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PUBLIC SERVICE REGULATORY BOARD
PUERTO RICO ENERGY BUREAU

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IN RE: PERFORMANCE TARGETS FOR
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

SUBJECT: REPLY BRIEF

LOCAL ENVIRONMENTAL AND CIVIC ORGANIZATIONS' REPLY BRIEF

TO THE PUERTO RICO ENERGY BUREAU:

COME NOW, Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc.
- Enlace Latino de Acción Climática, Inc., Alianza Comunitaria Ambientalista del Sureste, Inc., Coalición de Organizaciones Anti-Incineración, Inc., Amigos del Río Guaynabo, Inc., CAMBIO, and Sierra Club and its Puerto Rico chapter, and Unión de Trabajadores de la Industria Eléctrica y Riego (collectively, "LECO"), and respectfully submit the following Reply Brief, pursuant to Regulation No. 9137 ("Regulation 9137"), known as Regulation For Performance Incentive Mechanisms, Section 9.06 of Regulation No. 8543 ("Regulation 8543"), known as Regulation on Adjudicative, Notice of Noncompliance, Rate Review and Investigation Proceedings, and September 8, 2023 Resolution and Order.

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I. INTRODUCTION

On May 11, 2023, LUMA Energy, LLC and LUMA Energy ServCo, LLC (collectively, “LUMA”), the Independent Consumer Protection Office (“ICPO”), and LECO filed its final legal and substantive briefs for the Puerto Rico Energy Bureau’s (PREB or Energy Bureau) consideration. After several procedural events, PREB established September 21, 2023, as the date for all parties to submit their reply briefs. LECO submits this Reply Brief to the Energy Bureau in response to LUMA’s final brief.

II. REPLY TO LUMA’S BRIEF

LECO’s Final Brief anticipated and addressed most of the arguments made in LUMA’s brief, so we do not repeat those points here. LECO’s Final Brief contains our recommendations and arguments on Labor Safety Performance Metrics, Energy Efficiency & Demand Response Metrics, and Finance Metrics, which we do not repeat here. This brief includes brief responses to LUMA’s claims and misstatements on Penalties, Customer Satisfaction Metrics, Reliability Metrics, Vegetation Management Metrics, and Major Outage Metrics.

A. LUMA’s Opposition To The Imposition Of Penalties Is Baseless And PREB Must Impose Financial Penalties As Part Of The Performance Incentive Mechanism

LUMA acknowledges (if implicitly) that penalties can be imposed if they are consistent with "the legal framework adopted by the Government of Puerto Rico and

pursuant to which the T&D OMA was executed."¹ The legal framework adopted by the Government of Puerto Rico, being referred to here, includes Law 57-2014, Law 120-2018, and Law 17-2019. Through those three laws, the Government set up a legal framework for privatization of the electric system, as well as transformation of the electric system. The T&D OMA was executed pursuant to, and must comply with, Law 57-2014, Law 120-2018 and Law 17-2019.²

So – the question before PREB is to determine whether adding penalties to the PIM is consistent with this legal framework: Law 57-2014, Law 120-2018 and 17-2019. LECO’s extensive briefing on this issue has shown that those laws clearly, explicitly, and repeatedly contemplate that PREB can and should impose penalties as part of that scheme. For example:

- Section 6.3 (j) of Act 57 prescribes that one of the Energy Bureau’s powers and duties is to establish performance-based incentives **and** penalty mechanisms.³
- Article 6.25B of Act 57 requires the Energy Bureau to establish “those mechanisms that provide incentives **and** penalties that consider the performance and compliance of the electric service companies with the execution metrics that constitute the energy public policy.”⁴

¹ LUMA, *LUMA’s Brief in Support of the Request for Approval of the Proposed Annex IX to the T&D OMA, LUMA’s Performance Metrics Targets* at 24, PREB Dkt. NEPR-AP-2020-0025 (May 11, 2023). [hereinafter *LUMA’s Initial Brief*].

² See T&D OMA (Adm. Exh. 18), at 11: ““Energy Compliance Certificate” means the certificate issued by the PREB certifying that this Agreement complies with Act 120 and the regulatory framework, including Act 17.”

³ Puerto Rico Energy Transformation and RELIEF Act, Act 57 of May 27, 2014, 2014 LPRA 57 § 6.3 (j).

⁴ Act 17-2019 Art.5.21 adding Art.6.25B to Act 57-2014.

- 22 LPRA 1141d requires the Energy Bureau to establish “performance based incentives **and** penalty mechanisms for electric power service companies...”⁵
- 22 LPRA 1051 requires PREB to “thoroughly scrutinize the power grid’s maintenance and establish performance-based incentive **and** penalty mechanisms.”⁶
- PREB’s Regulation 9137, Article 1.7, defines “financial Incentive” as the “financial reward **or** penalty that may be attached to a Target and which, if it is attached, is applied to a given Electric Power Service Company, for meeting or failing to meet such target.”⁷
- Regulation 9137 Section 7.3(a)(2)(b) reiterates that each Financial Incentive may include a penalty.
- And finally, PREB’s June 2021 order in Docket [NEPR-MI-2019-0007] stated that PREB would use this proceeding “to establish performance-based incentives **and** penalties...”

To sum up: LUMA asks PREB to examine whether "the legal framework adopted by the Government of Puerto Rico and pursuant to which the T&D OMA was executed" allows for incorporation of penalties into a Performance Incentive Mechanism (“PIM”). That framework includes Law 57-2014, Law 120-2018 and Law

⁵ Puerto Rico Energy Public Policy Act, Act.17-2019, 22 LPRA § 1141d.

⁶ Puerto Rico Energy Transformation and Relief Act, Act 57-2014, 22 LPRA §1051 (2014).

⁷ PREB, Regulation for Performance Incentive Mechanisms, Num.9137, Article 1 §1.7 (Dec. 13,2019), <https://energia.pr.gov/wp-content/uploads/sites/7/2020/02/9137-Regulation-for-Performance-Incentive-Mechanisms.pdf>.

17-2019. LECO has established - and LUMA has never refuted - that those laws all envision penalties as part of a Performance Incentive Mechanism.

PREB should also reject LUMA's remaining arguments against imposing penalties within the Performance Incentive Mechanism.

First, LUMA erroneously and capriciously relies on its Operations & Management Agreement as the sole legal framework to establish performance metrics. LUMA's denial of PREB's full authority and the actual legal framework surrounding the establishment of performance metrics along with an incentive-penalty mechanism does not constitute a surprise for LECO. From day one of its operation, LUMA has questioned any decision or action that it thinks might be outside of the Operations & Management Agreement ("OMA"). What LUMA continuously fails to recognize is Law 17 and Regulation 9137 take precedence over the contract. If sections of the OMA violate those laws or improperly limit PREB authority to impose penalties, those sections are illegal and therefore null and void under the OMA's Severability Clause. In LECO's Legal Brief, we argued extensively on this point. Therefore, LECO reiterates those arguments and request PREB to once again make clear to LUMA PREB's authority and the legal framework that LUMA must abide.

