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

IN RE: PERFORMANCE TARGETS FOR LUMA ENERGY SERVCO, LLC	**CASE NO:** NEPR-AP-2020-0025 **SUBJECT:** Final Resolution and Order on Performance Targets for LUMA Energy Servco, LLC

FINAL RESOLUTION AND ORDER ON PERFORMANCE TARGETS FOR LUMA ENERGY LLC AND LUMA ENERGY SERVCO, LLC

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I. Introduction

Through this Final Resolution and Order ("Final R&O"), the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") approves LUMA's[1] proposed performance metrics with the modifications and clarifications detailed herein. With this approval, the Energy Bureau completes an important milestone in the series of government approvals that LUMA is required to fulfill under the Transmission & Distribution System Operation and Maintenance Agreement ("T&D OMA").[2] The modifications and clarifications in this Final R&O align LUMA's opportunity to earn an incentive payment with the principles beneficial to the public interest that the Energy Bureau outlined in the opening order of this proceeding.

A. Overview of this Proceeding

This proceeding began with a Resolution and Order issued by the Energy Bureau on December 23, 2020 ("December 23 Resolution"). Following LUMA's submission of its final Revised Annex IX to the Energy Bureau, dated October 28, 2022 (hereafter referred to as "Final Revised Annex IX"), the Energy Bureau determined that LUMA's filings complied with minimum filing requirements as contained in Section 4.2(f) of the T&D OMA.[3] The Energy Bureau then undertook a thorough and detailed review of LUMA's proposal to evaluate whether LUMA's proposal was consistent with the public interest, particularly with reference to the principles in the December 23 Resolution and Regulation 9137[4] (see Section II for details on the December 23 Resolution and Regulation 9137).

During this proceeding, the Energy Bureau submitted ten (10) rounds of information requests to LUMA (hereafter referred to as "ROI" or "Requests of Information"), which included both questions and data requests. Intervenors also issued ROIs to LUMA, and both LUMA and the Energy Bureau issued ROIs to intervenors.[5] The Energy Bureau held evidentiary hearings from February 7, 2023–February 10, 2023, with LUMA, Local Environmental and Civic Organization (LECO), and the Independent Office of Consumer Protection (OIPC) participating in these hearings and subsequently filing two rounds of legal briefs. The Energy Bureau also sought public comments on LUMA's Final Revised Annex IX and held two days of virtual Public Hearings.[6] A complete record of this proceeding and related procedural history is in Appendix A. Public comments are summarized in Appendix C.

The Energy Bureau's findings and orders, summarized below and discussed in the following sections, are the product of this complete and transparent process. The process included the full participation of many intervenors along with members of the general public, and it

[1] LUMA Energy, LLC as ManagementCo, and LUMA Energy ServCo, LLC as ServCo: collectively, "LUMA."

[2] *Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement dated as of June 22, 2020, by and among the Puerto Rico Electric Power Authority ("PREPA"), the Puerto Rico Public-Private Partnerships Authority ("P3 Authority"), LUMA.*

[3] While LUMA's final submission of Revised Annex IX filed October 28, 2022, is hereafter referred to in text as "Revised Annex IX" without specific reference to its filing date, previous revisions of Annex IX filed by LUMA are identified with their respective filing dates.

[4] *Regulation for Performance Incentive Mechanisms*, December 13, 2019 ("Regulation 9137").

[5] The Energy Bureau granted intervenor status the following entities: the Puerto Rico Public Power Authority ("PREPA");); Independent Consumer Protection Office ("OIPC"); and the Local Environmental Organizations – Comité de Dialogo Ambiental, Inc. El Puente Williamsburg, Inc. - Enlace Latino de Acción Climática, Comité Yabucoeño Pro-Calidad de Vida, Inc., Alianza, Comunitaria Ambientalista del Sureste, Inc., Sierra Club and its Puerto Rico Chapter, Mayagüezanos para la Salud y el Ambiente, Inc., Coalición de Organizaciones Anti-Incineración, Inc. Amigos del Rio Guaynabo, Inc. Campamento Contra las Cenizas de Peñuelas, Inc. and CAMBIO Puerto Rico ("LECO").

[6] The Virtual Public Hearings were held February 16, 2023 – February 17, 2023.

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reflects careful analysis and investigation into the substance of LUMA's proposals and deference to the laws and regulations of Puerto Rico.

B. Energy Bureau's Findings and Orders on LUMA's Incentive Proposal

A. Overall Determinations

Through this Final Resolution and Order, the Energy Bureau makes the following determinations:

1. Accept each of LUMA's proposed metrics, including the metrics that LUMA proposes to defer;
2. Accept LUMA's proposed Key Performance Metrics;
3. Modify the approach to performance measurement for certain metrics;
4. Update performance baselines for metrics when more recent performance data is available;
5. Update the Annual Performance Targets, which indicate the performance level necessary to earn 100 percent of the allocated incentive, for all non-binary metrics and certain binary metrics;
6. Accept LUMA's proposal to include three years of performance targets, with the Energy Bureau maintaining the right to review and amend on a yearly basis;
7. Modify the incentive structure such that non-binary metrics are specified with three performance tiers, corresponding to 75 percent, 100 percent, and 125 percent of the allocated incentive;
8. Modify the incentive structure such that performance targets represent the minimum performance level required to earn the associated incentive payment;
9. Accept LUMA's proposed Minimum Performance Levels;
10. Maintain the approach to capping the total incentive at the performance category level;
11. Modify base points allocated to certain metrics;
12. Accept the proposed scorecard for Major Outage Events ("MOE");
13. Modify the incentive calculation such that LUMA shall not be entitled to an incentive fee over the 100-percent target level of the MOE performance metric;
14. Modify the incentive tiers for the MOE metrics to allow LUMA to earn an incentive fee for a 50-percent range of performance consistent with the other performance metrics; and
15. Implement additional requirements and modifications to MOE reporting.

B. Adoption of Performance Metrics and Base Point Allocation

After careful review, the Energy Bureau determines to accept all of LUMA's proposed performance metrics, including those metrics proposed for deferral and LUMA's proposed MOE performance metrics. The Energy Bureau further accepts LUMA's designation of certain metrics as Key Performance Metrics. These determinations are made in consideration of the overall reasonableness of the proposed portfolio of metrics. Further, the Energy Bureau finds that accepting this portfolio of metrics, including the MOE metrics and the designation of certain metrics as Key Performance Metrics, will support progress toward public policy objectives and is consistent with the principles for performance incentive mechanism design in the December 23 Resolution and Regulation 9137. The complete portfolio of metrics that will be adopted through this Final R&O, the assigned base points, and the effective weight for each metric, is presented below in Table 1.

The Energy Bureau will make a limited number of specific modifications to performance measurement for certain metrics; these modifications are summarized in Table 4 in Section IV.C and described in in Section V in the associated subsections for each metric.

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While the Energy Bureau maintains the proportional allocation of the total incentive fee at the performance metric category level, as well as allocation of 25 percent of the total fee to the Customer Service metrics, 50 percent of the total fee to the Technical, Safety, and Regulatory metrics, and the 25 percent of the total fee to the Financial metrics, the Energy Bureau modifies the allocation of base points and the effective weight of individual metrics within the Customer Service and Technical, Safety, and Regulatory categories. These modifications in distribution of base points between metrics are undertaken in the interest of several considerations, to ensure the overall portfolio of performance metrics is in the public interest. No base points have been assigned to metrics that will be deferred.

Table 1. Energy Bureau determinations on performance metrics and base points[7]

Performance Metric	Description	Base Points	Effective Weight
Customer Service		**30**	**25%**
J.D. Power Customer Satisfaction Survey (Residential Customers)	Third-party measure of customer satisfaction	6	5.0%
J.D. Power Customer Satisfaction Survey (Business Customers)	Third-party measure of customer satisfaction	6	5.0%
Average Speed of Answer (minutes)	Average wait time from the moment the customer enters the Automated Call Distribution (ACD) queue to the time an agent answers the call	6	5.0%
Customer Complaint Rate	Number of formal complaints received by the PREB annually per 100,000 customers	6	5.0%
First Call Resolution	Percentage of calls where the customer was able to resolve an issue/need on the first attempt (Deferred)	N/A	N/A
Abandonment Rate	Percentage of customers who hang up (abandon) while the call is still in the Automated Call Distribution (ACD) queue	6	5.0%
Technical, Safety, and Regulatory		**60**	**50%**
OSHA Recordable Incident Rate	Number of OSHA recordable incident cases per 100 full-time employees	1	0.8%
OSHA Fatalities	Number of employee fatalities that occur on the job within OSHA jurisdictions	1	0.8%
OSHA Severity Rate	Total number of restricted and lost-time days incurred as a result of a work-related injury, multiplied by the OSHA scaling factor, and divided by the total number of work hours	1	0.8%
OSHA DART Rate	Total number of OSHA injury cases with either lost time days, restricted days, or results in a job transfer multiplied by the OSHA scaling factor and divided by the total number of work hours	1	0.8%
System Average Interruption Frequency Index (SAIFI)	Indication of how often the average customer experiences a sustained interruption over a predefined period	13	10.8%
System Average Interruption Duration Index (SAIDI)	Indication of the total duration of interruption for the average customer during a predefined period of time	13	10.8%
Customers Experiencing Multiple Interruptions (CEMI)	Ratio of customers experiencing N or more sustained interruptions to the total number of customers served (Deferred)	N/A	N/A
Momentary Average Interruption Frequency Index (MAIFI)	Average frequency of momentary interruptions (Deferred)	N/A	N/A
Distribution Line Inspections & Targeted Corrections	Number of distribution lines (circuits) inspected with results recorded in a database	2	1.7%

[7] The effective weights of the metrics in the Technical, Safety, and Regulatory category do not sum to 50 percent in this table due to rounding.

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Performance Metric	Description	Base Points	Effective Weight
Transmission Line Inspections & Targeted Corrections	Number of transmission lines inspected with results recorded in a database	2	1.7%
T&D Substation Inspections & Targeted Corrections	Number of T&D substations inspected with results recorded in a database	2	1.7%
NEM Project Activation Duration	Average number of days between the submission of a customer application for NEM tariff activation and activation of the tariff on the customer's account, across all expedited projects activated during the year	8	6.7%
Energy Savings as % of Total Energy Sales	Metric to be defined in the EE Three Year Plan filing	6	5.0%
Peak Demand Savings as % of Total Peak Demand	Metric to be defined in the EE Three Year Plan filing	6	5.0%
Vegetation Maintenance Miles Completed	Number of overhead line miles maintained in a given year by Transmission (230kV, 115kV, 28V) and Distribution (less than 38kV)	4	3.3%
Financial Performance		**30**	**25%**
Operating Budget	Actual operating expenses for the Fiscal Year divided by the approved T&D operating budget for the same Fiscal Year	7.5	5.7%
Capital Budget: Federally Funded	Actual Federally Funded Capital Expenses for the Fiscal Year divided by the approved Capital Budget: Federally Funded for the same Fiscal Year	7.5	5.7%
Capital Budget: Non-Federally Funded	Actual Non-Federally Funded Capital Expenses for the Fiscal Year divided by the approved Capital Budget: Non-Federally Funded for the same Fiscal Year	7.5	5.7%
Days Sales Outstanding: General Customers	Year-end amount of general customers' receivables divided by the total year-end value of general customers' credit sales and multiplied by the number of days in that year	4	3.0%
Days Sales Outstanding: Government Customers	Year-end amount of government customers' receivables divided by the total year-end value of government customers' credit sales and multiplied by the number of days in that year	1.5	1.1%
Reduction in Network Line Losses	Measure of ability to reduce electric losses (Deferred)	N/A	N/A
Overtime	Amount of overtime expenses divided by the amount of total non-exempt base compensation expenses	5	3.8%

C. Determinations on Baseline and Target Derivation

Through this Final R&O, the Energy Bureau sets performance baselines for each metric. The Energy Bureau also approves performance targets for each metric for three years, which are designated Year 1, Year 2, and Year 3.

The Energy Bureau has updated the performance baselines and modified the performance targets for many of the approved performance metrics. The performance baselines adopted through this Final R&O are presented in Table 5 in Section IV.D. Final updated performance targets for each metric are presented in the respective subsections, in Section V of this Final R&O. The complete portfolio of performance metrics, with associated baselines and performance targets, is presented in Appendix B.

The Energy Bureau clarifies that baselines are intended to reflect system performance at a time proximate to the commencement of Year 1 of the approved performance metrics. However, the performance baselines in LUMA's Final Revised Annex IX do not reflect the most recent available performance data, and do not reflect a consistent historical period. The Energy Bureau further clarifies that performance targets should be informed by the performance baselines, since the baselines indicate the condition of current system performance and suggest the extent of performance improvement that may be reasonably achievable. Therefore, in many instances, updates to performance baselines require updates to performance targets.

In making updates to the performance targets for certain metrics following performance baseline updates, the Energy Bureau has used a standardized set of methods meant to preserve the underlying structure of LUMA's proposals to the extent practicable and to the extent determined to be in the public interest, and these methods are also intended to be both transparent and replicable. Section IV.F details the approaches used by the Energy Bureau.

Through this Final R&O, the Energy Bureau establishes a process to update performance baselines and to make necessary associated performance target updates before the commencement of Year 1 of this performance regulatory regime. Section IV.E details this update process.

C. Energy Bureau's Findings and Orders on Annual Process

The Energy Bureau will implement an annual process for evaluating incentive mechanism performance and making modifications to mechanisms as required. LUMA shall file interim performance reports and an annual Incentive Fee Report, which (1) documents LUMA's performance during the reporting period and (2) presents LUMA's calculation of the incentive fee. The Energy Bureau will review LUMA's performance, and at the conclusion of the annual review process, the Energy Bureau shall issue a Resolution and Order documenting its determination on LUMA's performance and incentive fee earned during the reporting period. PREPA shall pay LUMA the amount determined by the Energy Bureau in the aforementioned Resolution and Order.

II. Detailed Background of this Proceeding

A. Act 57-2014

Act No. 57-2014,[8] establishes the authority of the Energy Bureau over the Puerto Rico Electric Power Authority ("PREPA") and other electric service companies. Act 57-2014 states that all consumers have a right to a reliable and stable electric service.[9]

B. Act 17-2019

Act No. 17-2019[10] broadened the Energy Bureau's authority through authorizing the implementation of performance-based incentives and penalty mechanisms for electric power service companies and other alternative mechanisms to cost-based regulation for compliance and implementation of the objectives established in the law and strict compliance with the Energy Bureau orders.[11]

Act 17-2019 amended section 6.25 of Act 57-2014 to include a set of criteria that the Energy Bureau shall consider when developing performance-based incentives and penalties. These criteria include:

(a.) the volatility and affordability of the electric power service rates;

[8] Known as the *Puerto Rico Energy Transformation and RELIEF Act,* as amended ("Act 57-2014").

[9] See Act 57-120, Section 1.2(f) "Declaration of the Public Policy on Electric Power."

[10] Known as the *Puerto Rico Energy Public Policy Act,* as amended ("Act 17-2019").

[11] *Id.* Section 1.5(3)(c) and (d).

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(b.) the economic incentives and investment payback;
(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 in consumers' properties;
(f.) compliance with metrics to achieve the energy efficiency standards established in this Act; and
(g.) infrastructure maintenance.[12]

C. Regulation 9137

In compliance with the requirements of Act 57-2014, the Energy Bureau adopted Regulation 9137 to establish Performance Incentive Mechanisms and targets for regulated electric companies. Article 3 of Regulation 9137 states that the Bureau will initiate the corresponding proceedings to adopt such performance mechanisms and targets and sets forth the process for interim and annual reporting and to establish specific metrics, targets, financial incentives, and penalties.

Regulation 9137 established that the Energy Bureau should apply the following principles in establishing Performance Incentive Mechanisms:

(A) The Energy Bureau's policy goals and desired outcomes, including but not limited to the criteria for developing performance-based incentives and penalties described in section 6.25 Act 57-2014, compliance with federal and local environmental policies and any 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 absent the PIM.
(C) Performance Incentive Mechanisms shall be 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.
(F) Performance Incentive Mechanisms shall give the affected company 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 designed outcomes.

D. Adoption of Revised Annex IX to the T&D OMA

On June 22, 2020, LUMA, PREPA, and the P3 Authority entered into an Operation and Maintenance Agreement ("OMA") under which LUMA will manage PREPA's transmission and distribution system ("T&D System").[13]

[12] Act 57-2014, Section 6.25B.

