *See* LECO's Brief, pp. 87, 89. LECO is mistaken in suggesting that recording safety incidents does not incentivize performance to promote a safe workplace. LECO forgets that the proposed safety metric makes LUMA accountable for incidents involving the safety of its employees. By tracking all safety incidents, including near-misses that did not actually cause any injury or damage, LUMA "will take all of those learnings to make . . . all of [its] contractors [and] LUMA employees . . . more successful and trained." Evidentiary Hearing, Vol. 4, February 10, 2023 (English Portion), p. 829, lines 5-10; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:17:45]. Moreover, the record establishes LUMA's commitment to safety in connection with its response to a MOE and implementation of the MOE

Metrics. In this regard, Mr. Hurtado testified that “in an emergency, there’s a need to prioritize very specific actions. And lots of other things are put on the back burner, as we say in English, right, or you hold because you have to prioritize **safety** and restoring customers.” Evidentiary Hearing, Vol. 4, February 10, 2023 (English Portion), p. 839, lines 12-16; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:31:31]. The “Major Outage Events metrics exist to be able to gauge performance, and . . . to learn from that and to be able to present that and provide transparency on how the company has prepared for an emergency, how the company acts during an emergency on some very specific things such as estimated time of restoration, **very important things in terms of safety**, and then generally in terms of communications with regulators, stakeholders, the public and customers.” *See* Evidentiary Hearing, Vol. 4, February 10, 2023 (M. Hurtado English Portion), p. 836, lines 4-17; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:27:04] (emphasis added).

Also unavailing is LECO’s contention that the MOE Metrics involve basic actions such as the Preparation Phase Performance Metric to notify critical and essential customers after a declared state of emergency that an event is expected to affect service. *See* LECO’s Brief, p. 89. At the outset, LECO cites out-of-context testimony offered by Mr. Tonsi during the Evidentiary Hearing. To wit, on page 89 of its Brief, LECO suggests that Mr. Tonsi’s testimony supports the proposition that addressing the needs of lifeline customers during an emergency is a basic action that all utilities undertake.⁹ In the portion of the hearing testimony that LECO quotes on page 89 of its

⁹ The citation to the audio of the proceeding that LECO includes on footnote 338 allegedly containing Mr. Tonsi’s testimony, is incorrect. It does not contain the testimony that LECO references in its Brief.

Brief, Mr. Tonsi did not address a question on the topic of notices issues to lifeline customers in anticipation of an emergency event. Mr. Tonsi responded to a question on efforts by LUMA to restore service after an MOE.

In that context, Mr. Tonsi stated that the practice by utilities is to “focus on the critical lifeline customers that you’ve got to get major facilities on. And all of the resources are working in collaboration to get that done.” Evidentiary Hearing, Vol. 4, February 10, 2023 (English Portion), p. 824, lines 8-15; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:10:25]. Contrary to what LECO suggests, said portion of Mr. Tonsi’s testimony **underscores the importance of addressing lifeline customers at all stages of a MOE, including the preparation phase.** The fact that these are actions that all prudent utilities shall undertake establishes the need to approve a Performance Metric that measures LUMA’s compliance with the requirement to communicate with lifeline customers.¹⁰ Moreover, the record refutes the contention that communicating with lifeline customers is not an important task in preparing for an MOE. As Mr. Abner Gómez explained, this is an essential component of the preparation phase. LUMA sends an automatic message to these customers and also uses the Emergency Communications Center to reach out to those lifeline customers who cannot be reached. Evidentiary Hearing, Vol. 4, February

¹⁰ This Energy Bureau must strike and disregard the statement included on page 89 of LECO’s Brief that by September 2022, that LUMA allegedly had not availed itself of a database of critical customers compiled by the federal government. The only support for that claim is found on footnote 240 and is a hearsay news article that was not admitted as evidence for the record. As argued in Section II A of this Brief *supra*, and in alignment with the August 17th Order, this Energy Bureau should rule that LECO is precluded from adding arguments that arise from newspaper articles that not only are hearsay, but have not been admitted as evidence and thus, do not belong in the administrative record.

10, 2023 (Spanish Portion), p. 31, lines 4-11 and 22-25, pp. 32, lines 1-25 and p. 33 lines 1-16; AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [2:23:41].

In conclusion, this Energy Bureau should reject LECO's objections to the MOE Metrics, which are not based on technical expertise or knowledge of the actions that a public utility must undertake to prepare for and respond to an MOE. LUMA hereby incorporates by reference the discussion included in pages 133 through 151 of its Opening Brief, whereby LUMA outlines the uncontested evidence for the record that supports approval of the MOE Metrics. Because LECO failed in its Brief to discuss the evidence submitted by LUMA regarding the MOE Metrics, the testimonies of LUMA's witnesses should be deemed uncontested to approve the MOE Metrics as filed in the Revised Annex IX.

WHEREFORE, LUMA respectfully requests that the Energy Bureau **take notice** of the aforementioned and grant LUMA's requests as stated in its Opening Brief of May 11, 2023.

RESPECTFULLY SUBMITTED.

We hereby certify that we filed this motion using the electronic filing system of this Energy Bureau. We will send an electronic copy of this motion to counsel for PREPA, Joannely Marrero-Cruz, jmarrero@diazvaz.law; the Office of the Independent Consumer Protection Office, Hannia Rivera Diaz, hrivera@jrsp.pr.gov, and counsel for the Puerto Rico Institute for Competitiveness and Sustainable Economy ("ICSE"), Fernando Agrait, agraitfe@agraitlawpr.com, counsel for the Colegio de Ingenieros y a de Puerto Rico ("CIAPR"), Rhonda Castillo, rhoncat@netscape.net, and counsels for Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc., Enlace Latino de Acción Climatica, Alianza Comunitaria Ambientalista del Sureste, Inc., Coalicion de Organizaciones Anti-Incineración, Inc., Amigos del Río Guaynabo, Inc., CAMBIO, Sierra Club and its Puerto Rico Chapter, and Unión de Trabajadores de la Industria Eléctrica y Riego (jointly, Puerto Rico Local and Environmental Organizations), larroyo@earthjustice.org, rstgo2@gmail.com, notificaciones@bufete-emmanuelli.com, pedrosaade5@gmail.com, jessica@bufete-emmanuelli.com; rolando@bufete-emmanuelli.com, lvelez@earthjustice.org, rmurthy@earthjustice.org, jcassel@earthjustice.org.

In San Juan, Puerto Rico, this 21st day of September 2023.



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