Next, LUMA asks PREB to consider how penalties affect the "risk and reward equation" for LUMA.⁸ The PREB's statutory requirement, to consider penalties as part of the PIM, has always been part of the risk-reward equation for all electric

⁸ LUMA's Initial Brief at 32.

companies in Puerto Rico, including LUMA. This is not a surprise: LUMA was well aware (or should have been through due diligence) of PREB's authority and obligation to impose penalties as part of the scheme when LUMA signed the T&D OMA. Indeed, the OMA clearly establishes that PREB may modify or reject the draft PIMs proposed in Annex IX. Section 20.17 states that: "Notwithstanding anything to the contrary herein, no provision of this Agreement shall be interpreted, construed or deemed to limit, restrict, supersede, supplant or otherwise affect, in each case in any way, the rights, responsibilities or authority granted to PREB under Applicable Law with respect to the T&D System, Owner or Operator."⁹

LUMA's brief claims that changes to the risk-reward equation of the proposed PIM is a major concern, but LUMA's own conduct proves that is false. LUMA chose to sign the OMA in June 2020 with a mostly-blank, unfinished, unapproved draft Annex IX.¹⁰ Since that time - LUMA itself has repeatedly, and unilaterally, changed draft Annex IX without consent of the other parties.¹¹ LUMA's numerous changes to the draft Annex IX, from June 2020 to October 2022, demonstrate that any risk-reward equation inherent to the June 2020 version was preliminary, subject to change, and is not binding on this PIM and not even of concern to LUMA.

Third, LUMA draws a false equivalence between fines that PREB can impose for LUMA's noncompliance with law, and penalties that a PIM would impose for

⁹ T&D OMA (Adm. Exh. 18).

¹⁰ LUMA's Initial Brief at 32, 39.

¹¹ See extensively redlined versions of draft Annex IX submitted on August 20, 2021; August 23, 2021; and October 28, 2021. LUMA's brief suggests yet more changes to draft Annex IX, this time to the Customer Satisfaction metrics.

performance that is terrible, but not necessarily a violation of the law. That is why Dr. Irizarry highlighted the term "terrible performance"¹²: LUMA could perform terribly and not incur any fines for legal violations, and due to the skewed nature of LUMA's incentive proposal, could even earn an incentive despite performing terribly. That is why Dr. Irizarry recommended addition of penalties to the PIM for "terrible performance."

Fines on LUMA are an inadequate substitute for inclusion of penalties to the performance incentive mechanism. LUMA has always faced the threat of fines for violations of law - that has not spurred LUMA to perform better. For example: the threat of fines for failure to clear the interconnection backlog has not moved LUMA. Key reliability metrics like SAIDI have dropped under LUMA's watch. PREB has not fined LUMA for that poor performance - but PREB could penalize LUMA for failure to improve reliability, if penalties and outage compensation were incorporated into LUMA's performance incentive mechanism. In that way, penalties as part of the PIM would induce better performance.

For LUMA's final argument against adding financial penalties to each performance metric, LUMA continues to repeat its wholly irrelevant point that a PIM could not impose penalties on PREPA.¹³ This case concerns the reward-penalty scheme for LUMA, not PREPA.¹⁴

¹² Evidentiary Hearing Transcript, February 7, 2023 (Spanish Portion), pp. 7, 8, 11, 107, 108, 109, 110, 111; LUMA's Initial Brief at 26.

¹³ LUMA's Initial Brief at 35.

¹⁴ LUMA's witness testimony on this point is redundant - Regulation 9137 Section 7.2, "Establishment of Incentives and Penalties", is crystal clear that penalties are inappropriate for

**B. In Addition To Financial Penalties Attached To Each Metric, PREB
Should Also Attach "Gating Metrics" To The PIM.**

Dr. Irizarry recommends that PREB also attach “gating metrics” to the Performance Incentive Mechanism, analogous to those which afford the Long Island Power Authority “unprecedented level of oversight of” its service provider’s operations. LUMA urges PREB to examine the context behind the Long Island Power Authority’s gating metrics.¹⁵ That examination reveals remarkable similarities between the circumstances that led LIPA to impose gating metrics, and the circumstances that Puerto Rico finds itself in with LUMA today.

In 2012, Hurricane Sandy destroyed much of LIPA's electric system and caused widespread blackouts - much as Hurricane Maria destroyed much of PREPA's system in 2017.¹⁶ These two storms caused massive physical damage while also revealing longstanding problems with management of the electric system.¹⁷ To deal with both the damage and the mismanagement, LIPA decided that gating metrics were necessary to give the public utility more oversight and control if PSEG continued to mismanage the system. PREB should similarly implement gating metrics to exercise oversight over LUMA, given LUMA’s continuing mismanagement of the grid.

PREPA but wholly appropriate for a for-profit successor company like LUMA: “Regarding PREPA, the Energy Bureau shall apply Metrics and Targets only, until the point when there is a for-profit successor company operating as the transmission and distribution concessionaire under a contract with PREPA, then the Energy Bureau may apply Financial Incentives [the financial reward or penalty that may be attached to a target] to the successor.”

¹⁵ LUMA’s Initial Brief at 28-29.

¹⁶ LUMA’s Initial Brief at 28; AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 2 [01: 18 19].

¹⁷ *Id.*

C. LUMA’s Proposed Customer Satisfaction Metrics Do Not Adequately Measure Customer Satisfaction, And Do Not Go “Above And Beyond.”

LUMA’s brief merely rehashes the testimony from the hearing, and fails to incorporate a robust legal analysis of applicable laws and regulations.¹⁸ In fact, LUMA never mentions PREB’s Commencement of Proceeding Order,¹⁹ let alone other resolutions regarding customer satisfaction issued by PREB in related dockets.²⁰ LUMA latches on –wrongly and to the detriment of customers—to the T&D OMA signed on June 22, 2020, and fails to provide updated data to set adequate baselines for each metric. This means that LUMA once again fails to acknowledge the importance of setting metrics that “go above and beyond”, “serve the public interest”,

¹⁸ LUMA’s Initial Brief at 41.

¹⁹ PREB, *Resolution and Order - Commencement of Proceeding for the Establishment of a Performance-Based Incentive Mechanism Targets*, PREB Dkt. NEPR-AP-2020-0025 (Dec. 23, 2020) [hereinafter *PREB Commencement of Proceeding Order*], (Adm. Exh. 13). In this order, PREB specified that, to be approved, performance metrics must:

- (1) **Go above and beyond:** targets or levels for which an incentive may be proposed shall be subject to and dependent on performance above and beyond the minimum required compliance level;
- (2) **Further the earlier compliance with public policy:** targets or levels for which an incentive may be proposed shall encompass the accelerated implementation of public policy such as the renewable energy portfolio, demand response, energy efficiency or other similar mandated;
- (3) **Further efficiencies and savings:** targets or levels for which an incentive may be proposed shall pursue the highest level of efficiencies and savings;
- (4) **Impact areas with significant performance issues:** targets or levels for which an incentive may be proposed shall positively impact or address areas of unsatisfactory performance with a direct impact to the electric service user;
- (5) **Benefits for the Public Interest:** targets or levels for which an incentive may be proposed shall result in a clear benefit for the public interest and rate payers; and
- (6) **Incentives Reward Difficult Tasks:** targets or levels for which an incentive may be proposed shall be tied to difficult tasks, and not to easy to fix areas.