[13] The executed copy of the T&D OMA is available at: https://www.p3.pr.gov/wpcontent/uploads/2020/06/executed-consolidated-om-agreement-td.pdf (last visit, November 29, 2023)

As a certified electric service company[14] and operator of the T&D System, LUMA is subject to compliance with Performance-Based Incentive Mechanisms. Per Section 4.2(f) of the OMA, LUMA must prepare and submit to the P3 Authority for review and comment "a revised Annex IX (*Performance Metrics*), including (i) proposed baseline, target and minimum performance levels for certain Performance Metrics, (ii) Key Performance Metrics and (iii) Major Outage Event Performance Metrics, together with an explanation of the basis for each of the foregoing." Following the review and process, LUMA must incorporate or reject changes suggested by the P3 Authority and submit the revised Annex IX to the Energy Bureau for review. After a review, the Energy Bureau can then "approve, deny, or propose modifications to, such revised Annex IX." LUMA must then submit updates to the revised Annex IX for PREB approval.

The performance metrics targets established in Annex IX to the OMA will be the basis for determination of the Incentive Fee for each Contract Year as defined in the OMA. Section 7.1I(i) of the OMA (Incentive Fee) provides:

> *"Based on the Operator's ability to timely achieve or exceed the performance metrics set forth in Annex IX (Performance Metrics) (The "Performance Metrics"), Operator shall be entitled to earn the incentive fee in any given Contract Year ("Incentive Fee"), which fee shall be in Annex VII (Service Fee), adjusted on a Pro Rata basis for a partial Contract Year and calculated as set for in Annex X (Calculation of Incentive Fee)."*

E. Baseline Proceeding, Case No. NEPR-MI-2019-0007

On May 14, 2019, the Energy Bureau issued a Resolution and Order establishing a proceeding on baseline performance measurement for PREPA (NEPR-MI-2019-0007). The order required PREPA to provide quarterly reports of key performance indicators beginning September 15, 2019, to establish a baseline of PREPA's performance and to help with the development of "measures, metrics, and targets." The Energy Bureau ordered LUMA to use the list of key performance indicators published by the Energy Bureau on April 27, 2017, in Case No. CEPR-IN-2016-0002.[15]

Following a year of collecting and analyzing PREPA reports, on December 23, 2020, the Energy Bureau issued a Resolution and Order through which it commenced a proceeding under the same case to establish the baseline and the targets or minimum compliance benchmarks with which the electric system of Puerto Rico should comply.

On May 21, 2021, the Energy Bureau issued a Resolution and Order establishing baseline values for all reported metrics ("Baseline Order"). In the same order, the Energy Bureau discussed performance metric Benchmarks which it defined as "the precise level of service or output that a utility is expected to achieve during a particular time period for a particular metric." Benchmarks may be the basis for providing a utility with a financial incentive, and they may also be a tool to help guide a utility's performance with neither penalty nor reward attached. The Baseline Order discussed several design principles and methods to set Benchmarks:

- Tie benchmarks to policy goals.
- Balance costs and benefits.
- Set realistic benchmarks.
- Historical performance.
- Peer utility performance.

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[14] Resolution, *In re: Request for Certification LUMA Energy, LLC,* Case No.: NEPR-CT-2020-0008, November 4, 2020; Resolution, *In re: Request for Certification LUMA Energy ServCo, LLC,* Case No.: NEPR-CT-2020-0007, November 20, 2020.

[15] Resolution, *In Re: The Performance of the Puerto Rico Electric Power Authority*, Case No. CEPR-IN-2016-0002, April 27, 2017.

- Frontier methods.
- Incorporate stakeholder input.
- Use dead bands to mitigate uncertainty and variability.
- Use time intervals that allow for long-term sustainable solutions.
- Allow benchmarks to evolve.

The Energy Bureau established Benchmarks for many metrics, but for some metrics the Energy Bureau noted that comparison to either industry standards and/or peer group utilities is not applicable and subsequently did not establish a Benchmark. The Energy Bureau further clarified that the determinations made on baselines and benchmarks in the Baseline Order do not prevent the Energy Bureau from revisiting the baselines and benchmarks as "such revision is an ongoing process."

On December 21, 2023, the Energy Bureau issued a Resolution and Order ("December 21 Resolution") summarizing LUMA's 12-month performance from June 2022 to May 2023 for the 963 metrics reported by PREPA and LUMA.[16]

F. Background on this Proceeding to Establish Performance-Based Incentive Mechanisms for LUMA

On December 23, 2020, the Energy Bureau issued a Resolution and Order ("December 23 Resolution") through which it commenced this adjudicative proceeding to establish performance-based incentive mechanisms ("PIMs") for LUMA ("Target Proceeding"). The December 23 Resolution reestablished the Energy Bureau's authority to establish PIMs for LUMA under Act 17-2019, reiterated key criteria for review provided by Act 17-2019, and stated that the performance baseline and performance compliance benchmarks determined in the Baseline Proceeding (Case No. NEPR-MI-2019-0007) would be used to establish the corresponding targets.

Further, the December 23 Resolution ordered LUMA to make sure any filing pursuant to Section 4.2 of the OMA considers the outcomes of the Baseline Proceeding under Case No. NEPR-MI-2019-0007 and aligns with additional public interest principles enumerated within the order. These additional principles beneficial to the public interest are consistent with the principles for the design of PIMs in Regulation 9137 and are repeated below:[17]

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 levels.
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, and other similar mandates.
3. **Further Efficiencies and Savings**- As applicable, 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 affect 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 the ratepayers.

[16] Resolution and Order, *In Re: The Performance of the Puerto Rico Electric Power Authority*, Case No. NEPR-MI-2019-0007, December 21, 2023, Attachment A: Discussion of Performance for Selected Metrics and Attachment B: FY23 Metrics Comparison Tables.

[17] Resolution and Order, *In Re: Performance Targets for LUMA Energy Servco, LLC*, Case No. NEPR-AP-2020-0025, December 23, 2020.

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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.

Finally, the December 23 Resolution also stated that "performance rewards or incentives should be awarded after confirmation that the performance of an entity is above and beyond the compliance benchmark. Rewarding entities with incentives for achieving required compliance is the antithesis of the performance incentives mechanisms concept and contrary to the public interest."[18]

The Energy Bureau further clarified in the December 23 Resolution that while LUMA was to be subject to PIMs, as outlined in Section 4.2(f) of the T&D OMA that LUMA had jointly entered into with PREPA and the Puerto Rico Public-Private Partnerships Authority, the Energy Bureau was not to be bound in its review or approval of LUMA's performance metrics by either the time limitations imposed by the T&D OMA or the contents of LUMA's Annex IX proposal.

On February 5, 2021, LUMA submitted its initial proposal for performance metrics, targets, and incentives to the P3 Authority for final review and comments.

On February 25, 2021, LUMA filed a document titled *Submittal and Request for Approval of Revised Annex IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("OMA") pursuant to Section 4.2(f) of the OMA* ("February 25 Request") in which it addressed the comments and suggestions of the P3 Authority.

On April 8, 2021, the Energy Bureau issued a procedural calendar ordering LUMA to file a revised version of the February 25 Request consistent with the December 23 Resolution and the Energy Bureau's final determination establishing baseline and benchmarks in Case No. NEPR-2019-007.

On August 18, 2021, LUMA filed a document titled *LUMA's Submittal of Request for Approval of Revised Annex IX to the OMA* ("August 18 Revised Request").

On August 23, 2021, LUMA submitted a document titled *Motion Submitting Amended Exhibit to the Revised Request for Approval of the Revised Annex IX to the OMA* ("August 23 Motion") in which LUMA submitted an amended version of the August 18 Revised Request with minor edits.[19]

On September 24, 2021, LUMA submitted a document titled *Request for Authorization to Submit Revised Pre-Filed Testimony of Melanie Jeppesen, Second Amended Revised Annex IX to the OMA, and Redline of Second Amended Revised Annex IX to the OMA* ("September 24 Motion) in which LUMA submitted revisions made by Ms. Jeppesen to the Customer Complaint Rate metric target and therefore a second Amended Revised Annex IX of the T&D OMA submitted on August 23, 2021, to be consistent with the revised calculations.

On December 22, 2021, the Energy Bureau issued an order identifying three new performance areas for potential incentive treatment ("December 22 Resolution"). In the December 22 Resolution, the Energy Bureau ordered LUMA to file a revised Annex IX to the OMA including targets and supporting metrics for (i) interconnection; (ii) energy efficiency and demand response; and (iii) vegetation management.

Following several requests by LUMA for extension of time to submit the revised Annex IX and pre-filed testimonies, and multiple subsequent procedural calendar amendments, on October 28, 2022, LUMA filed a document titled "*Revised Annex IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement ("T&D OMA")*.

[18] *Id.*

[19] LUMA states that the only difference between the August 18 Revised Request is Appendix B of Exhibit 1, which states the number of associated exhibits for each of LUMA's primary witnesses (August 23 Motion, p. 2).

A hybrid evidentiary hearing took place from February 7–10, 2023. Public hearings were held between February 16–17, 2023.

Following various procedural events, on April 21, 2023, the Energy Bureau issued a Resolution and Order establishing the deadlines for the parties to submit their final and substantive legal briefs and reply briefs ("April 21 Resolution").

On May 11, 2023, LUMA, ICPO, and LECO filed their final legal and substantive briefs.

On May 25, 2023, the Energy Bureau issued a resolution and order taking administrative notice of 12 documents ("May 25 Resolution").

On June 9, 2023, LUMA filed a document titled *LUMA's Response and Opposition to the Resolution and Order of May 25, 2023, on Taking of Administrative Notice*, whereby it objected to the Energy Bureau's decision on various grounds. ICPO and LECO also filed motions in response to the May 25 Resolution, and stated they had no objection to the Energy Bureau taking official notice of the documents described in the resolution. LECO requested the Energy Bureau take official notice of 24 additional sources originally included in LECO's legal brief.

On June 15, 2023, LUMA filed a document titled *Urgent Request to Stay the Deadline to Submit Reply Brief* ("June 15 Motion"). In its June 15 Motion, LUMA argued that, because the Energy Bureau had not yet issued a ruling on its June 9 Motion, it was reasonable and equitable to stay the pending deadlines on reply briefs until the matter was settled and provide LUMA the final opportunity to address the evidence in the administrative record. LUMA requested that the Energy Bureau stay the deadline to file final briefs until at least twenty (20) days after a ruling was issued on what information and documents would be admitted in the administrative record through the mechanism of taking official notice.

Following several procedural events, on August 17, 2023, the Energy Bureau issued a Resolution ("August 17 Resolution") whereby it denied LECO's June 9 Motion; determined that it was appropriate to take official notice of the facts in Section (II)(B) of the August 17 Resolution, consistent with the May 25 Resolution; and ordered the parties to file reply briefs within twenty-one (21) days.

On August 25, 2023, LUMA filed a motion requesting that the Energy Bureau grant an extension of time until September 21, 2023, to submit the replies to the final briefs by the parties, which the Energy Bureau granted on September 1, 2023 ("September 1 Resolution").

On September 6, 2023, LUMA filed a document titled *LUMA's Motion for Partial Reconsideration of the Resolution of August 17, 2023* ("LUMA's Reconsideration Request"). In its Reconsideration Request LUMA reiterated that the Energy Bureau did not comply with the requirements for taking administrative notice under Puerto Rico law and case law.

On September 21, 2023, the parties submitted their respective replies to final briefs, in compliance with the September 1 Resolution.

Further, on September 21, 2023, LUMA filed the Final Evidentiary Hearing Transcripts. LUMA also filed a document titled *Motion to Reiterate LUMA's Motion for Partial Reconsideration of the Resolution of August 17, 2023, and Reservation of Rights*.

III. Overview of LUMA's Final Revised Annex IX

This section has a high-level summary of LUMA's proposed Final Revised Annex IX. Per Section 4.2(f) of the T&D OMA, LUMA's Revised Annex IX has: "(i) proposed baseline, target and minimum performance levels for certain Performance Metrics, (ii) Key Performance Metrics and (iii) Major Outage Event Performance Metrics, together with an explanation of the basis for each." LUMA proposes that its proposed set of performance metrics apply for three years, due "to the significant gaps identified in data collection, data quality, record-keeping and processes" and proposes that the "effectiveness and appropriateness of each metric," including targets and minimum performance levels, be evaluated annually by the Energy Bureau and LUMA.[20]

A. Performance Categories and Levels

Consistent with the original Annex IX of the T&D OMA, LUMA groups the performance metrics into three performance categories: (1) Customer Satisfaction, (2) Technical, Safety, and Regulatory, and (3) Financial Performance. LUMA proposes the total incentive pool be allocated across each of the performance categories as in the original Annex IX of the OMA; the Customer Satisfaction and Financial Performance categories are each worth 25 percent of the incentive pool, while the Technical, Safety, and Regulatory category is worth 50 percent of the incentive pool.

Each metric has an assigned number of base points that LUMA can achieve. These base points correspond to an effective weight for incentive fee allocation. For each metric, LUMA has the potential to earn 25 percent, 50 percent, 100 percent, 125 percent, or 150 percent of the base points depending on their annual performance. LUMA also proposed a baseline performance value and annual minimum performance levels, and 25-percent, 50-percent, 100-percent, 125-percent, and 150-percent target performance levels for three years for each metric. LUMA need not meet the target threshold for each tier to earn the corresponding incentive; it only must exceed the tier below. For example, to earn 25 percent of the base points, LUMA must exceed the minimum performance level. To earn 50 percent of the base points, LUMA must exceed the 25-percent performance level. For performance greater than or equal to the 25-percent tier but less than the 50-percent tier, LUMA would receive 50 percent of the base points.

Per Annex X of the OMA, LUMA cannot earn greater than 100 percent of the base points in any performance metric category. Section III of Annex X states, "If the sum of the points awarded in a Performance Category meets or exceeds the sum of the base points, the Operator will receive 100 [percent] of the Incentive Pool Allocation for that Performance Category."[21]

B. Proposed Metrics

LUMA proposes 28 performance metrics for application during periods of normal T&D operations.[22] Consistent with the original Annex IX of the T&D OMA, LUMA proposes performance metrics within three performance categories: (i) Customer Satisfaction, (ii) Technical, Safety, and Regulatory, and (iii) Financial Performance. Table 2 summarizes the performance metrics in LUMA's Final Revised Annex IX and the associated number of base points and effective weight as in the October 28 Request. For each metric, the table also indicates whether the metric was in the original Annex IX to the T&D OMA and/ or LUMA's August 18 Request.[23]

LUMA proposes deferring four metrics in the original Annex IX until LUMA can provide accurate data for those metrics. These include: First Call Resolution, Multiple Average Interruption Frequency Index (MAIFI), Customers Experiencing Multiple Interruptions (CEMI), and Reduction in Network Line Losses. LUMA also proposed removing Customer Average Interruption Duration Index (CAIDI) from the list of performance metrics. LUMA

[20] LUMA. Final Revised Annex IX, October 28, 2022, page 7.

[21] Annex X of the T&D OMA. Page 1.

[22] LUMA proposed to defer six of these metrics.

[23] Originally submitted on August 18, 2021, then amended on August 23, 2021, and again on September 24, 2021.

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proposes three new performance metrics related to inspections of T&D lines and substations not in the original Annex IX; these three metrics were first in LUMA's initial August 18 Revised Request. In addition, LUMA proposes bifurcating the Days Sales Outstanding metric in the original Annex IX into two metrics: Days Sales Outstanding: General Customers and Days Sales Outstanding: Government Customers. Finally, LUMA incorporated in its October 28 Revised Request three new performance metrics as required by the Energy Bureau in an August 1, 2022, Resolution and Order.

LUMA proposes 11 metrics to be considered Key Performance Metrics (Table 2). Per Section IV of Annex IX to the OMA, failure to meet the Minimum Performance Level for any three Key Performance Metrics in three or more consecutive Contract years provides for an Operator Event of Default.[24] LUMA's list of proposed Key Performance Metrics includes the 10 metrics originally identified in the T&D OMA and one additional metric, Distribution Line Inspections & Targeted Corrections.

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[24] Annex IX to the OMA, Section IV. "Operator Event of Default" state the following on Key Performance Metrics, "Section 14.1(k) (Events of Default by Operator – Failure to Meet Minimum Performance Threshold) of the Agreement provides for an Operator Event of Default if, during three (3) or more consecutive Contract Years, Operator fails to meet the Minimum Performance Level for any three (3) of the following Performance Metrics and no such failure has been excused by a Force Majeure Event, Outage Event or Owner Fault: (i) Average Speed of Answer; (ii) First Call Resolution; (iii) OSHA Fatalities; (iv) OSHA Severe Injuries; (v) System Average Interruption Frequency Index (SAIFI); (vi) System Average Interruption Duration Index (SAIDI); (vii) Customer Average Interruption Duration Index (CAIDI); (viii) Operating Budget; (ix) Capital Budget – Federally Funded; and (x) Capital Budget – Non-Federally Funded (each a "Key Performance Metric" and together the "Key Performance Metrics").

Table 2. Summary of Proposed Performance Metrics

Performance Metric	Metric included in filing?			Base Points	Effective Weight
	OMA	LUMA Proposal (Aug. 18, 2021)	LUMA Proposal (Oct. 28, 2022)		
Customer Service					
J.D. Power Customer Satisfaction Survey (Residential Customers)	Yes	Yes	Yes	7	5.83%
J.D. Power Customer Satisfaction Survey (Business Customers)	Yes	Yes	Yes	7	5.83%
Average Speed of Answer (minutes) [a, b]	Yes	Yes	Yes	7	5.83%
Customer Complaint Rate	Yes	Yes	Yes	2	1.67%
First Call Resolution [a, b]	Yes	Yes, but deferred	Yes, but deferred	N/A	N/A
Abandonment Rate [b]	Yes	Yes	Yes	7	5.83%
Technical, Scientific, and Regulatory					
OSHA Recordable Incident Rate	Yes	Yes	Yes	5	4.17%
OSHA Fatalities [a, b]	Yes	Yes	Yes	5	4.17%
OSHA Severity Rate [a, b]	Yes	Yes	Yes	5	4.17%
OSHA DART Rate	Yes	Yes	Yes	5	4.17%
System Average Interruption Frequency Index (SAIFI) [a, b]	Yes	Yes	Yes	5	4.17%
Customer Average Interruption Duration Index (CAIDI) [a]	Yes	No	No	N/A	N/A
System Average Interruption Duration Index (SAIDI) [a, b]	Yes	Yes	Yes	5	4.17%
Customers Experiencing Multiple Interruptions (CEMI)	Yes	Yes, but deferred	Yes, but deferred	N/A	N/A
Momentary Average Interruption Frequency Index (MAIFI)	Yes	Yes, but deferred	Yes, but deferred	N/A	N/A
Distribution Line Inspections & Targeted Corrections [b]	No	Yes	Yes	5	4.17%
Transmission Line Inspections & Targeted Corrections	No	Yes	Yes	5	4.17%
T&D Substation Inspections & Targeted Corrections	No	Yes	Yes	5	4.17%
NEM Project Activation Duration	No	No	Yes	5	4.17%
Energy Savings as % of Total Energy Sales	No	No	Yes	2.5	2.08%
Peak Demand Savings as % of Total Peak Demand	No	No	Yes	2.5	2.08%
Vegetation Maintenance Miles Completed	No	No	Yes	5	4.17%
Finance					
Operating Budget [a, b]	Yes	Yes	Yes	7.5	5.68%
Capital Budget: Federally Funded [a, b]	Yes	Yes	Yes	7.5	5.68%
Capital Budget: Non-Federally Funded [a, b]	Yes	Yes	Yes	7.5	5.68%
Days Sales Outstanding	Yes	No	No	N/A	N/A
Days Sales Outstanding: General Customers	No	Yes	Yes	4	3.03%
Days Sales Outstanding: Government Customers	No	Yes	Yes	1.5	1.14%
Reduction in Network Line Losses	Yes	Yes, but deferred	Yes, but deferred	N/A	N/A
Overtime	Yes	Yes	Yes	5	3.79%

a. *These performance metrics are also Key Performance Metrics as defined in the original Annex IX to the T&D OMA.*

b. *These performance metrics are Key Performance Metrics in LUMA's Final Revised Annex IX.*

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C. Major Outage Event Metrics

Per section 7.1(c)(vi) of the T&D OMA, if any MOE prevents LUMA from achieving one or more of the performance metrics targets, LUMA is "entitled to earn the Incentive Fee for the period that such Major Outage Event continues as long as, and to the extent that, the Operator achieves the Major Outage Event Performance Metrics during such period of time."

LUMA proposed an MOE scorecard to be applied during a major outage event, which LUMA defines 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 (≥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 either (8) hours."*[25]

LUMA proposed 23 metrics in three categories designed to capture the key activities associated with an MOE: (1) Preparation, (2), Operational Response, and (3) Communication. LUMA can earn a maximum of 1,000 base points for completion of each activity, as in Table 3.

Table 3. Summary of Proposed Major Outage Events Performance Metrics

Metric	Base Points	Effective Weight
Preparation Phase		
Event Categorization	40	4.0%
Press Releases Issued	15	1.5%
Municipal Conference Calls Held	20	2.0%
Critical and Essential Customers Alerted	40	4.0%
Point of Contact for Critical Facilities Alerted	15	1.5%
Company Compliance with Training Programs	40	4.0%
Participation in Pre-Event Mutual Assistance Calls	40	4.0%
Verify Materials/ Stockpiles Level	40	4.0%
Operational Response		
Downed Wires	40	4.0%
Damage Assessment	50	5.0%
Crewing	30	3.0%
Estimated Time of Restoration (ETR) for 90% of Service Outages [a]	100	10.0%
ETR Accuracy for 90% Service Restoration	80	8.0%
Municipality Coordination	20	2.0%
Municipal EOC Coordination Puerto Rico Commonwealth / Federal EOC	10	1.0%
Utility Coordination	20	2.0%
Safety	80	8.0%
Mutual Assistance	20	2.0%
Communication		
Call Answer Rates [b]	-	-

[25] LUMA. Final Revised Annex IX, October 28, 2022, Page 39.

Metric	Base Points	Effective Weight
Web Availability	75	7.5%
PREB and Administrator (P3A) Reporting	75	7.5%
Customer Communications	100	10.0%
Outgoing Message on Telephone Line	50	5.0%
Maximum Points	**1,000**	**100%**

a. Metric is divided into 5 sub-metrics, each worth 20 base points or 2.0% effective weight.
b. LUMA noted this metric was to be determined depending on the size of a major event. The Energy Bureau interprets this to mean there are zero base points associated with this metric.

IV. The Energy Bureau's Evaluation and Modifications to Proposed Incentive Framework

This section describes the Energy Bureau's authority to modify and methods of review of LUMA's Revised Annex IX. After this review, the section presents the Energy Bureau's determinations on and modifications to this proposed incentive framework. The organization of this section is as follows:

- First, this section summarizes the Energy Bureau's authority to modify LUMA's proposed incentive framework and explains the Energy Bureau's methods of review.
- Next, the section provides a high-level summary of the Energy Bureau's findings on the structure of LUMA's Final Revised Annex IX and key parameters.
- Finally, this section details each of the Energy Bureau's findings on the structural features and key parameters of LUMA's incentive framework, addressing the following: the metrics that will be included in the final incentive framework, the performance baselines for each, the Annual Performance Targets for each metric, other performance levels for each metric, the Minimum Performance Levels and deadbands for each metric, and incentive caps at the performance category level.

Additional detail about individual metrics and LUMA's proposed approach to MOE metrics is discussed in Section V of this Resolution and Order.

A. Energy Bureau's Authority and Methods of Review

Act 57-2014 and Act 19-2019 authorize the Energy Bureau to establish and administer performance-based regulation. Act 57-2014 directs the Energy Bureau to produce regulations that prescribe "incentive and penalty mechanisms that take into account electric power companies' performance and compliance with the performance metrics set forth in the energy public policy."[26] Act 17-2019 further reinforces the authority of the Energy Bureau in this domain, and states that when appropriate, the Energy Bureau, "shall establish performance-based incentives and penalty mechanisms for electric power service companies."[27]

Consistent with its obligations as outlined in Act 17-2019 and Act 57-2014, the Energy Bureau evaluated LUMA's Revised Annex IX, carefully considering its alignment with the public interest and consistency with the principles for performance-incentive mechanism design in Regulation 9137 and the December 23 Resolution.

B. Summary of Energy Bureau's Determinations on the Incentive Framework

This section summarizes the Energy Bureau's modifications to LUMA's proposed incentive framework. These modifications, while limited in number, promote the public interest by

[26] Act 57-2014, Section 6.25B.

[27] Act 17-2019, Section 1.5(3)(D).

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making sure the framework follows the Energy Bureau's principles for PIM design in Regulation 9137 and the December 23 Resolution. The resulting framework is more standardized and transparent, and it gives LUMA a reasonable opportunity to earn incentives for performance outcomes that advance public policy goals.

Following are the Energy Bureau's determinations regarding LUMA's proposed incentive framework:

1. Accept each of LUMA's proposed metrics, including the metrics that LUMA proposes to defer;
2. Accept LUMA's proposed Key Performance Metrics;
3. Modify the approach to performance measurement for certain metrics;
4. Update performance baselines for metrics when more recent performance data is available;
5. Update the Annual Performance Targets, which indicate the performance level necessary to earn 100 percent of the allocated incentive, for all non-binary metrics and certain binary metrics;
6. Accept LUMA's proposal to include three years of performance targets;
7. Modify the incentive structure such that non-binary metrics are specified with three performance tiers, corresponding to 75 percent, 100 percent, and 125 percent of the allocated incentive;
8. Modify the incentive structure such that performance targets represent the minimum performance level required to earn the associated incentive payment;
9. Accept LUMA's proposed Minimum Performance Levels;
10. Maintain the approach to capping the total incentive at the performance category level;
11. Modify base points allocated to certain metrics;
12. Accept the proposed scorecard for MOE;
13. Modify the incentive calculation such that LUMA shall not be entitled to an incentive fee over the 100-percent target level of the MOE performance metric;
14. Modify the incentive tiers for the MOE metrics to let LUMA earn an incentive fee for a 50-percent range of performance consistent with the other performance metrics; and
15. Implement additional requirements and modifications to MOE reporting.

C. Energy Bureau's Determinations on Inclusion of Metrics and Their Definitions

After careful review of LUMA's proposed Revised Annex IX, the Energy Bureau accepts each of LUMA's proposed metrics, including those metrics that LUMA proposes to defer. The Energy Bureau also accepts LUMA's proposed Key Performance Metrics. These determinations are made in consideration of the overall reasonableness of the proposed portfolio of metrics, which this Energy Bureau finds will support progress toward the public policy objectives and are consistent with the principles for PIM design in Regulation 9137 and the December 23 Resolution.

The Energy Bureau modifies the approach to performance measurement for a limited set of the proposed metrics. These are presented below in Table 4. To avoid doubt, the Energy Bureau notes that the period over which metrics will be calculated shall equal the entire Contract year.[28]

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[28] For example, if the Contract Year is a full 12-months, the "set time period" over which the OSHA Recordable Incident Rate will be calculated will be the same 12-month period. If the Contract Year is a Partial Year, the metric will be calculated considering just the time period during the Partial Year. This approach is consistent Section 7.1 I (i) of the T&D OMA except for modifications to the Energy Efficiency and Demand Response performance metrics. These programs will have annual targets established in Three-Year Plans, which require PREB approval. The performance metrics approved in this R&O will align with the approved Three-Year Plans.

Table 4._ Performance Metrics with Revisions to Performance Definition or Measurement only

Performance Metric	LUMA Calculation	PREB Revision or Specification to Metric Calculation
Customer Service		
J.D. Power Customer Satisfaction Survey (Residential Customers)	Third-party measure of customer satisfaction	No changes
J.D. Power Customer Satisfaction Survey (Business Customers)	Third-party measure of customer satisfaction	No changes
Average Speed of Answer (minutes)	Total Automatic Call Distributor wait seconds/ total answered calls	No changes
Customer Complaint Rate	The annual value is calculated by taking the total number of initial complaints divided by the customer population and multiplying by 100,000	No changes to LUMA's final proposal to include NEPR-QR and NEPR-RV in annual complaints
Abandonment Rate	Total calls were abandoned in the queue/ total calls offered to the queue	No changes
Technical, Safety, and Regulatory		
OSHA Recordable Incident Rate	Total number of recordable incident cases over a set time period multiplied by the OSHA scaling factor and divided by the total number of labor hours the company recorded during that time period	Reformulated to a binary metric - removed performance targets at the 75-percent and 125-percent levels.
OSHA Fatalities	The number of OSHA-reportable fatalities	No changes
OSHA Severity Rate	Calculated by dividing the product of the total number of severity days and the OSHA scaling factor by the total number of work hours	No changes
OSHA DART Rate	Calculated by dividing the product of the total number of DART Cases and the OSHA scaling factor by the total number of work hours	Reformulated to a binary metric for Year 2 and Year 3 by removing performance targets at the 75- percent and 125-percent levels for those years.
System Average Interruption Frequency Index (SAIFI)	Calculated by dividing the total number of customers interrupted by the total number of customers served	No changes
System Average Interruption Duration Index (SAIDI)	Calculated by summing the product of the length of each interruption and the number of customers affected by that interruption for all sustained interruptions during the measurement period, then dividing by the total number of customers served	No changes
Distribution Line Inspections & Targeted Corrections	Number of distribution lines (circuits) inspected with results recorded in a database	No changes
Transmission Line Inspections & Targeted Corrections	Number of transmission lines inspected with results recorded in a database	No changes
T&D Substation Inspections & Targeted Corrections	Number of T&D substations inspected with results recorded in a database	No changes

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Performance Metric	LUMA Calculation	PREB Revision or Specification to Metric Calculation
NEM Project Activation Duration	Calculated as the average duration (days) between the submission of a complete application and NEM tariff activation on the customer's account, across all expedited projects activated during the year	Include projects with customer delays until LUMA acquires the information technology to exclude customer-delayed projects from calculation during pendency of customer delay
Energy Savings as % of Total Energy Sales	Total gross annual energy savings achieved (MWh) during the year divided by the total forecasted energy sales (MWh) for the year	Metric will be defined in the EE Three Year Plan filing
Peak Demand Savings as % of Total Peak Demand	Total gross annual peak demand savings achieved (MW) during the year divided by the total forecasted peak demand (MW) for the year	Metric will be defined in the EE Three Year Plan filing
Vegetation Maintenance Miles Completed	Calculated by adding together the total amount of vegetation maintenance line miles completed during the fiscal year along 230kV, 115kV, 38kV, and primary Distribution lines	No changes
Financial Performance		
Operating Budget	Actual operating expenses for a given Fiscal Year divided by the approved T&D operating budget for the same Fiscal Year as incurred	Binary Metric stays as defined with the opportunity to earn 100% if the metric is between 95% and 100%
Capital Budget: Federally Funded	Actual Federally Funded Capital expenses for a Fiscal Year, as incurred, divided by approved Capital Budget: Federally Funded for the same Fiscal Year	Binary Metric stays as defined with the opportunity to earn 100% if the metric is between 95% and 100%
Capital Budget: Non-Federally Funded	Actual Non-Federally Funded Capital expenses for a Fiscal Year, as incurred, divided by approved Capital Budget: Federally Funded for the same Fiscal Year	Binary Metric stays as defined with the opportunity to earn 100% if the metric is between 95% and 100%
Days Sales Outstanding: General Customers	Calculated by dividing the year-end amount of general customers' receivables by the total year-end value of general customers' credit sales and multiplying the result by the number of days in that year; "Un-collectibles reserve" will not be included in the LUMA DSO calculations	No changes
Days Sales Outstanding: Government Customers	Calculated by dividing the year-end amount of Government customers' receivables by the total year-end value of government customers' credit sales and multiplying the result by the number of days in that year; "Un-collectibles reserve" will not be included in the LUMA DSO calculations	No changes
Overtime	The amount of overtime expenses divided by the amount of total non-exempt base compensation expenses, expressed as a percentage	No changes

D. Energy Bureau's Determinations on Baselines

The Energy Bureau determines that it is in the public interest to update the performance baselines where possible—i.e., for all metrics for which updated performance data is available. Much time has elapsed since LUMA first proposed baselines and more recent data, where available, better reflects the current state of LUMA's performance. Since performance targets should consider baseline performance, baselines must be updated to the extent possible, to make sure performance targets are set to be both achievable and to incentivize improvement in performance. The Energy Bureau expects that complete standardization of the approach to setting baselines will be possible in the future once a more extensive, complete record of LUMA's performance is available.

The Energy Bureau notes that its determination to update LUMA's proposed baselines with the most recent performance data is consistent with the positions expressed by the parties to this proceeding.