²⁰ See LECO’s Initial Brief at 63-64, where LECO highlights that LUMA is already legally required to (1) resolve disputes diligently; (2) provide fast service responses; (3) minimize wait time to receive customer service; and (3) establish mechanisms that assess the service provided, any incentives they wish to earn must be set out in accordance with the precepts laid out in PREB’s Commencement of Proceeding Order. LECO, *Local Environmental and Civic Organizations’ Legal Brief*, PREB Dkt. NEPR-AP-2020-0025 (May 11, 2023). [hereinafter *LECO’s Initial Brief*].

and “reward difficult tasks”, among other principles, as required by PREB’s Commencement of Proceeding Order. This is contrary to PREB’s mandate and to the discussion that occurred during the evidentiary hearings.

i. PREB SHOULD REJECT THE METRICS BASED ON THE J.D. CUSTOMER SATISFACTION SURVEY

In our legal brief we asserted that the use of the J.D. Power Survey by LUMA to establish benchmarks is inappropriate for the following reasons: Firstly, it has already been rejected by PREB. Secondly, it fails to mitigate selection bias. Thirdly, it does not provide an accurate representation of Puerto Rico’s electric system. Lastly, it enables compensation for services that do not align with the guidelines in PREB’s Commencement of Proceeding Order.²¹

In its brief, LUMA also persistently emphasizes, as stated by Ms. Laird, that “digital channels (mobile devices laptop, P.C.) are the most widely used and cost-effective means to conduct these studies.”²² Not only was this statement discredited during the hearing when Ms. Laird acknowledged her failure to conduct a comprehensive cost analysis of various survey methods²³, but it raises significant concerns due to its underlying colonialist perspective. The assumption that approaches successful in other regions, like the continental U.S.A, will inherently work here is deeply flawed. Recognizing the unique dynamics of each location is

²¹ LECO’s Initial Brief at 65-70.

²² *Id.* at 44.

²³ AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 2 [01: 11: 14].

crucial for ensuring the accurate implementation of effective work strategies and customer satisfaction survey methods.

Moreover, LUMA's proposal relies on assumptions based on customers outside of Puerto Rico, for example: "surveying in person can be challenging due to the time it takes to complete the survey and peoples limited time when visiting a commercial office."²⁴ This assumption is not grounded in Puerto Rico, because prior to joining LUMA Ms. Laird had no experience working with customer service in Puerto Rico.²⁵

LECO's witness on Customer Satisfaction Metrics, Dr. Irizarry, has far superior knowledge of the Puerto Rico electric system and its customers. Dr. Irizarry possesses ample experience in the energy service sector **in Puerto Rico**, something that both Ms. Laird and Ms. Jeppesen lack. Most notably, LUMA omits Dr. Irizarry's abundant experience in analyzing survey results, specifically in statistical analysis.²⁶ Upon questions from LUMA's attorneys, Dr. Irizarry clarified: "En mi trabajo de profesor Universitario, cuando hacemos investigación, analizamos datos estadísticos todo el tiempo. No solo encuestas, analizamos estadísticamente datos, digamos, de sistema electrico, etcetera."²⁷ He then expressly stated that some of the surveys he analyzes as a professor are "Encuestas para entender, por ejemplo, la satisfaccion de comunidades con el servicio electronico que reciben, sí."²⁸

²⁴ *Id.*

²⁵ *LUMA's Motion Submitting Direct Testimonies on Performance Metrics, Direct Testimony of Mrs. Jessica Laird*, at 11.29-38, PREB Dkt. NEPR-AP-2020-0025 (Aug. 18, 2021) [hereinafter *Laird Direct Testimony*] (Adm. Exh. 41).

²⁶ AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 2 [02:02:42].

²⁷ *Id.* 20230209_Meeting Recording 2 [02:03:05].

²⁸ *Id.* 20230209_Meeting Recording 2 [02: 03: 28].

Chairman and President of PREB Mr. Edison Aviles also intervened and questioned Dr. Irizarry on his academic preparation and his ability to analyze data. Specifically, Chairman Avilés questioned Dr. Irizarry on courses he has taken that allow him to correctly analyze and interpret statistical data. Chairman Avilés himself pointed out that Ms. Laird does not possess formal education in the preparation of surveys,²⁹ a fact that LUMA also omits in their recapitulation of what took place during the hearings.

We reiterate that a survey that has already been rejected twice by PREB due to LUMA’s inability to demonstrate the survey’s usefulness and provide adequate information regarding the survey’s process and the outcome should not be used for establishing benchmarks.³⁰ The reality is that LUMA clings to this survey, much like it clings to the T&D OMA, without any legal foundations and with the sole motive of enhancing its financial gains. The selective manipulation of data and information to meet “easy to fix areas,” is in direct opposition to PREB’s mandate and should never be allowed.

²⁹ *Id.* 20230209_Meeting Recording 2 [02: 06: 59].

³⁰ *See* 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) where LUMA proposed that the PREB incorporate performance baselines from the J.D. Power Customer Satisfaction Survey for both residential and business customers. However, PREB dismissed this proposal, highlighting LUMA’s inability to substantiate the survey’s effectiveness and its failure to address inquiries concerning the survey’s methodology and outcomes. LUMA subsequently filed a motion for partial reconsideration on April 28, 2021, which was rejected by PREB on May 21, 2021.

**ii. CUSTOMER SATISFACTION AND THE INTEGRATION OF NEPR- QR
COMPLAINTS**

During the February 9, 2023, hearing, Commissioner Mateo established that under both NEPR-QR and NEPR-RV nomenclatures PREB receives claims that have already gone through the utility process for which the utility reached a conclusion and provided responses to customers. Following that discussion, LUMA included in their brief an amended customer satisfaction metric that includes both nomenclatures and asserts that the “overall calculation methodology will remain the same.”³¹ LUMA accompanies this with a Sworn Statement from Melanie Jeppesen, included as Exhibit B to its Legal Brief. In her sworn statement, Ms. Jeppesen clarifies that the complaints classified under both QR and RV nomenclatures that will be used to establish the baseline encompass the period from May 2019- February 2020.³²

While LUMA acknowledged the need to include the larger set of complaints, it insists on using the complaints from the limited period of May 2019- February 2020. LUMA should be incorporating all complaints from the full period of LUMA’s operations: that information is readily available and should be used to set the baseline.

Furthermore, LUMA claims that their customer complaint rate must only factor in formal complaints. LUMA’s proposal to ignore informal claims, in which

³¹ LUMA’s Initial Brief at 59. This amendment would change the “risk-reward equation” in draft Annex IX, to the extent that concept is relevant in this proceeding.