In its legal brief, LUMA stated its proposed performance targets were set "based on the data that was available" and stated, "there is a direct relationship between the data that was available and the targets. Therefore, targets should be revised to consider the new data that is now available with the passage of time since LUMA's prior submissions of the Revised Annex IX to the T&D OMA."[29]

Similarly, LECO and OIPC argue for the need to use up-to-date baselines in their respective legal briefs.[30,31]

The Energy Bureau's determinations on performance baselines are presented below in Table 5.

Table 5. Summary of Energy Bureau Determination on Baselines

Metric	**Baseline**	**Final R&O Baseline Source**
Customer Service		
J.D. Power Customer Satisfaction Survey (Residential Customers)	398	Final Revised Annex IX
J.D. Power Customer Satisfaction Survey (Business Customers)	345	Final Revised Annex IX
Average Speed of Answer (minutes)	1.69	Resumen Metricas_Master July 2023; June 2023 12-month average
Customer Complaint Rate	17.1	FY23 value reported by PREB
Abandonment Rate	8.7%	FY22 value reported by LUMA in response to Energy Bureau's ROI 11, Question 30
Technical, Safety, and Regulatory		
OSHA Recordable Incident Rate	2.19	Resumen Metricas_Master July 2023; June 2023 rolling 12-month average
OSHA Fatalities	0.08	Resumen Metricas_Master July 2023; June 2023 rolling 12-month average
OSHA Severity Rate	17.90	Resumen Metricas_Master July 2023; June 2023 rolling 12-month average
OSHA DART Rate	1.32	Resumen Metricas_Master July 2023; June 2023 rolling 12-month average
System Average Interruption Frequency Index (SAIFI)	7.0	Resumen Metricas_Master October 2023; June 2023 rolling 12-month average[32]
System Average Interruption Duration Index (SAIDI)	1218	Resumen Metricas_Master October 2023; June 2023 rolling 12-month average[33]

[29] LUMA. Legal Brief, May 11, 2023, page 21.

[30] LECO. Legal Brief, May 11, 2023, page 15.

[31] OIPC. Legal Brief, May 11, 2023, page 8-9.

[32] On October 31, 2023, LUMA filed updates for the FY 2023 results for SAIFI and SAIDI.

[33] *Ibid.*

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Metric	Baseline	Final R&O Baseline Source
Distribution Line Inspections & Targeted Corrections	N/A	No baseline exists
Transmission Line Inspections & Targeted Corrections	N/A	No baseline exists
T&D Substation Inspections & Targeted Corrections	N/A	No baseline exists
NEM Project Activation Duration	20.3	2019-0016 quarterly filing
Energy Savings as % of Total Energy Sales	N/A	No baseline exists
Peak Demand Savings as % of Total Peak Demand	N/A	No baseline exists
Vegetation Maintenance Miles Completed	909	Calculated based on LUMA responses to PREB-LUMA-ROI 10 Questions 8-13
Financial Performance		
Operating Budget	80.4%	LUMA analysis of PREPA historical data as reported in LUMA's Final Revised Annex IX
Capital Budget: Federally Funded	N/A	No baseline exists
Capital Budget: Non-Federally Funded	N/A	No baseline exists
Days Sales Outstanding: General Customers	131	LUMA analysis of historical data as reported in LUMA's Final Revised Annex IX
Days Sales Outstanding: Government Customers	754	LUMA analysis of historical data as reported in LUMA's Final Revised Annex IX
Overtime	23%	LUMA analysis of PREPA historical data as reported in LUMA's Final Revised Annex IX

E. Baseline Update Process

To help make sure baselines are reasonably current when this incentive framework goes into effect, the Energy Bureau also provides a mechanism for updating baselines before the start of the incentive regime ("Baseline Update Process"), which may be used after approval by or upon a motion by the Energy Bureau. As necessary, the Energy Bureau may further elect to update targets with baseline updates for given metrics such that the targets are appropriate calibrated to updated baselines.

Before PREPA's exit from bankruptcy, any party to this proceeding may request through a motion that the Energy Bureau update specified baselines using the latest available data. The Energy Bureau may elect to grant such a request or to reject it, subject to its own discretion. Motions for baseline updates must provide the rationale for each update requested, by metric, with reference to any available and relevant performance data. Requests for comprehensive updates of all baselines without specific and appropriately particularized indications of the need for each baseline update will not be granted. The Energy Bureau also reserves the right to initiate a Baseline Update Process on its own motion. It is the Energy Bureau's intention that the Baseline Update Process will only occur proximate in time to the commencement of the first Contract Year.

Should the Energy Bureau elect to open a Baseline Update Process, which shall be in a separate proceeding, it will commence this process by issuing an order that commences such procedure and establishing a procedural schedule detailing how LUMA and other intervenors may participate. This commencement and procedural order will also establish the specific baselines to be considered for an update. The Energy Bureau expects that updates to baselines made under such conditions might reflect partial- rather than full-year performance data. However, the Energy Bureau reserves the right of final determination to update baselines even if such baselines were designated for consideration as part of the

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Baseline Update Process. Should any baselines be updated, the Energy Bureau will make all necessary associated updates to performance targets, consistent with the approaches detailed in this Final Resolution and Order. Unless determined to be warranted by the Energy Bureau, with due consideration given to the input of any party to such a proceeding, the Energy Bureau will use the same approach to target setting for metrics receiving baseline and target updates as utilized for the same metrics in this Final R&O (see Table 6 in Section IV.F).

F. Energy Bureau's Determinations on the Approach to Determining Performance Targets

The Energy Bureau accepts LUMA's proposal to establish performance targets for an initial three-year period.

The Energy Bureau updated certain performance targets in LUMA's proposed incentive framework to make sure these targets promote the public policy of Puerto Rico and the public interest of Puerto Ricans. The Energy Bureau's approach to updating these performance targets is summarized below. The Energy Bureau notes that while it updated both the baseline and performance targets for certain performance metrics, for other metrics, the Energy Bureau updated performance targets without modifying the performance baselines.

A. General Approach to Updating Performance Targets

The Energy Bureau used two distinct approaches to update performance targets. For most metrics for which performance targets were updated, the Energy Bureau made updates to performance targets based on the year-on-year improvement rates implicit in LUMA's proposed Annual Performance Targets (i.e., targets at the 100-percent incentive level), thus preserving LUMA's general approach to setting performance targets. This approach, which is considered "Approach 1," is described further in Section IV.F.B.

However, Approach 1 was not always appropriate. Where application of LUMA's implicit improvements rates was not suitable (because baselines could not be updated, or because application of these improvement rates to the updated baselines did not yield reasonable results), the Energy Bureau used a complementary approach to derive updated performance targets. Under this complementary approach, which is deemed "Approach 2," the Energy Bureau first determined a Long-Term Performance Target, and then plotted a trajectory from the metric baseline to this Long-Term Performance Target to interpolate a series of intermediate year performance targets. The Energy Bureau notes that the use of longer-term targets for setting nearer-term performance goals is consistent with the intention of this Energy Bureau in establishing performance benchmarks in the Baseline Order and with Annex IX to the OMA, which included a longer-term target deemed the "Target Performance Level." It bears noting, too, that the Energy Bureau stated in a Resolution dated July 2, 2021, that "baselines and benchmarks will be, among other things, the basis to establish the performance incentives or targets to be applicable to LUMA Energy, LLC as Management Co., and LUMA Energy ServCo, LLC."[34]

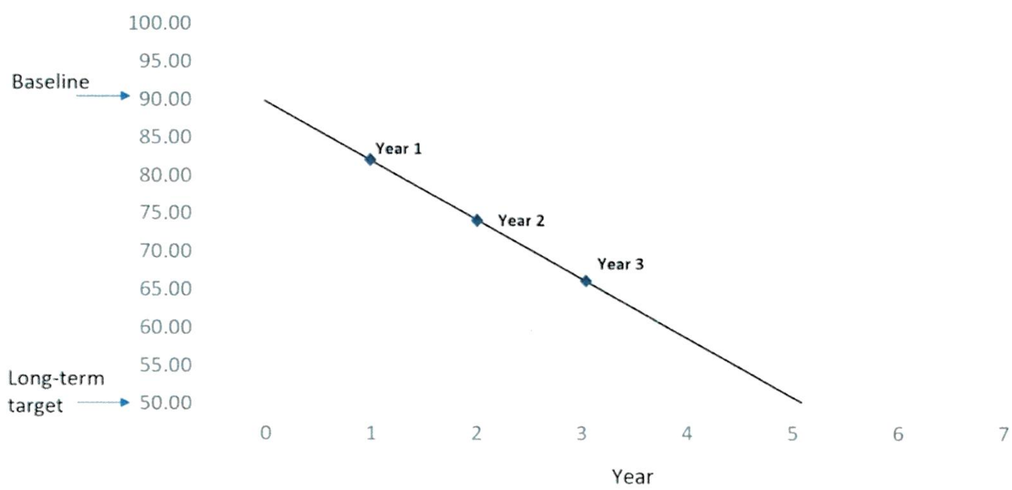
For consistency and for other methodological reasons detailed in Section IV.H, the Energy Bureau also used Long-Term Performance Targets, based on LUMA's implicit improvement rates, even where Approach 1 was used to update performance targets. The consistent use of the Long-Term Performance Targets provides additional standardization and

[34] Resolution, *In Re: The Performance of the Puerto Rico Electric Power Authority*, Case No. NEPR-MI-2019-0007, July 2, 2021, p. 1.

transparency through issuing a functional relationship between baselines and Annual Performance Targets.

The Energy Bureau determined that the Long-Term Performance Target should correspond to the target performance level in the fifth year, such that the Annual Performance Targets (corresponding to 100 percent of the allocated incentive) are determined along the line connecting the baseline to the Long-Term Performance Target. This is consistent with the approach used in Annex IX to the OMA, where the Long-Term Performance Target was deemed the "Target Performance Level."[35] Figure 1 shows an illustration of this approach for the Annual Performance Target.

Figure 1. Derivation of Annual Performance Targets from Baseline and Long-Term Performance Target



The Energy Bureau stresses that the use of a standardized, functionalized methodology for deriving performance targets, as described in the preceding section, should help to maximize transparency, and ensure performance targets drive meaningful improvement, consistent with the principles elucidated in Regulation 9137 and the December 23 Resolution.

B. Targets Based Upon Implicit Improvement Rates (Approach 1)

Where possible, the Energy Bureau applied the improvement rates implicit in LUMA's proposal to derive revised performance targets from the updated baselines. In the interest of standardization, and for other methodological reasons that are detailed further below, the Energy Bureau used these improvement rates to first calculate a Long-Term Performance Target and then derive annual targets from this Long-Term Performance Target as described next.

Under Approach 1, the Long-Term Performance Target was calculated as follows: First, the Energy Bureau used the improvement rates implicit in LUMA's proposed performance targets at the 100-percent incentive level in the Final Revised Annex IX to calculate a metric-specific compound annual growth rate (CAGR), equivalent to an average rate of growth over the performance period. Next, the Energy Bureau applied the calculated CAGR to the updated metric baseline to project out a long-term performance goal corresponding to the fifth measurement year (i.e., the CAGR was applied *five* times to the baseline). Then, the Energy Bureau used linear interpolation to determine Annual Performance Targets (i.e., targets at the 100-percent level) by plotting a line from the baseline to the Long-Term Performance Target (in Figure 1).

The use of a Long-Term Performance Target for Approach 1 was necessary for consistency with Approach 2 (described below), such that the performance target update process was

[35] Annex IX to the T&D OMA, page 2.

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reasonably standardized for all metrics. Using a linear formulation was needed to derive performance threshold levels for the 75-percent and 125-percent incentive tiers (see Section IV.H). The use of long-term targets and the linear approach to formulating targets at all incentive levels is consistent with the approach used in Annex IX to the T&D OMA.

In limited cases, the Energy Bureau uses a variant of Approach 1 denoted as "Approach 1a."[36] Under this variant approach, Long-Term Performance Targets were determined based on implicit improvement rates at the 100-percent level from the original Annex IX to the T&D OMA.

C. Targets Based Upon Long-Term Performance Target (Approach 2)

In certain cases, LUMA's implicit improvement rates could not be used to derive new performance targets. For example, in certain cases, LUMA proposed no improvement over the period covered by Annex IX. In other instances, LUMA's proposed improvement rate was not adequately ambitious and did not result in sufficient improvement, as determined with reference to the benchmarks established in the Baseline Order and through the exercise of the Energy Bureau's judgement. The Energy Bureau notes that the foundational PIMs principles elucidated by this Energy Bureau through the December 23 Resolution and Regulation 9137 require that incentives be given only for exceptional performance ("Above and Beyond"). Thus, where Approach 1 or Approach 1a is determined to not be appropriate, the Energy Bureau modifies the Long-Term Performance Target based on criteria separate from LUMA's proposal, including peer utility and industry performance data. This alternative method to deriving revised performance targets was denoted as "Approach 2."

Table 6 below identifies the approach used to determine the annual performance target for each metric.

Table 6. Summary of Long-Term Performance Targets

Metric	Performance Target Update Approach
Customer Service	
J.D. Power Customer Satisfaction Survey (Residential Customers)	Approach 2
J.D. Power Customer Satisfaction Survey (Business Customers)	Approach 2
Average Speed of Answer (minutes)	Approach 2
Customer Complaint Rate	Approach 1
Abandonment Rate	Approach 1
Technical, Safety, and Regulatory	
OSHA Recordable Incident Rate	Approach 2
OSHA Fatalities	N/A
OSHA Severity Rate	Approach 1
OSHA DART Rate	Approach 1
System Average Interruption Frequency Index (SAIFI)	Approach 1
System Average Interruption Duration Index (SAIDI)	Approach 1
Vegetation Maintenance Miles Completed	Approach 1
Distribution Line Inspections & Targeted Corrections	Approach 1
Transmission Line Inspections & Targeted Corrections	Approach 1
T&D Substation Inspections & Targeted Corrections	Approach 1
NEM Project Activation Duration	Approach 2
Energy Savings as % of Total Energy Sales	N/A
Peak Demand Savings as % of Total Peak Demand	N/A
Financial Performance	
Operating Budget	N/A
Capital Budget: Federally Funded	N/A
Capital Budget: Non-Federally Funded	N/A
Days Sales Outstanding: General Customers	Approach 1a
Days Sales Outstanding: Government Customers	Approach 1a
Overtime	Approach 1

[36] Approach 1a was utilized only for updates to the Days Sales Outstanding metrics.

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G. Functional Relationship Between Baselines and Performance Targets Is Consistent with Regulation 9137 and OMA

The Energy Bureau finds that restoring the functional relationship between baselines and Annual Performance Targets improves alignment with several of the PIM principles in the December 23 Resolution and described earlier in this Final Resolution and Order. The Energy Bureau's approach will enhance transparency by making it clear how Annual Performance Targets relate to performance baselines, consistent with Section 7.1(C) of Regulation 9137, which requires that performance-incentive mechanisms be "clearly defined, easily interpreted, and easily verified." The Energy Bureau's approach will also help ensure LUMA is only compensated for meaningful progress toward its performance objectives—in other words, that LUMA only earns incentives for going "Above and Beyond," as required by Principle (1) from the December 23 Resolution.

The Energy Bureau's approach to deriving performance targets is wholly consistent with the original Annex IX to the T&D OMA. Section I(C) of the T&D OMA indicates that, "[t]he Baseline Performance Level sets the starting point for each metric relative to the target performance level to be achieved in the fifth Contract Year (the "Target Performance Level")." The T&D OMA further indicates the following:

> *"The baseline target over the initial five-year period is determined by a straight line between the Baseline Performance Level and the Target Performance Level. The Minimum Performance Level set for each Performance Metric establishes the value that must be exceeded to qualify for Base Points and is established as the straight line between the Baseline Performance Level and achieving the Target Performance Level in the tenth Contract Year."*

H. Incentive Tier Performance Thresholds

Most metrics in LUMA's Final Revised Annex IX include four performance threshold levels at which LUMA can earn 25 percent, 50 percent, 125 percent, and 150 percent of the incentive base points. These incentive tiers indicate the percentage of the total base points allocated to a metric that is earned with achievement of the associated performance threshold level. A few LUMA's proposed metrics are instead specified as "binary" metrics, which are defined with a single performance target at the 100-percent incentive level.

All of LUMA's proposed metrics include positive incentives without penalties. The Energy Bureau finds this approach is reasonable in consideration it will institute the first ever performance incentive scheme in Puerto Rico.[37] However, the Energy Bureau finds that LUMA's proposed approach to setting performance levels for each incentive tier is not consistent, lacks transparency, and could lead to adverse and unintended outcomes.

LUMA does not provide enough justification as to why so many earnings tiers are required. There is also a lack of transparency about how outcomes at the different earnings levels are to be understood within LUMA's framework. LUMA does not clearly describe the relationship between performance levels and financial incentives across the incentive tiers. For example, it is unclear whether the performance threshold level associated with the 150-percent incentive tier should be understood to be 50 percent *better* than the performance threshold level at the 100-percent tier.

The Energy Bureau notes the risk of adverse outcomes with so many incentive tiers. For example, by providing an opportunity to earn 150 percent of the allocated incentive for

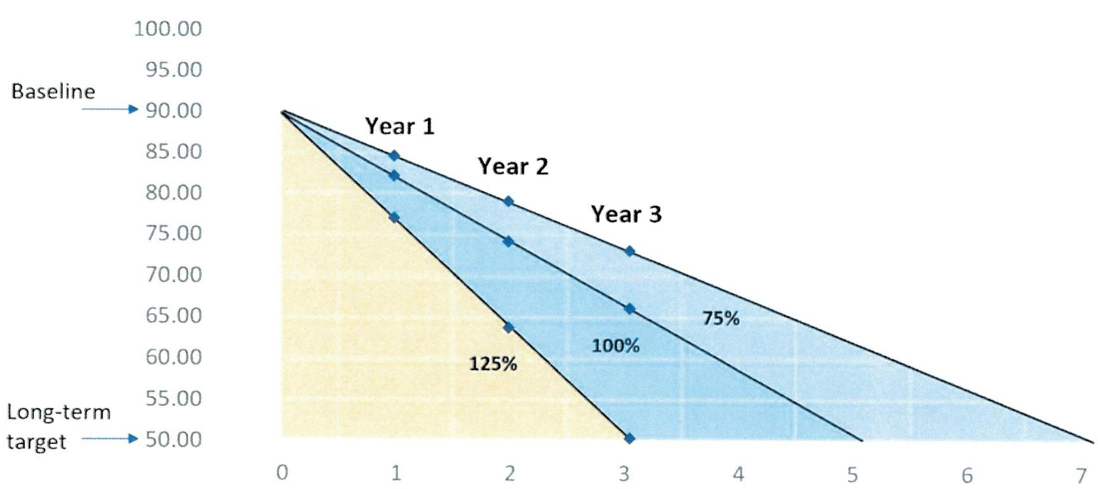
[37] It may be appropriate to incorporate penalties into future iterations of the incentive framework as institutional experience with PIMs grows in Puerto Rico. The inclusion of penalties is supported by the relevant sections of Act 57-2014 and Act 17-2019 and is also consistent with practices in other jurisdictions.

certain outcomes, LUMA's Final Revised Annex IX could permit compensation to LUMA for delivering substandard performance to customers in some areas, while overperforming in others and earn the full incentive fee. Similarly, the existence of 25-percent and 50-percent incentive levels within LUMA's Final Revised Annex IX would suggest that LUMA might stand to earn *some* incentive for substandard performance.

Given these issues of complexity, transparency, and adverse outcomes, the Energy Bureau finds that three modifications to the approach to performance incentive tiers and thresholds performance levels in the incentive framework are necessary. First, the Energy Bureau eliminates the 25-percent, 50-percent, and 150-percent incentive tiers. Second, the Energy Bureau introduces a new 75-percent incentive tier. This use of more streamlined and consolidated incentive tiers better balances the benefits of providing multiple incentive earnings opportunities with the potential for excessive complexity and the risk of adverse consequences discussed above.

Third, to improve transparency and enhance standardization, the Energy Bureau restores the general approach to deriving performance threshold levels described in the T&D OMA. As noted in Section F.A, above, the Annual Performance Target (associated with 100 percent tier) will be determined based on the trajectory starting from the baseline and reaching the Long-Term Performance Target in five years. The 75-percent incentive tier performance threshold will be along the trajectory starting at the baseline and reaching the Long-Term Performance Target in seven years. Finally, the 125-percent performance thresholds are on the trajectory that begins at the baseline and achieves the Long-Term Performance Target in three years. The Energy Bureau's revised approach is presented below in Figure 2.

Figure 2. Incentive Levels and Associated Performance Trajectories for an Illustrative Metric



Performance targets now represent the minimum, rather than maximum, performance requisite to earn the associated incentive. This approach contrasts with LUMA's proposal in the Revised Annex IX, wherein performance targets at given incentive levels represent the *best* performance required to achieve the associated incentive. An illustrative example of this approach for Year 2 for the metric in Figure 2 is in the table below.

Table 7. Illustrative Performance Targets and Performance Ranges for Year 2

Incentive Level	75%		100%		125%	
Performance Target	78.5		74.5		64.5	
Performance Range	Max	Min	Max	Min	Max	Min
	78.5	> 74.5	74.5	> 64.5	64.5	None

I. Energy Bureau's Determination on Minimum Performance Levels and Deadbands

The Energy Bureau accepts LUMA's proposed minimum performance levels. While the Energy Bureau's incentive framework does not include mechanisms with specific financial penalties, the consideration of deadbands is still relevant to the design of these PIMs since they are specified with minimum performance levels, that in certain cases, are associated with potential penalization.[38] Deadbands can also be useful in helping to delineate the merely acceptable level of performance from the exceptional (above and beyond) performance level.

In Regulation 9137, the Energy Bureau identified deadbands as a potential design feature for PIMs.[39] Moreover, in its final brief, LECO raised concerns that without deadbands as a component of the incentive mechanism design, LUMA would stand to earn positive incentives for unsuccessful performance.[40]

The Energy Bureau finds it to be in the public interest to incorporate deadbands into LUMA's incentive mechanism design. The Energy Bureau further observes that modifications to the interpretation of performance targets to the effect that targets indicate the minimum rather than maximum (i.e., best) performance required to earn an incentive, will result in an effective deadband between the minimum performance level and the 75-percent threshold performance level for each metric. This design modification helps ensure LUMA will not earn incentives for substandard performance. Incorporating deadbands also helps to delineate between unacceptable performance (i.e., performance worse than the minimum performance level) and exceptional performance worthy of reward.

J. Incentive Caps

The Final Revised Annex IX includes caps for incentive earnings at the performance category level. Consistent with the original Annex IX to the OMA, LUMA's proposed incentive framework dictates incentive allocations at the performance category level and to individual metrics. The performance category incentive allocations are as follows:

- Customer Service: 25 percent of total incentive fee
- Technical, Scientific, and Regulatory: 50 percent of total incentive fee
- Finance: 25 percent of total incentive fee

The category-level allocations function as caps on total potential earnings across all metrics within the respective categories. This is a key design feature because the incentive framework provides the opportunity for earning more than the allocated incentive (i.e., 125 percent of the allocated incentive) for individual metrics. The Energy Bureau determines that capping incentives at the performance category level is in the public interest and will maintain this feature in the final incentive framework.

K. Summary of Final Determinations on Incentive Framework Structure

The table below summarizes the Energy Bureau's determinations on the final incentive framework.

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[38] Deadbands indicate the range of performance around a central value resulting in neither penalty nor incentive.

[39] Regulation 9137. Section 7.3(A)2h.

[40] LECO. Reply Brief, September 21, 2023, Page. 14.

Table 8. Energy Bureau's Determinations on Final Incentive Framework

Feature	LUMA's Proposed Approach	Approach Adopted by Energy Bureau
Baseline	No consistent functional relationship between baselines and annual targets.	Baselines are a key input to calculating Annual Performance Targets. Baselines will be set using the most recent full-year performance data for LUMA.
Annual Performance Target	The Annual Performance Target, which is the performance target associated with earning 100 percent of the allocated incentive, is not functionally related to the baseline or other key parameters.	The Annual Performance Target is methodologically derived using implicit improvement rates from LUMA's proposal or the T&D OMA or based upon a long-term target.
Performance Tiers	The performance tiers are the set of incentive levels and associated performance targets provided for given metrics. For non-binary metrics, there are five performance tiers, at 25 percent, 50 percent, 100 percent (Annual Performance Target), 125 percent, and 150 percent of base point allocation. For non-binary metrics, performance targets associated with given incentive levels dictate the *best* performance required to earn with the given incentive.	Limited to just three performance tiers: 75 percent, 100 percent (Annual Performance Target), and 125 percent of the allocated incentive. The 100-percent incentive level is associated with achievement of the Long-Term Performance Target in five years. The 75-percent incentive level is associated with achievement of the Long-Term Performance Target in seven years. The 125-percent incentive level is associated with achievement of the Long-Term Performance Target in three years. Performance targets indicate the minimum performance level associated with the given incentive.
Minimum Performance Level	Derived based on judgement. No financial penalties for performance below minimum levels except for potential for system operator default.	Maintained minimum performance level and key performance metric designations from LUMA's Revised Annex IX.
Deadband	Except for certain binary metrics for which earnings above the minimum level do not qualify for positive incentive earnings, LUMA's proposed metrics have been specified without deadbands.	The modifications to the target structure implemented by the Energy Bureau effectively create deadbands, as performance between the minimum performance level and the 75-percent performance threshold does not result in any incentive earnings.
Incentive Cap	Total incentive earnings capped at the level of performance categories.	Maintained incentive earnings cap at the the performance category level, as proposed by LUMA in its Revised Annex IX.

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V. Analysis and Findings by Topic Area and Metric

In the following sections the Energy Bureau describes each metric per LUMA's proposal and summarizes stakeholder discussion. Consistent with its obligations and authority established in Act 17-2019 and Act 57-2014, the Energy Bureau discusses its findings regarding LUMA's proposed Final Revised Annex IX and stakeholder proposals, and their alignment with the public interest and consistency with the principles for performance-incentive mechanism design in Regulation 9137 and the December 23 Resolution. Finally, the Energy Bureau concludes with its determinations on each metric, including the metric definition, baseline, and targets. The Energy Bureau **ORDERS** LUMA to revise its proposed Annex IX and file in a separate proceeding which shall be commenced for such purposes, as so ordered in the following sections.

A. Customer Service Metrics

A. J.D Power Customer Satisfaction Survey

a) LUMA Proposal

In its Final Revised Annex IX, LUMA proposes two metrics to measure Residential and Business Customer Satisfaction based on the J.D. Power customer satisfaction survey.[41] In her pre-filed direct testimony, LUMA witness Ms. Laird describes the methodology of the J.D. Power study that underlies the proposed metrics:

> *"J.D. Power Electric Utility Residential Customer Satisfaction Study provides the electric industry with important insights into the evolving needs and demands of residential and commercial electric utility customers. The J.D. Power survey is a standard methodology. The customer information was taken from the PREPA Oracle CC&B system and used by J.D. Power to survey a statistically significant sample size via email (residential n=4008; commercial n=163). To measure customer satisfaction, critical experience factors are examined using an index model. The study measures overall customer satisfaction of residential and commercial customers based on performance in six factors and three sub-factors"*[42]

Ms. Laird continues by describing the six factors and three sub-factors that determine J.D. Power survey performance. The six factors are: Power Quality & Reliability; Price; Billing & Payment; Corporate Citizenship; Communications; and Customer Care. The three subfactors, which are only measured for the Residential J.D. Power score as components of the Customer Care factor, are: Phone; Digital; and In-Person.[43]

Concerning the baselines for the proposed J.D. Power metrics, Ms. Laird explains that since PREPA had not measured customer satisfaction, the baselines were set using data from the front-end transition period. J.D. Power collected two quarters of residential survey results and two quarters of business survey results.[44,45]

Performance targets for the Residential and Business Customer Satisfaction metrics were set based on a review of the Long Island Power Authority's (LIPA) J.D. Power survey performance.[46]

[41] LUMA. Final Revised Annex IX, page 21.

[42] LUMA. Direct Testimony of Jessica Laird, August 3, 2021, lines 65-73.

[43] *Id.* lines 74-77.

[44] *Id.* lines 93-97.

[45] LUMA. Response to Energy Bureau's ROI 1, Question 50, September 10, 2021.

[46] *Id.* lines 112-113.

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LUMA proposed Minimum Performance Levels for the J.D. Power metrics but did not explain the bases for them. The T&D OMA did not include Minimum Performance Levels for these metrics.

b) Intervenors

ICPO witness Ms. González opposed the proposed J.D. Power metrics on several grounds. Ms. González noted that LUMA did not explain J.D. Power's methodology to support that it is an effective instrument and that its sampling methodology yields representative results.[47] Further, Ms. González raised specific concerns about J.D. Power's exclusive reliance on email surveying, which excludes many customers from participating, and noted that conducting in-person surveying of customers who choose to visit LUMA's commercial offices would be preferable.[48]

LECO witness Dr. Irizarry-Rivera raised similar concerns to those of Ms. González. Dr. Irizarry-Rivera also noted the lack of detailed analysis in support of LUMA's proposed use of the J.D. Power survey, and he observed, too, that J.D. Power's exclusive reliance on email for surveying excludes many customers. In line with Ms. González, Dr. Irizarry-Rivera recommended that the Energy Bureau not include the J.D. Power metrics in LUMA's incentive framework.

c) Rebuttal, Hearing, and Briefs

In LUMA's rebuttal, Ms. Laird focused on the concerns raised by Ms. González. In response to Ms. González's assertion that LUMA had not provided the information necessary to evaluate the effectiveness of the J.D. Power survey, Ms. Laird emphasized the wide use, recognition, and acceptance of the J.D. Power survey, and specifically noted that the survey is in use for performance tracking purposes in both New York and Minnesota.[49]

Concerning the issues raised by Ms. González on sampling methodology, Ms. Laird replied that "J.D. Power has not apprised LUMA that there are concerns with the surveys' reliability based on the response rate, nor did J.D. Power include any type of reservation in connection with the survey results."[50] She noted that J.D. Power recommends using an email-based survey approach,[51] and she also characterized the average response rate to the J.D. Power survey as "high."[52] Ms. Laird observed that almost half of LUMA's customers have documented email addresses, which, she asserted, is enough to generate a "strong selection" of customers, and that the results of the surveying provide "sufficient data to represent a customer base."[53]

Ms. Laird dismissed Ms. González's recommendation to conduct in-person surveying as costly and infeasible. Ms. Laird suggested that this approach would suffer several shortcomings, including failing to reach certain customers, and it would introduce the risk that interviewers might influence customers, among other issues.[54] Finally, Ms. Laird noted that Ms. González did not support her claims about survey methodology with reference to

[47] ICPO. Direct Testimony of Beatriz P. González Álvarez, November 17, 2021, lines 186-195.

[48] *Id.* lines 210-218.

[49] LUMA. Rebuttal Testimony of Jessica Laird, February 17, 2022, lines 137-139.

[50] *Id.* lines 243-245.

[51] *Id.* lines 274-276.

[52] *Id.* lines 245-247.

[53] LUMA. Rebuttal Testimony of Jessica Laird, February 17, 2022, lines 281-282.

[54] *Id.* lines 330-336.

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any data, and remarked that Ms. González lacks experience in designing or implementing customer satisfaction surveys.[55]

Through its reply brief, ICPO expressed that it does not oppose a survey for customer satisfaction but objects to the fact that the J.D. Power survey "was not tailored to the Puerto Rican population," which raises questions about "the design of the survey, and consequently, how effective it was in measuring Puerto Rican customer satisfaction.[56] In its reply brief, LECO stressed that LUMA had neither obviated concerns about the usefulness of the J.D. Power survey nor justified the online-only approach to collecting survey responses.[57]

d) Discussion and Determinations

The Energy Bureau finds that the J.D. Power survey has merit as a measure of LUMA's customer satisfaction and should be approved for the initial three-year period. However, the Energy Bureau acknowledges as valid several of the concerns raised by intervening parties to this proceeding concerning the appropriateness of the survey for Puerto Rico and the associated sampling methodology. The Energy Bureau will thus require additional information from LUMA to assess whether the J.D. Power metrics should be maintained as a part of LUMA's incentive framework or replaced with alternative metrics over the longer term.

Therefore, the Energy Bureau **APPROVES** the J.D. Power Customer Satisfaction Survey metrics but makes the following **MODIFICATIONS**:

1) Decrease the allocated incentive base points to six (6) for each of the two metrics, corresponding to an effective weight of five (5) percent of the total incentive fee.
2) Update the Annual Performance Targets using "Approach 2" based on Section IV.F. The Long-Term Performance Targets will be set at 714 for Residential customers and 760 for Business customers.
3) Update the Performance Tiers and associated targets for the J.D. Power metrics, such that incentive earnings opportunities are provided at 75 percent, 100 percent, and 125 percent of the total allocated incentive, consistent with the approach described in Section IV.H.
4) Instruct LUMA to develop and report back to the Energy Bureau on an alternative survey instrument and sampling methodology, which should be responsive to the concerns raised by intervenors to this proceeding.