³² LUMA’s Initial Brief, Exhibit B at para. 19.

LUMA chooses to only measure “things that are in their control,” would result in a metric that offers only a faint glimpse of customer satisfaction. LUMA’s desire to avoid accountability for complaints is revealed in its statement that it has “concerns regarding the potential for fluctuations in the filing of those complaints [informal] due to external factors such as fuel costs increase, natural disasters, rate changes, etc.” LUMA fails to understand that these “external factors” are typical issues that any company in the energy industry must deal with. The performance metrics are meant to measure how LUMA deals with those external factors. Indeed, the only thing that LUMA’s Customer Complaint Rate Metric seems to measure is LUMA’s own satisfaction with how it handles things that are easily achievable and within its control. This directly contradicts PREB’s Commencement of Proceeding Order because it fails to establish a difficult task and a metric that goes above and beyond.

Considering that LUMA’s proposal for a Customer Complaint Rate Metric consists of outdated data, the metric should be deferred until LUMA provides updated data needed to set performance metrics in compliance with PREB’s Commencement of Proceeding Order.³³

D. PREB Should Impose Reliability Metrics with Penalties and Incentives as Recommended by Dr. Irizarry.

LECO’s Initial Brief thoroughly explained why PREB should revise the targets and baselines for the SAIDI and SAIFI metrics, add CAIDI as a metric, require LUMA to pay outage compensation, and add gating metrics tied to LUMA’s

³³ See LECO’s Initial Brief at 15-16 for a discussion on LUMA’s failure to submit adequate, updated data to support its proposed metrics.

performance on reliability.³⁴ LECO's brief anticipated and addressed LUMA's counterarguments. We only seek to highlight one statement and correct one misstatement in LUMA's brief.

First: LECO's brief urged PREB to re-assign the minimum performance level and targets for its reliability metrics, in order to ensure that they were set in accordance with PREB's requirement that the incentives reflect the "highest level of efficiencies and savings".³⁵ In other words, PREB's target should correspond to the best-case scenario for LUMA performance, while the baseline should correspond to the worst-case scenario. At the hearing, LUMA's witness confirmed that LUMA had strayed from this principle and assigned an easy-to-reach target: putting the best-case scenario at the 150% tier rather than the 100% tier.³⁶ Even more egregiously, LUMA proposed to earn points toward an incentive even in the worst-case scenario, putting it at the 25% tier rather than the baseline. LUMA's brief confirms this: "In setting the 25% Target, LUMA examined pursuant to its experience, what would be the worst-case scenario for its ability to improve; that is, if LUMA had more problems on the grid than anticipated, what would be the minimum performance and the minimum achievable Target."³⁷

LUMA's brief also proposes to remove CAIDI from the list of performance metrics.³⁸ This is a change in position for the company: its initial Annex IX, submitted

³⁴ LECO's Initial Brief at 55-63, 99-100.

³⁵ PREB December 2020 Order.

³⁶ LECO's Initial Brief at 56.

³⁷ LUMA's Initial Brief at 81.

³⁸ *Id.* at 78.

in the summer of 2020, did include CAIDI.³⁹ (Therefore, to the extent the original Annex IX’s “risk-reward equation” is relevant in this case: CAIDI was part of that equation.) As explained in LECO’s Initial Brief and Dr. Irizarry’s testimony, PREB has good reason to stick with the original decision to include CAIDI as a performance metric: first and foremost, the average time a customer must wait until power is restored, as measured by CAIDI, is the most important metric for customers (and therefore, improvement on this metric is critical to restore customers’ faith in the system). LUMA’s brief misstates the facts and misrepresents Dr. Irizarry’s testimony. First, LUMA states that Dr. Irizarry’s testimony did not consider the need for transformation of the grid.⁴⁰ Quite the opposite: Dr. Irizarry’s testimony is centered on recommending performance metrics that will address the fundamental need to transform the current grid, which relies on centralized powerplants burning imported fossil fuels, to a grid powered by rooftop solar + storage systems. Next: LUMA misrepresents the updated version of IEEE Standard 1366.⁴¹ As Dr. Irizarry made clear at the hearing: the revised IEEE standard recommends observing CAIDI in context with SAIDI and SAIFI, rather than observing CAIDI on its own without the other two statistics. This is perfectly aligned with Dr. Irizarry’s recommendation to add all three statistics to the Performance Incentive Mechanism.⁴² The record reveals

³⁹ LUMA, *LUMA’s Submittal and Request for Approval of Revised Annex IX to the OMA*, PREB Dkt. NEPR-AP-2020-0025 (Feb. 25, 2021).

⁴⁰ LUMA’s Initial Brief at 78.

⁴¹ *Id.*

⁴² AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 3 [01:57:02]

the real reason LUMA does not wish to be evaluated under CAIDI: the average length of outages, measured by CAIDI, rose nearly 70% in one year under LUMA's watch.⁴³

E. PREB Should Accept Intervenors' Recommendations on Vegetation Management Metrics

All parties agree that vegetation management is critical, especially in the context of the current centralized grid. Despite the importance of this work, LUMA is still resistant to the concept of adding a metric that would reward LUMA for exceptional performance on vegetation management, and punish LUMA for poor performance.⁴⁴ In October 2022, ten months after PREB ordered LUMA to do so, the company finally submitted a single, overly simplistic metric: tracking the total annual number of miles of vegetation management on primary lines only.⁴⁵ The proposal did not go unchallenged⁴⁶: witnesses for LECO and OIPC both recommended additional metrics to better fit the provisions of Law 17-2019, Regulation 9137, and the Bureau's December 2020 Order.

The single metric that LUMA proposes is inadequate. As LUMA itself explains, "Tracking one unit or metric", like Vegetation Miles Completed on primary lines, "will not directly correlate to the success of a whole vegetation management program."⁴⁷

⁴³ LECO, *Motion to Submit Expert Testimony – Expert Testimony of Agustín A. Irizarry on Behalf of Local Environmental and Civil Organizations* at 56, PREB Dkt. NEPR-AP-2020-0025 (Nov. 17, 2021). (Adm. Exh. 7).

⁴⁴ LUMA claims that performance on vegetation management would be reflected in SAIDI and SAIFI metrics, and thus "it is not necessary to separately track vegetation miles..." LUMA's Initial Brief at 90.

⁴⁵ LUMA, *Submission of the Revised Annex to the T&D OMA*, PREB Dkt. NEPR-AP-2020-0025 (Oct. 28, 2022) [hereinafter *Revised Draft Annex IX*].

⁴⁶ LUMA's Initial Brief at 87: LUMA's brief incorrectly states that LUMA's testimony on vegetation management metrics was "uncontested".

⁴⁷ LUMA's Initial Brief at 91; Adm. Exh. 27, lines 100-101.

How is the metric inadequate? First – it excludes the vast majority of service lines, which fall into the “secondary lines” category, and are shunted into an unmonitored backlog. As Engineer Cosme recommends, PREB should require LUMA to report on the progress on this backlog, especially secondary lines.