The baselines for each metric will be maintained at the levels proposed by LUMA.

The final performance targets and other key parameters for this metric are presented in Table 14 and Table 10.

Table 9. Performance Targets and Other Key Parameters for J.D. Power Customer Satisfaction Survey (Residential Customers)

Baseline	398			
Long-Term Target	714			
Incentive Level	**Minimum**	**75%**	**100%**	**125%**
Year 1	390	443	461	503
Year 2	427	488	524	609
Year 3	455	533	588	714

[55] *Id.* lines 316-319.

[56] ICPO. Reply Brief, September 21, 2023, page 12.

[57] LECO. Reply Brief, September 21, 2023, page 11.

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Table 10. Performance Targets and Other Key Parameters for J.D. Power Customer Satisfaction Survey (Business Customers)

Baseline	345			
Long-Term Target	760			
Incentive Level	**Minimum**	**75%**	**100%**	**125%**
Year 1	345	404	428	483
Year 2	380	464	511	622
Year 3	414	523	594	760

As noted above, the Energy Bureau finds that the J.D. Power metrics have merit for approval for the initial three-year period. As LUMA articulated, and the Energy Bureau acknowledges, the J.D. Power metrics offer an established mechanism for assessing customer satisfaction with a wide record of use across many jurisdictions. In the near term, the Energy Bureau believes that including the J.D. Power metrics within LUMA's incentive framework should encourage LUMA to make improvements that would increase customer satisfaction.

While intervening parties raised reasonable concerns about the validity of the J.D. Power index for the Puerto Rican context, and also about the associated sampling methodology, the Energy Bureau does not find that these concerns outweigh the value of approving the J.D. Power metrics for the initial three-year period. Rather, in the near term, given LUMA's low baseline performance on the J.D. Power measures and the significant improvements in these scores required to achieve incentive earnings, the Energy Bureau is confident that any incentives paid to LUMA for improvements in J.D. Power performance would correspond to a meaningful increase in customer satisfaction.

Nonetheless, in light of the reasonable concerns raised by intervenors about these metrics, the Energy Bureau has determined to reduce the incentive allocation to these metrics. This reduction in incentives should not dampen LUMA's commitment to improve its performance on the J.D. Power surveys or to increase its overall customer satisfaction. Further, to help ensure that incentives are only awarded for meaningful improvements in customer satisfaction, the Energy Bureau has determined that it is appropriate to update the performance targets for the J.D. Power metrics. In so doing, the Energy Bureau is mindful that LUMA provided no specific justification for its own proposed J.D. Power performance targets.

Notwithstanding the approval of these metrics for the initial three-year period, the Energy Bureau does have concerns about the utility of these metrics over the longer run, especially as LUMA's J.D. Power performance improves. These concerns are described in greater detail below.

Concerning the composition of the overall J.D. Power index scores, LUMA was not able to provide any detail about how component factor scores are weighted. Nor could LUMA specifically substantiate that each of these factors are important to customers. Furthermore, the J.D. Power performance data provided by LUMA as an exhibit to Ms. Laird's direct testimony shows highly discrepant performance across these factors, raising questions about whether the interpretation of a composite score that reflects the contributions of several varied factor scores.

There were also valid concerns raised about the J.D. Power survey methodology. Unfortunately, LUMA did not address these concerns compellingly. While LUMA's witness pushed back against the suggestion that surveying be done in person by citing issues with costliness, effectiveness, and overall practicability, she did not substantively address the intervenors' concern that an email survey would not yield a representative response. In the Energy Bureau's view, Ms. Laird's assertion that J.D. Power had not raised any concerns with *its own* survey methodology is no consolation.

Given concerns with the use of the J.D. Power survey as the basis for incentive metrics, the Energy Bureau directs LUMA to develop and report back to the Energy Bureau on an alternative survey instrument and sampling methodology, which should be responsive to the concerns raised by intervenors to this proceeding. In this response, LUMA should also address whether it still prefers the J.D. Power survey or proposes to transition to a metric based upon the new alternative survey instrument.

B. Average Speed of Answer

a) LUMA Proposal

LUMA proposes an Average Speed of Answer (ASA) performance metric to incentivize efficient call center service.[58] The T&D OMA includes ASA as a performance metric and Key Performance Metric.[59] LUMA describes the ASA as a measurement of "the average wait time, in minutes, from the moment the customer enters the Automated Call Distribution (ACD) queue to the time the call is answered by an agent."[60] LUMA explains that an ACD is a "telephony system that automatically distributes incoming phone calls to available agents, based on data entered by the caller into an Interactive Voice Response (IVR) and skills-based routing, using skills associated with agents."[61] LUMA proposes to calculate this metric by dividing the total ACD wait seconds by the total answered calls.[62]

In her pre-filed testimony, LUMA witness Ms. Laird describes the ASA metric. Ms. Laird explains that LUMA's proposed baseline of 10.0 minutes is derived from FY2019–March 2020 data. Witness Laird indicates that FY2020 data did not support a reliable baseline because there was only data for six months. She further notes that ASA "varies significantly from month to month due to COVID and onboarding new outsource vendors, and there is a lack of visibility into three separate call routing systems and overflow which prevents LUMA from accurately calculating baseline ASA."[63]

Witness Laird also describes how LUMA developed the ASA target values. She states that "[s]tarting with the baseline, LUMA calculated a reasonable year-over-year improvement that accounted for hiring, learning curve, training, ramp-up, turn over, process improvement and other standard operational changes."[64] This differs from the Original Annex IX to the T&D OMA, which was set using a straight-line calculation with the baseline performance level of 10.0 minutes in Year 0 and the Target Performance Level of 1.0 minute is met in Year 5.[65]

Regarding process improvements and operational changes, LUMA states it is "planning various technology improvements intended to enable additional customer self-serve and reduced call volumes that, in turn, will contribute to a reduction in ASA."[66] These technologies include the following:

- Outage reporting via IVR.
- Upgrades to LUMA Express that will further enable first-contact resolution.
- Upgrades to the Mi LUMA app to enable business account access.

[58] LUMA. Final Revised Annex IX, October 28, 2022, page 22.

[59] *Id.* page 38.

[60] *Id.* page 22.

[61] *Ibid.*

[62] *Ibid.*

[63] LUMA. Direct Testimony of Jessical Laird, August 3, 2021, lines 151-156.

[64] *Id.* lines 158-160.

[65] Annex IX to the T&D OMA, page 8.

[66] LUMA. Response to Energy Bureau's ROI 11, Question 27, January 5, 2023.

- Automated outage notifications via Mi LUMA and/or IVR.
- Customer education on online and automatic payment options.
- Improvements to the LUMA website to inform and educate customers on how energy usage impacts billing.

Based on this methodology, LUMA proposes ASA targets for the 100-percent incentive tier of 9.0 minutes for Year 1 (a 10-percent improvement from LUMA's proposed baseline), 6.4 minutes for Year 2 (a 36-percent improvement from LUMA's proposed baseline) and 5.8 minutes for Year 3 (a 42-percent improvement from LUMA's proposed baseline).[67]

LUMA's proposed Minimum Performance Levels for ASA are 9.7 minutes in Year 1, 7.1 minutes in Year 2, and 6.4 minutes in Year 3.[68] These targets are more aggressive than those in Annex IX of the T&D OMA, which are 10.0 minutes, 9.1 minutes, and 8.2 minutes for the same three years respectively.[69] LUMA includes Abandonment Rate as a Key Performance Metric in its Final Revised Annex IX based on the T&D OMA Annex IX.[70]

b) Intervenors

In her pre-filed direct testimony, ICPO witness Ms. González disagreed with LUMA's proposed baseline and targets for the ASA performance metric. Witness González argued that LUMA can already accomplish the 10.0-minute baseline for this performance metric based on the results of LUMA's ASA for July and August as reported in APR-MI-2019-0007, which were 7:07 (7.1) and 9:17 (9.3) minutes, respectively. She indicated that it is illogical to establish a metric that can already be accomplished and encouraged the Energy Bureau to adopt the baseline of 8:25 (8.4) minutes, as established by the Energy Bureau in Case NEPR-MI-2019-0007.[71]

LECO did not comment on the ASA performance metric in pre-filed direct testimony.

c) Rebuttal, Hearing, and Briefs

LUMA witness Laird objected to ICPO's recommended baseline of 8:25 (8.4) minutes. Ms. Laird stated that Ms. González's proposal is based on erroneous information, noting that the baseline established by the Energy Bureau in Case No. NEPR-MI-2019-0007 was 8:30 (8.5). She further explained that LUMA's performance is based on an annual average, not on a monthly average due to varying call volumes throughout the year.[72] Ms. Laird concluded that the monthly metrics reported to the Energy Bureau in Case No. NEPR-MI-20019-0007 cannot be compared to annual metrics and data from two different months cannot be extrapolated to represent the year, as Ms. González suggested in her testimony.[73]

Witness Laird also challenged Ms. González's objection to LUMA's proposed baseline of 10.0 minutes. Ms. Laird stated that Ms. González "fails to consider that the baseline proposed by LUMA is based on data from PREPA that was available when the baseline was submitted to the Energy Bureau on February 2021."[74] Ms. Laird emphasized that it is not illogical to set metrics that can be accomplished and that the point is to accelerate accomplishment, not to set a metric impossible to achieve.[75]

[67] LUMA. Response to Energy Bureau's ROI 11, Question 26(a), January 5, 2023.

[68] LUMA. Final Revised Annex IX, October 28, 2022, Table 2-6, page 22.

[69] Annex IX to the T&D OMA, page 8.

[70] LUMA. Final Revised Annex IX, October 28, 2022, page 38.

[71] ICPO. Direct Testimony of Beatriz P. González Alvarez, November 17, 2021, lines 229-245.

[72] LUMA. Rebuttal Testimony of Jessica Laird, February 17, 2022, lines 392-402.

[73] *Id.* lines 387-391.

[74] *Id.* lines 360-362.

[75] *Id.* lines 279-383.

In its legal brief, ICPO responded and reiterated that LUMA is already complying with its proposed ASA metrics in this case and the recent ASA statistics for January, February, and March of 2023 reflected a substantial improvement in the service offered to customers.[76] ICPO requests that the Energy Bureau "approve an even more rigorous metric that promotes better performance than the one already achieved."[77]

In its legal brief, LECO requests that the Energy Bureau reject LUMA's proposed baseline of 10 minutes and impose a baseline of 8.3 minutes as set in the July 2, 2021, Order in Case No. NEPR-MI-2019-0007.[78] LECO proposes revisions to the Performance Tiers and base points in its legal brief as follows:

- 7.0 points if LUMA achieves a "Best Case Scenario" target, which has the same performance targets as the 150-percent performance level in Final Revised Annex IX Table 2-6 (4.5 minutes in Year 1, 3.2 minutes in Year 2, and 2.9 minutes in Year 3).
- 3.5 points if LUMA achieves its proposed target threshold levels as defined in Revised Annex IX, except for Year 1 where LECO requests the target be revised.
- A deduction of 7.0 points if LUMA fails to meet a minimum performance level of 8.3 minutes in Year 1, 7.1 minutes in Year 2, and 6.4 minutes in Year 3.[79]

In its reply brief, LUMA objected to ICPO's introduction of ASA data from the *document Submission of Performance Metrics Report for January through March 2023 and in Compliance with Order of January 12, 2023 and April 3, 2023* as filed in Case No. NEPR-MI-2019-0007 because it was not an exhibit of this instant proceeding.[80] LUMA also reiterated its position that two to three months of ASA data cannot be used to represent the year.[81] In response to LECO, LUMA reiterated that the ASA baseline was based on data from PREPA that was available when it was submitted to the Energy Bureau.[82]

In its reply brief, LECO reiterated that LUMA's proposed customer satisfaction metrics, which included ASA, did not go "above and beyond." Specifically, LECO argued that LUMA's legal brief did not acknowledge the importance of setting metrics that go "above and beyond," "serve the public interest," and "reward difficult tasks" as required by the Energy Bureau's December 23 Resolution.[83]

In its reply brief, ICPO reiterated that LUMA is already complying with its proposed ASA targets and the Energy Bureau must establish metrics that encourage better utility performance. ICPO requests the Energy Bureau approve more rigorous metrics that promote better performance than LUMA has achieved.[84] LECO also restates its proposed revisions to performance levels for ASA as included in its legal brief.[85]

d) Discussion and Determinations

While the Energy Bureau recognizes that LUMA had limited data from PREPA when it developed its ASA baseline, the Energy Bureau agrees with ICPO and LECO that more recent performance data filed in Case No. NEPR-MI-20019-0007 should be considered. However,

[76] ICPO. Legal Brief, May 11, 2023, page 108-109.

[77] *Id.* at para. 111.

[78] LECO. Legal Brief, May 11, 2023, page 103.

[79] *Id.* page 103.

[80] LUMA. Reply to ICPO Legal Brief, September 21, 2023, page 29-30.

[81] LUMA. Reply to ICPO's Legal Brief, September 21, 2023, page 29-31.

[82] LUMA. Reply to LECO's Legal Brief, September 21, 2023, page 97-98.

[83] LECO. Reply Brief, September 21, 2023, page 8-9.

[84] ICPO. Reply Brief, September 21, 2023, page 13-14.

[85] LECO. Reply Brief, September 21, 2023, page 35-36.

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the Energy Bureau agrees with LUMA that ASA performance should be based on an annual average, and it is therefore not appropriate to base a revised baseline on the data cited by ICPO Witness González in her pre-filed direct testimony. Nevertheless, there is now a full year of data for ASA for FY2023 and it is reasonable to reexamine LUMA's proposed ASA baseline and performance targets.

LUMA's FY2023 ASA as reported in Case No. NEPR-MI-20019-0007 showed significant improvement. The Energy Bureau finds that LUMA's average annual FY2023 ASA performance of 1.69 minutes surpasses the LUMA's proposed 125-percent performance level in Year 3 (4.4 minutes).[86] Therefore, LUMA could maintain current performance, or even decline, during the initial three-year period and still meet the proposed targets. LUMA also acknowledged that its current performance and ASA is better than its proposed Year 1 target.[87]

In addition to LUMA's recent ASA performance, LUMA has made progress with the deployment of its planned technological improvements that will further improve ASA. LUMA indicated that it has:

- developed call forecasting models based on historical 2022 data to inform staffing models;[88]
- implemented an IVR option that provides for a call-back option in instances where the ASA is over 5 minutes, allowing customers to receive a call back when call volume subsides;[89] and,

Further, LUMA indicated that by the end of FY2023, it will have implemented the outage reporting for the IVR, completed the education online for automatic payment options, and made improvements to further enable first contact resolution.[90]

The Energy Bureau therefore **APPROVES** the ASA metric with the following **MODIFICATIONS**:

1) Decrease the allocated incentive base points to six (6), corresponding to an effective weight of five (5) percent of the total incentive fee.
2) Update the baseline to reflect performance over FY2023, consistent with Section IV.D. The updated baseline value is 1.69 minutes.
3) Update the Annual Performance Targets using "Approach 2" based on Section IV.F. The Long-Term Performance Target is 1.0 minutes.
4) Update the Performance Tiers and associated targets for ASA, such that incentive earnings opportunities are provided at 75 percent, 100 percent, and 125 percent of the total allocated incentive, consistent with the approach described in Section IV.H.

The Energy Bureau **ACCEPTS** LUMA's proposal to include ASA as a Key Performance Metric per Section IV of Annex IX to the OMA and **APPROVES** LUMA's proposed Minimum Performance Level for ASA.

The final performance targets and other key parameters for this metric are presented below in Table 13.

[86] LUMA. Final Revised Annex IX, October 28, 2022, Table 2-6, page 22.

[87] NEPR-AP-2020-0025 Evidentiary Hearing 20230209_Meeting Recording 1 00:12:04.

[88] LUMA. Response to Energy Bureau's ROI 11, Question 28, January 5, 2023.

[89] *Ibid.*

[90] NEPR-AP-2020-0025 Evidentiary Hearing 20230209_Meeting Recording 1 00:02:11.

Table 11. Performance Targets and Other Key Parameters for ASA Performance Metric

	Minimum	75%	100%	125%
Baseline	1.69			
Long-Term Target	1.00			
Year 1	9.70	1.59	1.55	1.46
Year 2	7.10	1.49	1.41	1.23
Year 3	6.40	1.39	1.28	1.00

The Energy Bureau updates the ASA target levels to reflect recent improvements based on one of the guiding principles for this proceeding that LUMA needs to go "above and beyond" to earn incentive payments. Under LUMA's current ASA proposal, its recent average annual FY2023 performance of 1.7 minutes would surpass the proposed 125-percent performance level in Year 3 (4.4 minutes).[91] Therefore, LUMA could maintain current performance, or even decline, during the initial three-year period and still meet the proposed targets. The Energy Bureau does not believe this is a reasonable outcome for an incentive metric.