Second – LUMA acknowledges that it must transition from corrective or reactive work to preventative work⁴⁸, but LUMA’s metric fails to measure progress on that transition. As Engineer Cosme recommends, PREB should require LUMA to report this ratio – and penalize LUMA for lack of progress on the transition.

Finally – LUMA set an arbitrary, timid, and easy-to-reach target for primary line Vegetation Management. As Dr. Irizarry recommends, PREB should require LUMA to set an aggressive target, based on historical data, and focused on hard-to-reach areas.

In sum: LUMA’s proposed Vegetation Metric does not directly correlate to the success of vegetation management, excludes the vast majority of service lines, does not track the transition to preventative vegetation management, and does not set an aggressive, hard-to-reach target. PREB must reject this proposal, as it fails to satisfy the criteria upon which metrics are judged. Instead, PREB should impose a reward-penalty scheme based on three metrics on Vegetation Management, as proposed by intervenors.

⁴⁸ LUMA’s Initial Brief at 88; Adm. Exh. 29, lines 128-131; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:01:20], “...preventive work is less costly per mile than reactive and corrective work... and takes less time.”

i. ADDRESS PROGRESS ON VEGETATION MANAGEMENT OF SECONDARY LINES, THROUGH LUMA’S BACKLOG.

At the hearing, several Commissioners expressed their concern that LUMA’s vegetation management metric did not include secondary lines⁴⁹: Commissioner Ugarte asked why LUMA’s metric omitted secondary lines.⁵⁰ Commissioner Mateo pointed out that LUMA had no estimate of the percentage of secondary lines that overlapped with primary lines.⁵¹ Commissioner Mateo further highlighted that LUMA had no estimate of the percentage of outages caused by “problems with vegetation on secondary lines”.⁵²

Ms. Watkins made vague claims that “much” of the secondary lines were in the same right-of-way as the primary lines, and in those areas of overlap, both the primary and secondary lines could be serviced at the same time.⁵³ LUMA’s brief is also vague on this point, only stating that “many” of the secondary lines share a right-of-way with primary lines.⁵⁴ When pressed at the hearing, Ms. Watkins admitted that LUMA had no idea what percentage of the secondary lines overlapped with primary lines: “I don't know the exact percentage... I don't know the exact number. ...I would surmise ... I don't have that number.”⁵⁵

⁴⁹ Evidentiary Hearing Transcript, February 8, 2023, p. 347.

⁵⁰ AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [02: 05: 25].

⁵¹ *Id.* at 20230208_Meeting Recording 1 [02: 06: 46]; Evidentiary Hearing Transcript, February 8, 2023, p. 348.

⁵² 20230208_Meeting Recording 1 [02: 06: 46].

⁵³ *Id.* at 20230208_Meeting Recording 1 [02: 05: 10].

⁵⁴ LUMA’s Initial Brief at 86-87.

⁵⁵ *Id.*

Not only does LUMA not know how much of the secondary lines overlap with primary lines – but LUMA also does not even “keep mileage data on secondary” lines and presently has no way of measuring preventative work on those secondary lines.⁵⁶ If LUMA will not measure or plan for preventative work with these secondary lines, then work on those lines falls into the corrective or reactive categories - which LUMA itself acknowledges is not ideal.⁵⁷ At the hearing, Ms. Watkins protested that secondary lines would be “more difficult to track”⁵⁸ than primary lines – all the more reason to measure that work through a performance metric, which “must be tied to difficult tasks, and not to easy to fix areas.”⁵⁹

Since LUMA is not tracking preventative work on secondary lines, that work would fall into the “backlog” that Engineer Cosme discusses in his testimony. To measure work on secondary lines and punish LUMA for failing to complete that work timely, PREB should impose metrics on the backlog, as Engineer Cosme recommends.

**ii. INCLUDE A METRIC TRACKING THE RATIO OF PREVENTATIVE WORK, TO
CORRECTIVE OR REACTIVE WORK.**

LUMA is in the midst of an “ongoing transition from reactive and corrective work... as the [ratio] of preventative work to total vegetation maintenance work is increasing. The goal is to increase the percentage of miles that are preventative...”⁶⁰ All parties agree with the need for this transition, and the transition to preventative

⁵⁶ AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [02: 05: 10].

⁵⁷ LUMA’s Initial Brief at 88; Adm. Exh. 29, lines 128-131; AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [2:01:20].

⁵⁸ AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 [02: 05: 30].

⁵⁹ PREB Commencement of Proceeding Order.

⁶⁰ LUMA’s Initial Brief at 89.

maintenance aligns perfectly with the criteria set forth by the Legislature and the Energy Bureau for performance metrics. Increasing the percentage of preventative miles is “infrastructure maintenance”⁶¹ that improves “the reliability of the electric power service”.⁶² Increasing the percentage of preventative miles achieves “the highest level of efficiencies”⁶³ and will impact an area with “significant performance issues”⁶⁴, with a “clear benefit for the public interest.”⁶⁵ Therefore, as OIPC witness Engineer Cosme explains, PREB should impose a performance metric for the transition to preventative maintenance. If LUMA achieves the transition faster than projected, the public will benefit, and the company should earn a reward. If LUMA does not achieve the transition on schedule – the public will be harmed and LUMA deserves a penalty.

**iii. PREB SHOULD IMPOSE A VEGETATION MANAGEMENT METRIC THAT
PRIORITIZES WORK IN HARD-TO-REACH AREAS.**

As stated above, LUMA’s metrics “must be tied to difficult tasks, and not to easy to fix areas.”⁶⁶ LUMA’s testimony and brief explains that vegetation management can indeed be prioritized for hard-to-reach areas. At the hearing, Ms. Watkins explained that hard-to-reach preventative work could be prioritized based on four factors: safety, reliability, outages, and customer impact.⁶⁷ LUMA’s brief

⁶¹ Act 17-2019 Section 5.21(g).

⁶² Act 17-2019 Section 5.21(c).

⁶³ PREB Commencement of Proceeding Order.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ AP-2020-0025 Evidentiary Hearing-20230207_Meeting Recording 3 [01: 16: 32].

explains that preventative work, which represents the largest portion of LUMA's Vegetation Management budget, "can be planned for and prioritized, scheduled, and managed on a project basis."⁶⁸

PREB should require LUMA to identify the hard-to-reach areas for vegetation management, based on the factors detailed above, and LUMA's vegetation management metric should be tied to those difficult tasks, not to easy to fix areas.

In sum, LUMA proposes to use a single, simplistic metric to track Vegetation Management, that does not track critical items like secondary miles, or the ratio of preventative work. PREB should impose three additional metrics recommended by intervenors: a backlog that would capture secondary miles, the ratio of preventative work, and a more sophisticated metric that prioritizes projects by safety, reliability, outages, and customer impact.

F. LUMA's Proposed Major Outage Events Metrics Provide No Clear Public Benefit, Would Not Impact Areas with Significant Performance Issues, and Would Give Away Incentives for "Easy to Fix Areas."