The Energy Bureau finds that the Target Performance Level from the T&D OMA of 1.0 minutes provides a proper Long-Term Target based on LUMA's FY2023 performance and to make sure LUMA's performance continues to improve.

Finally, the Energy Bureau declines to adopt LECO's recommendation for a deduction or penalty for this metric. The Energy Bureau finds that including positive incentives without penalties is reasonable at this time since LUMA will institute the first ever performance incentive scheme in Puerto Rico.

C. Customer Complaint Rate

a) LUMA Proposal

In her pre-filed direct testimony, LUMA witness Ms. Jeppesen describes the Customer Complaint Rate metric:

> *"The annual value is calculated by taking the total number of initial complaints divided by the total utility customer population and then multiplying by 100,000. Utilizing complaints before the Puerto Rico Energy Bureau is an appropriate metric since these are formal complaints that customers have filed."*[92]

Ms. Jeppesen provides more detail about the specific complaints that LUMA is proposing be tracked with this metric in her discussion about how the baseline was to be set for this metric:

> *"LUMA used the total number of complaints received by the Puerto Rico Energy Bureau for billing with the classification of NEPR-QR from May 2019 to February 2020 as the baseline as it was the most normal period of operations for PREPA in the last 4 years, resulting in a baseline of 11.1."*[93]

Explaining why LUMA opted not to include complaints filed under Act 57-2014, Ms. Jeppesen explains these complaints are "less formal" in nature and are often resolved before becoming formal.[94] Ms. Jeppesen further justifies the exclusion from this metric of complaints filed with

[91] LUMA. Final Revised Annex IX, October 28, 2022, Table 2-6, page 22.

[92] LUMA. Direct Testimony of Melanie Jeppesen, August 17, 2021, lines 66-69.

[93] LUMA. Direct Testimony of Melanie Jeppesen, August 17, 2021, lines 84-87.

[94] LUMA. Direct Testimony of Melanie Jeppesen, August 17, 2021, lines 96-100.

the Office of Consumer Protection because these complaints are varied in their content, wide-ranging in their subject, and vary in formality and validity.[95]

b) Intervenors

In her direct testimony, ICPO Witness Ms. González raised concerns about the scope of LUMA's proposed complaint metric, recommending instead that this metric include both informal complaints filed with LUMA and formal complaints filed with the Energy Bureau.[96] Ms. González also suggested that only a small share of customers eligible to file formal complaints with the Energy Bureau actually do so.[97]

LECO Witness Dr. Irizarry-Rivera also suggested that the complaint metric should include both formal and informal complaints, and that LUMA be subject to penalties if its performance falls below PREB's baseline value.[98]

c) Rebuttal, Hearing, and Briefs

In her rebuttal testimony, Ms. Jeppesen responded to the concerns raised by the intervening witnesses. Ms. Jeppesen disagreed with the recommendation that the complaint metric should account for both formal and informal complaints.[99] She noted that many informal complaints are filed that involve issues not in LUMA's control,[100] and she also raised concerns about double-counting.[101] Ms. Jeppesen emphasized that several claims made by Ms. González were not substantiated by data.[102] Ms. Jeppesen also opposed the potential for penalties associated with this metric.[103]

At the evidentiary hearing, Ms. Jeppesen responded to questions from Commissioners Matteo and Torres about the scope of complaints that would be counted under LUMA's proposal and the specific issue of whether complaints designated as NEPR-RV should also be included with complaints designated as NEPR-QR. It was clarified that NEPR-RV complaints correspond to those complaints for which the utility has been responsive but there is a concern about the response—in distinction to NEPR-QR complaints, for which the utility has not rendered a timely response.[104]

In its legal brief, LUMA revised its proposal such that its proposed customer complaint rate metric now includes both NEPR-QR and NEPR-RV complaints.[105]

d) Discussion and Determinations

After careful consideration of the evidentiary record surrounding LUMA's proposed complaint rate metric, the Energy Bureau determines that LUMA's proposed metric is generally reasonable but defined too narrowly. The Energy Bureau therefore **APPROVES** the Customer Complaint Rate metric with the following **MODIFICATIONS**:

[95] LUMA. Direct Testimony of Melanie Jeppesen, August 17, 2021, lines 107-111.

[96] OIPC. Direct Testimony of Beatriz Gonzalez Alvarez, November 17, 2021, lines 59-62.

[97] OIPC. Direct Testimony of Beatriz Gonzalez Alvarez, November 17, 2021, lines 136-142.

[98] LECO. Direct Testimony of Agustin Irizarry-Alvarez, November 17, 2021, page 47, lines 9-11.

[99] LUMA. Rebuttal Testimony of Melanie Jeppesen, February 1, 2022, line 72.

[100] LUMA. Rebuttal Testimony of Melanie Jeppesen, February 1, 2022, lines 75-77.

[101] LUMA. Rebuttal Testimony of Melanie Jeppesen, February 1, 2022, lines 99-100.

[102] LUMA. Rebuttal Testimony of Melanie Jeppesen, February 1, 2022, lines 139-141, 157-160, and 180-181.

[103] LUMA. Rebuttal Testimony of Melanie Jeppesen, February 1, 2022, lines 256-280.

[104] AP-2020-0025 Evidentiary Hearing 20230209_Meeting Recording 1 1:15:15 & 0:50:07.

[105] LUMA. Legal Brief, May 11, 2023, page 59.

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1) Increase the allocated incentive base points to six (6), corresponding to an effective weight of five (5) percent of the total incentive fee.
2) Update the baseline to reflect performance over the full FY2023, consistent with Section IV.D. The updated baseline value is 17.1.
3) Update the Annual Performance Targets using "Approach 1" based on Section IV.F. The Long-Term Performance Target will be set to 14.5.
4) Update the Performance Tiers and associated targets for the Customer Complaint Rate, such that incentive earnings opportunities are provided at 75 percent, 100 percent, and 125 percent of the total allocated incentive, consistent with the approach described in Section IV.H.
5) The metric will be redefined so it reflects the number of complaints received by the Energy Bureau and receiving a designation of either NEPR-QR or NEPR-RV.

The final performance targets and other key parameters for this metric are presented below in Table 14.

Table 12. Performance Targets and Other Key Parameters for Customer Complaint Rate Metric

Baseline	17.1			
Long-Term Target	14.5			
Incentive Level	**Minimum**	**75%**	**100%**	**125%**
Year 1	17.1	16.7	16.6	16.2
Year 2	17.1	16.4	16.1	15.4
Year 3	17.1	16.0	15.6	14.5

While the Energy Bureau does not adopt the recommendation made by intervening witnesses to consider both formal and informal complaints, the Energy Bureau acknowledges Ms. González's legitimate concern that tracking only formal complaints would exclude a potentially large swath of other complaints from consideration. The Energy Bureau's decision to not adopt the recommendations of Ms. González and Dr. Irizarry-Rivera—as LUMA indicated the Energy Bureau should in its legal brief—is not due to a lack of witness credibility or lack of evidentiary support for the witnesses' positions. The Energy Bureau notes that several material assertions and claims made by LUMA's witness, including that informal claims largely concern issues out of LUMA's control, were similarly not supported by any specific data.

The Energy Bureau adopts a modified version of LUMA's proposal for reasons of simplicity, and because in the Energy Bureau's view, it is preferred to use a complaint tracking metric tabulated by the Energy Bureau rather than based on complaints received and tracked by LUMA or another party. Though the formal complaints received by the Energy Bureau represent only a part of the total universe of complaints, the Energy Bureau believes that the metric as proposed herein will still provide a reasonably representative view of LUMA's overall customer satisfaction and dissatisfaction. The Energy Bureau will include both "QR" and "RV" designated formal complaints in this metric in the interest of formulating a complete view of the level of formal customer complaints filed with the Energy Bureau.

Concerning the baseline for this metric, the Energy Bureau concludes that it is preferable to use a full year of data rather than to annualize a partial year of data, as LUMA proposes. The Energy Bureau also concludes it is best to set the baseline with LUMA's performance data, not PREPA's data. The Energy Bureau will set the baseline for this metric based on FY2023 performance.

As a final note, the Energy Bureau notes its particular dissatisfaction with LUMA's proposed approach to setting targets for the Customer Complaint Rate metric. In LUMA's Final Revised Annex IX, the Year 1 performance target at the 25-percent incentive level is *worse* than the baseline. Ms. Jeppesen explained that this worsening was deliberate, to account for the possibility that complaint totals could increase due to billing concerns arising with LUMA's takeover as the system operator. In the Energy Bureau's view, this approach to formulating targets contravenes the purpose of the incentive framework—to drive performance improvements and reward exceptional, not status quo (or worse) performance. While LUMA's concerns about spurious complaints may have some basis in reality, the complaint metric that will be adopted, according to LUMA's own arguments, should be at least partly insulated from these effects because it will record only formal complaints. An increase in complaints could also be driven by LUMA's performance failings; this is a possibility that LUMA does not address when arguing for laxer initial performance targets.

D. First Call Resolution

The OMA includes a performance metric for First Call Resolution, which is calculated as the percentage of calls with issues that are escalated. This metric is designated in the OMA as a Key Performance Metric. The OMA expected that the baseline performance level for the First Call Resolution metric would be set during the front-end transition period.[106]

In the Final Revised Annex IX filings to the Energy Bureau, LUMA recommends deferring this metric until it procures the necessary "cloud-based Contact platform" that will enable it to track First Call Resolution performance. LUMA indicates that it is targeting acquisition of this technology by Year 2.[107]

a) Intervenors

Neither LECO's witness nor ICPO's addressed LUMA's recommendation to defer this metric.

b) Rebuttal, Hearing, and Briefs

LUMA addressed this metric for the first time in its legal brief, wherein it referred to LUMA witness Ms. Laird's statement at the evidentiary hearing that LUMA was then in the process of adding the capability to track First Call Resolution performance, and therefore recommending that the Energy Bureau not defer this metric.[108]

This metric was not addressed in the reply briefs.

c) Discussion and Determinations

The Energy Bureau has reviewed LUMA's recommendation to defer the First Call Resolution metric and the positions of the parties. The Energy Bureau **AGREES** with LUMA that this metric should be deferred until it has acquired the requisite technical functionalities to track performance.

The Energy Bureau **ADOPTS** LUMA's proposal to defer implementation until Year 2. Further, the Energy Bureau **AGREES** with the designation of this metric as a Key Performance Metric when it is ultimately implemented. The Energy Bureau believes that First Call Resolution could be a valuable future metric to evaluate customer service performance more comprehensively. To continue tracking progress towards this metric, LUMA **SHALL REPORT** on the status of the required data collection and IT systems to measure First Call Resolution performance in the Annual Incentive Fee reports filed with the Energy Bureau.

[106] Annex IX to the T&D OMA, page 10.

[107] LUMA. Final Revised Annex IX, October 28, 2022, page 6.

[108] LECO. Legal Brief, May 11, 2023, page 73-74.

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E. Abandonment Rate

a) LUMA Proposal

LUMA proposes an Abandonment Rate performance metric to incentivize efficient call center service.[109] LUMA describes Abandonment Rate as a measurement of "the percentage of callers who hang up (abandon) while the call is still in the Automatic Call Distribution (ACD) queue."[110] LUMA states that the Abandonment Rate calculation is an industry-standard calculation, which is equal to "calls offered minus calls answered divided by calls offered times 100."[111]

In her pre-filed testimony, LUMA witness Ms. Laird explains that LUMA's proposed baseline for the Abandonment Rate is 50.0-percent and is derived from "FY2019–March 2020 data."[112] She states that LUMA reviewed the Abandonment Rate data from three contact center platforms (PREPA, Insight, and Telecontacto). Ms. Laird says FY2020 data would not support a reliable baseline due to the existence of only six months of data. She further notes that reported abandonment varies significantly from month to month due to "COVID and onboarding new outsource vendors" and "a lack of visibility into three separate call routing systems and overflow," which prevented LUMA from accurately calculating baseline ASA.[113]

Witness Laird also describes how LUMA developed the Abandonment Rate target values. She states that "[s]tarting with the baseline, LUMA calculated a reasonable year-over-year improvement that accounted for hiring, learning curve, training, ramp-up, turn over, process improvement and other standard operational changes."[114]

Based on this methodology, LUMA's proposes Abandonment Rate targets of 40 percent for Year 1, 32 percent for Year 2, and 29 percent for Year 3 for the 100-percent incentive level.[115] LUMA explains that the year-over-year improvements to Abandonment Rate are based on industry experience and planned improvements, as approved in the System Remediation Plan and Initial Budgets within NEPR-MI-2020-0019 and NEPR-MI-2021-0004 proceedings, respectively.[116] This differs from the targets in the Original Annex IX to the T&D OMA, which were set using a straight-line calculation, starting from a baseline of 50 percent for Year 0 and assuming a target for year 5 of 25 percent.[117]

LUMA's proposed Minimum Performance Levels for Abandonment Rate are 45 percent in Year 1, 35 percent in Year 2, and 34.0 percent in Year 3.[118] These Minimum Performance Levels are more aggressive than those in the T&D OMA, which are 50 percent, 47.5 percent, and 45 percent for the same three years respectively.[119] LUMA includes Abandonment Rate as a Key Performance Metric in its Final Revised Annex IX based on the OMA Annex IX.[120]

[109] LUMA. Final Revised Annex IX, October 28, 2022, page 23.

[110] *Ibid.*

[111] LUMA. Direct Testimony of Jessica Laird, August 3, 2021, lines 170-172.

[112] LUMA. Direct Testimony of Jessica Laird, August 3, 2021, line 178.

[113] *Id.* lines, 175-183.

[114] *Id.* lines, 191-193.

[115] *Id.* lines 194-196.

[116] LUMA. Response to Energy Bureau's ROI 1, Question 53, September 10, 2021.

[117] Annex IX to the T&D OMA, page 11.

[118] LUMA. Final Revised Annex IX, October 28, 2022, Table 2-8, page 24.

[119] Annex IX to the T&D OMA, page 11.

[120] LUMA. Final Revised Annex IX, October 28, 2022, page 38.

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b) *Intervenors*

Neither ICPO nor LECO addressed LUMA's proposed Abandonment Rate performance metric in pre-filed testimony.

c) *Rebuttal, Hearing, and Briefs*

LUMA's rebuttal did not address the Abandonment Rate metric.

At the evidentiary hearing, LUMA witness Laird confirmed that an Abandonment Rate of 19 percent is better than LUMA's proposed 125-percent Performance Tier targets for Years 1, 2, and 3.[121] Ms. Laird also explained how LUMA's Interactive Voice Response (IVR) call-back option impacts the Abandonment Rate metric. She stated that if a customer chooses the call-back option, that customer is excluded from the Abandonment Rate.[122]

LUMA's legal brief stated that no intervenors challenged the Abandonment Rate performance metric through testimony and requests the Energy Bureau to adopt this metric as presented.[123]

In its legal brief, LECO indicated that it does not support LUMA's proposed baseline for the Abandonment Rate performance metric. LECO cited Ms. Laird's statement at the evidentiary hearing that the Abandonment Rate for FY2022 was 19 percent, which was better than the 125-percent Performance Tier targets for all three years.[124] LECO argued it was "unequivocally demonstrated throughout the evidentiary hearing that LUMA's baselines and information were not up to date, and that in many cases they were already being complied with, violating the mandate to go above and beyond and reward difficult to achieve tasks."[125] LECO stated that if baselines are approved, LUMA will begin earning incentives immediately because it is already complying with them.[126]

LECO proposes revised performance levels for Abandonment Rate in its legal brief:

- 7.0 points if LUMA achieves a "Best Case Scenario" target, which has the same performance targets as the 150-percent performance level in Revised Anex IX (20 percent in Year 1, 16 percent in Year 2, and 14.5 percent in Year 3).
- 3.5 points if LUMA achieves its proposed target threshold levels as defined in Revised Annex IX.
- A deduction of 7.0 points if LUMA fails to meet its Minimum Performance Level as defined in Revised Annex IX. [127]

Last, LECO stated that LUMA's proposal incorrectly lists Abandonment Rate as a Key Performance Metric as defined in the OMA. LECO argued that LUMA must withdraw its proposal, inspect it for further errors, and resubmit a corrected version.[128]

In its reply brief, LUMA stated that because ICPO's legal brief did not discuss Abandonment Rate the Energy Bureau should suppose that ICPO has no objections to that metric.[129] In response to LECO, LUMA reiterated that the baseline for the Abandonment Rate metric was set using PREPA contact center data based on subject matter experience and industry-

[121] AP-2020-0025 Evidentiary Hearing 20230209_Meeting Recording 1 00:21:51.