LUMA spends nearly 20 pages in its initial brief discussing – largely via extended quotes from its witnesses' testimony – its proposed metrics for major outage events ("MOE"). Not once in all those pages does LUMA even mention the standards established for performance metrics set out in Law 17-2019⁶⁹ or in PREB's December

⁶⁸ LUMA's Initial Brief at 85.

⁶⁹ Act 17-2019 § 5.21 sets out the criteria for performance incentives, which must address:

- (a) the volatility and affordability of the electric power service rates;
- (b) the economic incentives and investment payback;

2020 order,⁷⁰ let alone establish that its proposed MOE metrics satisfy those standards. Instead, LUMA repeatedly references the T&D OMA, asserting that the proposed MOE metrics are consistent with that contract.⁷¹ LUMA appears to forget that it is a regulated entity that *must* satisfy the standards set out by Puerto Rico’s governing bodies and PREB.⁷² As explained in our initial brief, its proposed metrics fall far short of what is required.⁷³

(c) the reliability of the electric power service; customer service and commitment, including options to manage electric power costs available to customers;

(d) customers’ access to the electric power companies’ information systems including, but not limited to, public access to information about the aggregated customer energy and individual consumers’ access to the information about their electric power consumption;

(e) compliance with the Renewable portfolio standard and rapid integration of renewable energy sources, including the quality of the interconnection of resources located in consumers’ properties; and

(f) compliance with metrics to achieve the energy efficiency standards established in this Act.

⁷⁰ *PREB Commencement of Proceeding Order* (Adm. Exh. 13). In this order, PREB specified that, to be approved, performance metrics must:

(1) **Go above and beyond:** targets or levels for which an incentive may be proposed shall be subject to and dependent on performance above and beyond the minimum required compliance level;

(2) **Further the earlier compliance with public policy:** targets or levels for which an incentive may be proposed shall encompass the accelerated implementation of public policy such as the renewable energy portfolio, demand response, energy efficiency or other similar mandated;

(3) **Further efficiencies and savings:** targets or levels for which an incentive may be proposed shall pursue the highest level of efficiencies and savings;

(4) **Impact areas with significant performance issues:** targets or levels for which an incentive may be proposed shall positively impact or address areas of unsatisfactory performance with a direct impact to the electric service user;

(5) **Benefits for the Public Interest:** targets or levels for which an incentive may be proposed shall result in a clear benefit for the public interest and rate payers; and

(6) **Incentives Reward Difficult Tasks:** targets or levels for which an incentive may be proposed shall be tied to difficult tasks, and not to easy to fix areas.

⁷¹ *See, e.g.*, LUMA’s Initial Brief at 136 (“The use of the MOE Scorecard is consistent with the T&D OMA’s intent to provide transparency on the utility’s performance during emergencies and to assist in learning from emergency events and improving emergency preparation and response”); *Id.* at 148 (“[I]n . . . signing the T&D OMA, the Government of Puerto Rico determined that the MOE metrics were consistent with energy public policy”).

⁷² *PREB Commencement of Proceeding Order* (Adm. Exh. 13) at 4 (“As a certified electric service company and the operator of the T&D system, LUMA is subject to compliance with the Performance-Based Incentives Mechanisms.”); T&D OMA at Section 4.2(f).

⁷³ *See* LECO’s Initial Brief at 83-91.

While it wholly fails to demonstrate satisfaction of applicable standards, LUMA’s initial brief succeeds in spotlighting the arbitrary nature of the weights the company proposes to allocate to different tasks during major outage events. LUMA asserts that the “effective weight” of the MOE metrics “looks at what is more important in an emergency, and that is how the weight for each metric is assigned.”⁷⁴ LUMA goes on to underscore that, “during a major event, an electrical utility’s *first priority* is the safety of the employees and public, and thus, the utility must *focus on downed powerlines* [sic] and dangerous situations before any restoration of service.”⁷⁵ Yet responding to downed wires counts for just 40 points in LUMA’s proposed MOE metrics, fewer than LUMA would receive for maintaining its website⁷⁶ or recording an outgoing telephone message.⁷⁷

Similarly, LUMA states the obvious: “[i]t is important for a utility to provide the restoration of a customer’s electricity, particularly during a major event or prolonged outage....”⁷⁸ Yet LUMA fails to include a metric for restoration of service in its proposal.⁷⁹ What is more, LUMA twists logic by arguing that somehow such a metric would lead LUMA to ignore mandates to restore electricity first to those who most need it.⁸⁰ The company’s proposed metrics raise questions: for whom are these

⁷⁴ LUMA’s Initial Brief at 140.

⁷⁵ *Id.* at 149-150 (emphasis added); *see also* AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [00: 42: 25 – 00: 42: 46]. (Tonsi testimony that downed wires present a “huge potential of injury to the public and first responders”).

⁷⁶ *Id.*

⁷⁷ *Revised Draft Annex IX*, Table 2-26.

⁷⁸ LUMA’s Initial Brief at 151.

⁷⁹ Similarly, LUMA opposes adding a metric to measure LUMA’s performance on reducing the average duration of an outage (CAIDI).

⁸⁰ *Id.* at 149-150.

metrics “more important,” and for what purpose? Is it to serve the Puerto Rican public, or to fill LUMA’s pockets? LUMA’s proposed metrics suggest that the latter was top of mind as it developed its MOE proposal.

Given the critical, life-or-death impacts of LUMA’s performance during and after major outages,⁸¹ Puerto Ricans deserve—and Puerto Rican law requires—far more. Because LUMA utterly fails to demonstrate that its proposed MOE metrics satisfy the relevant standards, PREB should reject LUMA’s MOE metrics and instead: (1) adopt metrics that will, to the greatest extent possible, ensure LUMA restores electricity as quickly as possible, as safely as possible, and to the greatest number of people possible following a major outage event; (2) impose penalties for failure to complete basic, necessary actions for preparation, operational response, and communications related to major outages; and (3) incorporate energy justice into the metrics to ensure that the same communities are not left, yet again, without power for extended periods after major outages.

⁸¹ *See, e.g.*, LECO’s Initial Brief at 81-83; Tonsi Direct Testimony and Statement to Comm. Ramos, AP-2020-0025 Evidentiary Hearing 20230210_Meeting Recording 1 [01: 35: 51 – 01: 43: 36] (noting that downed wires pose a “huge potential” risk of injury to the public and first responders); Testimony of Ms. Adeliz Garcia and Mr. José Flores, Carraizo Embellece, Negociado de Energía en vivo, *Vista Pública Híbrida Caso Núm.: NEPR-AP-2020-0025* at 4:57:26 – 5:02:42, YouTube (Feb. 17, 2023), https://www.youtube.com/live/6dPhlTVC_rQ?feature=share&t=17846.

III. CONCLUSION

Wherefore, it is respectfully requested that the Energy Bureau accepts LECO's legal brief and grant all the above specified reliefs, including, but not limited to:

1. Impose penalties as part of LUMA's performance-based mechanism as requested here, in LECO's May 11, 2023 Final Brief, and on May 26, 2022, *Motion Requesting Imposition of Penalties* and our July 15, 2022, *Reply to LUMA's Opposition* to that motion.
2. Find that Law 17-2019 Section 5.21, Regulation 9137, and PREB's initial December 23, 2020 order in this case impose a burden of proof upon LUMA, to demonstrate that its proposed incentives will induce LUMA to take the steps necessary to achieve a 21st Century "modern, sustainable, reliable, efficient, cost-effective, and resilient system." Find LUMA has failed to satisfy the burden of proof, and therefore LUMA's proposal must be rejected.
3. Include the following key performance metrics: Distributed Interconnections, Energy Efficiency, Demand Management, and Vegetation Management with corresponding Effective Weights.
4. Consider the faults in credibility for LUMA's expert testimonies in Labor Safety and Vegetation Management metrics as described in LECO's Final Brief Section VII(A) and Section X, respectively. LECO requests that PREB not grant probative value to those testimonies.

5. For each of the metrics, LECO requests that PREB impose metrics as follows:

a. Safety

i. OSHA Recordable Incident Rate. **LECO Request: Restore the Baseline Set in the PREB July 2, 2021 Order of 6.9. As described in Section VII of our Final Brief: PREB should eliminate any incentive for reaching targets on safety metrics, and impose a penalty for failing to meet baselines.**

- Points For Reaching Best-Case Scenario: 0.0
- Point Deduction for Failing to Meet Minimum

Performance Level: (5.0)

	Best-Case Scenario (Labeled as “150%” in LUMA’s proposal Table 2-3)	Minimum Performance Level: Restore to the Baseline Set in the PREB Order
Year One	5.68	6.9
Year Two	3.99	6.9
Year Three	2.79	6.67

ii. OSHA Fatalities. **LECO Request: As described in Section VII of our Final Brief: PREB should eliminate any incentive for reaching targets on safety metrics, and impose a penalty for failing to meet baselines:**

- Points For Reaching Best-Case Scenario: 0.0
- Point Deduction for Failing to Meet Minimum

Performance Level: (5.0)

	Best-Case Scenario (Labeled as “150%” in LUMA’s proposal Table 2-3)	Target Threshold	Minimum Performance Level
Year One	0	0	0
Year Two	0	0	0
Year Three	0	0	0

iii. OSHA Severity Rate. **LECO Request:** the Baseline set in the PREB Order is 31.00. LUMA’s targets and minimum performance levels for all three years indicate worse performance than the baseline. PREB should reject these and impose more aggressive targets and minimum performance levels, and impose penalties for failure to meet the Baseline of 31.00. As described in Section VII of our Final Brief: PREB should eliminate any incentive for reaching targets on safety metrics, and impose a penalty for failing to meet baselines:

- Points For Reaching Best-Case Scenario: 0.0
- Points For Reaching Target Threshold: 0.0
- Point Deduction for Failing to Meet Minimum Performance Level: (5.0)

iv. OSHA DART Rate. **LECO Request:** The Baseline set in the PREB Order is 4.80. LUMA’s proposed Threshold for Year One, and Minimum Performance Levels for all three years, indicate worse performance than this baseline. PREB should

reject these and impose more aggressive targets and minimum performance levels, and impose penalties for failure to meet the Baseline of 31.00. As described in Section VII of our Final Brief: PREB should eliminate any incentive for reaching targets on safety metrics, and impose a penalty for failing to meet baselines:

- Points For Reaching Best-Case Scenario: 0.0
- Points For Reaching Target Threshold: 0.0
- Point Deduction for Failing to Meet Minimum Performance Level: (5.0)

b. Distributed Interconnection, Energy Efficiency, & Demand Response

- i. NEM Project Activation. LECO Request: Reject LUMA's proposed metric, and direct LUMA to create a new metric aligned with the interconnection metric adopted by the Hawaii Public Utility Commission, adapted to the smaller rooftop systems in Puerto Rico: the average number of business days it takes the Companies to complete all steps within the Companies' control to interconnect DER systems <25kW in size, in a calendar year. PREB should also incorporate a penalty for failure to connect any system within thirty days, as required by Act 114-2007.

- ii. Add metrics recommended by Dr. Irizarry:
 - % of customers signed up to Energy Efficiency and Demand Response programs each year.
 - Program costs per MWh saved through Energy Efficiency and Demand Response programs.
- iii. Add metrics aligned with those adopted by the Hawai'i Public Utilities Commission:
 - Residential Hard-to-Reach Energy (kWh) Savings Beyond Energy's Target.
 - Residential Hard-to-Reach Peak Demand (kW) Reduction Beyond Energy's Target; Low-Income Customers Served Beyond Hawaii Energy's Target.
- iv. Add metrics envisioned by Regulation 9367:
 - Annual MWh savings
 - Lifetime MWh savings
 - Annual MW savings
 - Lifetime net benefits
 - Greenhouse gas reductions
 - First-year savings (at least 0.1% of annual sales in the first year)
 - Second-year savings (at least 0.25% of annual sales)

- v. Energy Savings as % of Sales. **LECO Request: Implement this metric immediately, instead of deferring it as LUMA proposes, as inducement to seek funding for, and accelerate implementation of, quick-start energy efficiency and demand response programs. Award points for reaching the Best-Case Scenario or the Target Threshold, and Deduct Points for Failure to Meet the Minimum Performance Level.**
- Points For Reaching Best-Case Scenario: 2.5
 - Points For Reaching Target Threshold: 1.25
 - Point Deduction for Failing to Meet Worst-Case Scenario (Labeled as 25% by LUMA): (2.5)

	Best-Case Scenario (Labeled as “150%” in LUMA’s proposal Table 2-3)	Target Threshold	Worst-Case Scenario (Labeled as “25%” in LUMA’s proposal Table 2-3)
Year One	0.15%	0.10%	0.03%
Year Two	0.38%	0.25%	0.06%
Year Three	0.50%	0.40%	0.10%

- vi. Peak Demand Savings as % of Peak Demand. **LECO Request: Implement this metric immediately, instead of deferring it as LUMA proposes, as inducement to implement quick-state energy efficiency and demand response programs immediately. Award points for reaching the Best-Case**

Scenario or the Target Threshold, and Deduct Points for Failure to Meet the Minimum Performance Level.

- Points For Reaching Best-Case Scenario: 2.5
- Points For Reaching Target Threshold: 1.25
- Point Deduction for Failing to Meet Worst-Case Scenario (Labeled as 25% by LUMA): (2.5)

	Best-Case Scenario (Labeled as “150%” in LUMA’s proposal Table 2-3)	Target Threshold	Worst-Case Scenario (Labeled as “25%” in LUMA’s proposal Table 2-3)
Year One	0.08%	0.10%	0.01%
Year Two	0.15%	0.20%	0.03%
Year Three	0.25%	0.30%	0.05%

c. Reliability

i. System Average Interruption Frequency Index. **LECO**

Request: PREB should revise the points awarded and deducted for this metric as follows:

- Points For Reaching Best-Case Scenario: 5.0
- Points For Reaching Target Threshold: 2.5
- Point Deduction for Failing to Meet Worst-Case Scenario (Labeled as 25% by LUMA): (5.0)

	Best-Case Scenario (Labeled as “150%” in LUMA’s proposal Table 2-3)	Target Threshold	Worst-Case Scenario (Labeled as “25%” in LUMA’s proposal Table 2-3)
Year One	8.2	9.8	10.2
Year Two	6.8	8.5	9.5
Year Three	5.8	7.4	9.0

ii. System Average Interruption Duration Index. **LECO**

Request: PREB should revise the points awarded and deducted for this metric as follows:

- Points For Reaching Best-Case Scenario: 5.0
- Points For Reaching Target Threshold: 2.5
- Point Deduction for Failing to Meet Worst-Case Scenario: (5.0)
- **PREB must also include an outage compensation mechanism, which will at least partially reimburse customers for damaged appliances and spoiled food caused by outages that were LUMA’s fault.**

	Best-Case Scenario (Labeled as “150%” in LUMA’s proposal Table 2-3)	Target Threshold	Worst-Case Scenario (Labeled as “25%” in LUMA’s proposal Table 2-3)
Year One	870	1,119	1,181
Year Two	684	932	1,081
Year Three	497	746	994

- iii. Customer Average Interruption Duration Index. **LECO Request: PREB should impose penalties for failure to meet the CAIDI Baseline of 145 minutes established in PREB’s May 21, 2021 Order in Docket NEPR-MI-2019-0007.**
- iv. Vegetation Maintenance Miles Completed. **LECO Request: Reject this metric, and require LUMA to propose a new vegetation maintenance metric or PREB establishes said metric which accounts for Relative Difficulty of Vegetation Maintenance Projects.**
- v. Distribution Line Inspections & Targeted Corrections. **LECO Request: award points for reaching the Best-Case Scenario or the Target Threshold, and Deduct Points for Failure to Meet the Minimum Performance Level.**
- Points For Reaching Best-Case Scenario: 5.0
 - Points For Reaching Target Threshold: 2.5
 - Point Deduction for Failing to Meet Minimum Performance Level: (5.0)

	Best-Case Scenario (Labeled as “150%” in LUMA’s proposal Table 2-3)	Target Threshold	Minimum Performance Level
Year One	159	106	16
Year Two	555	370	56
Year Three	1,031	687	103

vi. Transmission Line Inspections & Targeted Corrections:

LECO Request: award points for reaching the Best-Case Scenario or the Target Threshold, and Deduct Points for Failure to Meet the Minimum Performance Level.

- Points For Reaching Best-Case Scenario: 5.0
- Points For Reaching Target Threshold: 2.5
- Point Deduction for Failing to Meet Minimum Performance Level: (5.0)

	Best-Case Scenario (Labeled as “150%” in LUMA’s proposal Table 2-3)	Target Threshold	Minimum Performance Level
Year One	39	26	4
Year Two	137	91	14
Year Three	254	169	25

vii. T&D Substation Inspections & Targeted Corrections: **LECO**

Request: award points for reaching the Best-Case Scenario or the Target Threshold, and Deduct Points for Failure to Meet the Minimum Performance Level.

- Points For Reaching Best-Case Scenario: 5.0
- Points For Reaching Target Threshold: 2.5
- Point Deduction for Failing to Meet Minimum Performance Level: (5.0)

	Best-Case Scenario (Labeled as “150%” in LUMA’s proposal Table 2-3)	Target Threshold	Minimum Performance Level
Year One	59	39	6
Year Two	206	137	21
Year Three	383	255	38

d. Customer Service

- i. J.D. Power Customer Satisfaction Survey (Residential Customers). **LECO Request: strike this metric, for the reasons detailed in Section (A)(i) above and Final Brief Section XII(A).**
- ii. J.D. Power Customer Satisfaction Survey (Business Customers). **LECO Request: strike this metric, for the reasons detailed in Section (A)(i) above and Section XII(A).**
- iii. Average Speed of Answer (minutes). **LECO Request: Reject LUMA’s proposed baseline of 10 minutes, and impose the baseline of 8.3 minutes set in PREB’s July 2, 2021 Order in NEPR-MI-2019-0007. Award points for reaching the Best-Case Scenario or the Target Threshold, and Deduct Points for Failure to Meet the Minimum Performance Level.**
 - Points For Reaching Best-Case Scenario: 7.0
 - Points For Reaching Target Threshold: 3.5

- Point Deduction for Failing to Meet Minimum Performance Level: (7.0)

	Best-Case Scenario (Labeled as “150%” in LUMA’s proposal Table 2-3)	Target Threshold (Taken from LUMA’s proposal Table 2-3)	Minimum Performance Level
Year One	4.5	Revise Year One Target Threshold	8.3
Year Two	3.2	6.4	7.1
Year Three	2.9	5.8	6.4

iv. Customer Complaint Rate. **LECO Request: Reject the metric proposed by LUMA, as it measures only LUMA’s satisfaction rather than customer satisfaction.**

v. Abandonment Rate. **LECO Request: award points for reaching the Best-Case Scenario or the Target Threshold, and Deduct Points for Failure to Meet the Minimum Performance Level.**

- Points For Reaching Best-Case Scenario: 7.0
- Points For Reaching Target Threshold: 3.5
- Point Deduction for Failing to Meet Minimum Performance Level: (7.0)

	Best-Case Scenario (Labeled as “150%” in LUMA’s proposal Table 2-3)	Target Threshold	Minimum Performance Level
Year One	20%	40%	45%
Year Two	16%	32%	35%
Year Three	14.5%	29%	34%

e. Financial Performance

- i. Operating Budget
- ii. Capital Budget – Federally Funded
- iii. Capital Budget – Non-Federally Funded
- iv. Days Sales Outstanding – General Customers
- v. Days Sales Outstanding – Government Customers
- vi. Overtime

LECO Request for All Financial Performance Metrics: Reject LUMA's Proposed Finance Metrics, as they are timid, too easy to achieve, based on incomplete and cherry-picked data, and riddled with loopholes that would allow LUMA to game the system. Require LUMA to propose aggressive new metrics. Prohibit LUMA from collecting incentives based on meeting revised budgets well into the fiscal year, as opposed to meeting the original budget.

- f. Major Outage Events - **LECO Request: Reject LUMA’s proposed Major Outage Metrics, as they provide no clear benefit for the public interest, fail to impact areas with significant performance issues, give away incentives for basic and easy tasks, and fail to penalize**

unsatisfactory performance during a major outage. Require LUMA to propose new metrics, including penalties for unsatisfactory performance as described above, that will ensure LUMA restores electricity as quickly as possible, as safely as possible, and to the greatest number of people possible following a major outage event. Also, those should incorporate energy justice to ensure that the same communities are not left, yet again, without power for extended periods after major outages.

Respectfully submitted. In San Juan Puerto Rico, September 21, 2023.

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CERTIFICATION OF SERVICE

I hereby certify that on September 21, 2023, I served this Reply Brief to the following parties:

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