[122] *Id.* at 00:10:24.

[123] LUMA. Legal Brief, May 11, 2023, page 53-54.

[124] LECO. Legal Brief, May 11, 2023, page 73.

[125] LECO. Legal Brief, May 11, 2023, page 73-74.

[126] *Id.* page 73.

[127] *Id.* page 103-104.

[128] *Id.* page 19.

[129] LUMA. Reply to ICPO's Legal Brief, September 21, 2023, page 3.

standard results. LUMA also stated that the Abandonment Rate metric was not challenged by LECO or other intervenors in testimony or at the evidentiary hearing.[130]

In its reply brief, LECO restated its proposed revisions to performance levels for Abandonment Rate as included in its legal brief.[131]

d) Discussion and Determinations

The Energy Bureau agrees with LECO that the Abandonment Rate baseline and performance targets should be revised to reflect more recent data as filed in Case No. NEPR-MI-20019-0007. LUMA witness Laird clarified that LUMA's FY2022 performance of 19 percent is better than LUMA's proposed 125-percent Performance Tier targets for Years 1, 2, and 3.[132] In addition, in response to whether these targets should be revised, Ms. Laird stated that LUMA is "looking to get the performance metrics approved" and LUMA is "happy to revise the data."[133]

In addition to this recent performance data, LUMA indicated that an improvement in ASA will result in a reduced Abandonment Rate, noting that the longer a customer waits in queue, the higher the probability the customer will drop the call, and vice versa.[134] As summarized in the ASA section of this Resolution and Order, LUMA has made significant progress with the deployment of technologies to improve ASA. The Energy Bureau understands that these investments can contribute to further reducing LUMA's ASA and Abandonment Rate.

Considering LUMA's recent Abandonment Rate performance, LUMA's deployment of technologies to improve customer self-service options and reduce call volumes, and LUMA's willingness to revise targets based on updated data, the Energy Bureau finds that the Abandonment Rate baseline and performance targets should be revised to reflect more current data.

The Energy Bureau also finds there is a need to increase transparency related to the impact of LUMA's IVR call-back option on the Abandonment Rate metric. While it may be appropriate for LUMA to exclude customers selecting the call-back number from the Abandonment Rate, these calls still represent customers that had to abandon the call due to a wait time of five minutes. The number of customers selecting the call-back number therefore has a bearing on LUMA's customer service and should be considered.

The Energy Bureau therefore **APPROVES** the Abandonment Rate metric with the following **MODIFICATIONS**:

1) Decrease the allocated incentive base points to six (6), corresponding to an effective weight of five (5) percent of the total incentive fee.
2) Update the baseline to reflect performance over FY2023, consistent with Section IV.D. The updated baseline value is 8.7 percent.
3) Update the Annual Performance Targets using "Approach 1" based on Section IV.F. The Long-Term Performance Target is 3.8 percent.
4) Update the Performance Tiers and associated targets for Abandonment Rate, such that incentive earnings opportunities are provided at 75 percent, 100 percent, and 125 percent of the total allocated incentive, consistent with the approach described in Section IV.H.

130 LUMA. Reply to LECO's Legal Brief, September 21, 2023, page 98.

131 LECO. Reply Brief, September 21, 2023, page 36-37.

132 AP-2020-0025 Evidentiary Hearing 20230209_Meeting Recording 1 00:21:51.

133 AP-2020-0025 Evidentiary Hearing 20230209_Meeting Recording 1 00:22:07.

134 LUMA. Response to Energy Bureau's ROI 11, Question 29(a), January 5, 2023.

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The Energy Bureau **ACCEPTS** LUMA's proposal to include Abandonment Rate as a Key Performance Metric per Section IV of Annex IX to the OMA and **APPROVES** LUMA's proposed Minimum Performance Level for Abandonment Rate.

The final performance targets and other key parameters for this metric are presented below in Table 13.

Table 13. Performance Targets and Other Key Parameters for Abandonment Rate Performance Metric

	Minimum	75%	100%	125%
Baseline	8.7%			
Long-Term Target	3.8%			
Year 1	45.0%	8.0%	7.7%	7.1%
Year 2	35.0%	7.3%	6.7%	5.4%
Year 3	34.0%	6.6%	5.8%	3.8%

The Energy Bureau finds that LECO is correct in its determination that LUMA's proposed Abandonment Rate baseline does not reflect the most current data. The Energy Bureau updates the Abandonment Rate target levels to reflect recent improvements based on one of the guiding principles for this proceeding that LUMA needs to go "above and beyond" to earn incentive payments. The Energy Bureau agrees with LECO that under LUMA's current Abandonment Rate proposal, its recent average annual FY2023 performance of 8.7 percent would surpass the proposed 150-percent performance level in Year 3 (14.5-percent).[135] Therefore, LUMA could maintain current performance, or even decline, during the initial three-year period and still meet the proposed targets. The Energy Bureau does not believe this is a reasonable outcome for an incentive metric.

The Energy Bureau does not adopt LECO's proposed performance targets because LUMA's FY2023 performance data for Abandonment Rate would already achieve LECO's "Best Case Scenario" target. The Energy Bureau instead calculates LUMA's proposed improvement rates for Abandonment Rate using "Approach 1" consistent with Section IV.F.2. This approach considers the updated baseline of 8.7 percent and LUMA's proposed rate of improvement for Abandonment Rate in its Final Revised Annex IX to develop performance targets. The Energy Bureau finds the resulting Annual Performance Targets will help ensure LUMA's performance continues to improve.

Finally, the Energy Bureau declines to adopt LECO's recommendation for a deduction or penalty for this metric. The Energy Bureau finds that including positive incentives without penalties is reasonable since LUMA will institute the first ever performance incentive scheme in Puerto Rico.

B. Technical, Safety, and Regulatory Metrics

A. Occupational Safety and Health (OSHA) Metrics

a) LUMA Proposal

In his pre-filed direct testimony, LUMA witness Mr. Clark described four safety metrics, which measure the incidence and severity of workplace injuries and are defined by the Occupational Safety and Health Administration (OSHA).[136] These include OSHA Recordable Incident Rate, OSHA Fatalities, OSHA Severity Rate, and OSHA Days Away Restricted or

[135] LUMA. Final Revised Annex IX, October 28, 2022, Table 2-6, page 22.

[136] LUMA. Direct Testimony of Curtis Clark, January 24, 2023, lines 62-79.

Transferred (DART) Rate. Consistent with the OMA, LUMA proposes including OSHA Fatalities and OSHA Severity Rate as Key Performance Metrics.[137]

LUMA defines each labor safety metric and calculation method in its Final Revised Annex IX filing.[138] OSHA Fatalities are the number of OSHA-reportable fatalities that occur in a defined period. OSHA Recordable Incident Rate indicates the number of recordable incidents per 100 full-time employees and is calculated by multiplying the total number of recordable incident cases[139] over a set period by the OSHA scaling factor[140] and dividing the result by the total number of labor-hours the company recorded. OSHA Severity Rate measures severity of incidents by comparing the number of lost workdays compared to the number of incidents. OSHA Severity Rate is calculated by multiplying the total number of restricted and lost-time days incurred because of a work-related injury by the OSHA scaling factor and dividing the result by the total number of work hours. OSHA DART Rate measures severity of incidents by capturing the number of incidents resulting in time away from work per 100 employees and is calculated by multiplying the total number of OSHA injury cases resulting in either lost time days, restricted days, or a job transfer by the OSHA scaling factor and dividing the result by the total number of work hours.

LUMA states that the goal of these metrics is to "incentivize employee safety."[141] In his pre-filed testimony, Mr. Clark stated these safety metrics are "managed, tracked, and reported to ensure a safe & healthy workplace."[142] Further, LUMA must report metrics to OSHA annually.[143]

Mr. Clark explained that LUMA proposes different baseline values from those in the Baseline Order because LUMA believes the Energy Bureau baseline values were calculated using safety data that was inaccurate based on OSHA standards.[144] LUMA also stated that Energy Bureau Benchmarks are not representative of LUMA's activities (i.e., transmission and distribution) because they are an aggregation of data related to transmission, distribution, and generation activities.[145] Mr. Clark explained that LUMA's proposed baselines are based on FY2020 data from the PREPA OSHA 300 and 301 Logs and the PREPA Injury and Illness Data Reports.[146] LUMA excluded incidents from generation operations and included relevant

[137] Annex IX to the T&D OMA, Section IV. "Operator Event of Default" state the following on Key Performance Metrics, "Section 14.1(k) (Events of Default by Operator – Failure to Meet Minimum Performance Threshold) of the Agreement provides for an Operator Event of Default if, during three (3) or more consecutive Contract Years, Operator fails to meet the Minimum Performance Level for any three (3) of the following Performance Metrics and no such failure has been excused by a Force Majeure Event, Outage Event or Owner Fault: (i) Average Speed of Answer; (ii) First Call Resolution; (iii) OSHA Fatalities; (iv) OSHA Severe Injuries; (v) System Average Interruption Frequency Index (SAIFI); (vi) System Average Interruption Duration Index (SAIDI); (vii) Customer Average Interruption Duration Index (CAIDI); (viii) Operating Budget; (ix) Capital Budget – Federally Funded; and (x) Capital Budget – Non-Federally Funded (each a "Key Performance Metric" and together the "Key Performance Metrics"), https://www.p3.pr.gov/wp-content/uploads/2020/06/executed-consolidated-om-agreement-td.pdf (last visit, January 25, 2024).

[138] LUMA. Final Revised Annex IX, October 28, 2022, page 24-26.

[139] A recordable incident is a work-related injury or illness that results in one or more of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, significant injury or illness diagnosed by a physician or other licensed healthcare professional.

[140] The OSHA scaling factor is 200,000 and is the number of hours 100 employees working 40 hours per week for 50 weeks of the year would work.

[141] LUMA. Final Revised Annex IX, October 28, 2022, page 24-26.

[142] LUMA. Direct Testimony of Curtis Clark, January 24, 2023, lines 84-86.

[143] *Ibid.*

[144] LUMA. Direct Testimony of Curtis Clark, January 24, 2023, lines 165-168.

[145] LUMA. Final Revised Annex IX, October 28, 2022, page 24.

[146] LUMA. Direct Testimony of Curtis Clark, January 24, 2023, lines 99-101 and 107-108

'Casi-Casi' incidents, which LUMA stated PREPA had been excluding from the OSHA recordable incident register.[147]

LUMA's proposed annual Severity Rate targets imply a 15-percent annual improvement compared to its proposed baseline. The improvement trajectories for DART Rate and Recordable Incident Rate are slightly more aggressive: 22 percent per year on average for both metrics. The Fatalities metric is binary, and the target is zero (0) for all years.[148]

Mr. Clark discussed LUMA's approach for setting targets for Recordable Incident Rate and explained that LUMA first compared performance to EEI industry standards.[149] LUMA then assessed the feasibility of improvements given the "current state of health and safety matters" and developed a strategy to "lead LUMA to an Incident Reduction near 50% from the baseline in Year 3."[150] Mr. Clark stated that LUMA took similar approaches for OSHA Fatalities and OSHA DART Rate in that targets were "based on the goal to improve safety systems and processes."[151] Mr. Clark noted that Severity Rate targets were set "with the goal to improve performance" but also argued there are external factors beyond LUMA's control that affect the Severity Rate. [152]

LUMA proposed Minimum Performance Levels for each labor safety metric but did not provide a basis for them. The OMA provided Minimum Performance Levels for Recordable Incident Rate only, and LUMA's proposed Minimum Performance Levels for this metric are lower, and indicative of better performance, than those provided in the OMA.

b) *Intervenors*

In his direct testimony, LECO witness Dr. Irizarry-Rivera recommended that LUMA's proposed labor safety metrics "be used only to impose penalties if standards are not met."[153] Dr. Irizarry-Rivera recommended consulting Puerto Rico OSHA rules and comparing to similar jurisdictions to set minimum standards for these metrics.[154] In its legal brief, LECO discussed labor safety performance in the context of principles established in Section 7.1 of Regulation 9137 and argued for the imposition of penalties for poor performance.

In its legal brief, ICPO acknowledged the importance of labor safety metrics but did not provide specific comments on such metrics. Instead, ICPO's legal brief focused on metrics that impact the reliability of the grid.

c) *Rebuttal, Hearing, and Briefs*

In his rebuttal, LUMA witness Mr. Clark stated that he disagrees with LECO's recommendation to impose penalties for the OSHA metrics because LUMA is already subject to penalties or fines for noncompliance with OSHA regulation, and because imposition of additional penalties could result in double or multiple penalties without leading to any improvement in performance.[155] He argued that incentives for safety metrics encourage performance above the Minimum Performance Level, whereas "penalties are only useful in

[147] LUMA. Final Revised Annex IX, October 28, 2022, page 24.

[148] Calculation based on LUMA's proposed 100-percent targets for Years 1-3 in Final Revised Annex IX, October 28, 2022, pages 25-26.

[149] LUMA. Direct Testimony of Curtis Clark, January 24, 2023, lines 186-189.

[150] *Ibid.*

[151] *Id.* lines 189-191.

[152] *Id.* lines 192-193.

[153] LECO. Direct Testimony of Agustin Irizarry-Rivera November 17, 2021.

[154] *Id.* page 8, lines 14-16.

[155] LUMA. Rebuttal Testimony of Curtis Clark, January 24, 2023, Lines 79-80.

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deterring poor performance."[156] Mr. Clark noted that per Section 14.1(k) of the OMA, failure to meet three Key Performance Metrics, which include OSHA Fatalities and OSHA Severity Rate during three or more consecutive Contract Years can serve as grounds for cancellation for the OMA, which Mr. Clark called "the severest of penalties."[157] In its final brief, LUMA restated its opposition to penalties, and reiterated that its proposed metrics and associated 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."[158]

d) Discussion and Determinations

At the evidentiary hearing, Mr. Clark indicated that LUMA does not have a financial incentive to improve safety performance outside of the proposed OSHA incentive metrics, although there are other non-financial incentives for LUMA to improve in these areas, as "there have been many studies that have indicated that improved safety performance generally results in improvements in other metric areas."[159] Mr. Clark also discussed the mechanisms OSHA uses to promote workplace safety, and explained that the principle mechanism is through direct regulation of hazards that could be present in the workplace.[160] If there is evidence that LUMA is out of compliance with a regulation, OSHA has a series of tools it could use, including warnings or fines.[161] Additionally, in response to Energy Bureau-LUMA ROI 01-8, LUMA stated that "The OSHA Act provides for assessment of civil penalties for OSHA violations outlined in Chapter 6 of the Field Operations Manual."[162]

Two of the proposed safety metrics, OSHA Fatalities and Severity Rate, are Key Performance Metrics in the OMA. Failure to meet the minimum performance threshold for three Key Performance Metrics for three consecutive years could trigger cancellation of the contract. The OSHA Fatalities metric is a binary metric; that is, a fatality rate of zero (0) results in full points for incentive payment, and anything greater results in zero (0) points. Similarly, a fatality rate of zero (0) is the minimum performance threshold, and anything greater would be considered failing to meet a Key Performance Metric. Thus, LUMA has an incentive to meet the target threshold for the OSHA Fatalities metric, even without additional financial incentive, because exceeding the Minimum Performance Level means also meeting the target threshold. Similarly, LUMA has an existing incentive to exceed the Minimum Performance Level for Severity Rate. Although, because Severity Rate is not a binary metric, exceeding the Minimum Performance Level does not necessarily mean LUMA will also meet the target threshold.

LUMA has a reason to promote the safety of its employees that is not directly linked to whether LUMA receives an incentive payment for safety performance. For example, as stated in the hearing, improved safety performance generally results in improvements in other metric areas. In addition, adherence to workplace safety standards is regulated by OSHA, and violations of OSHA standards can result in penalties. However, the opportunity to earn additional financial incentive may encourage LUMA to take actions it may not otherwise prioritize in a penalty-only framework.

[156] *Id.* lines 84-86.

[157] *Id.* lines 84-89.

[158] LUMA. Legal Brief, May 11, 2023, page 72.

[159] AP-2020-0025 Evidentiary Hearing-20230208_Meeting Recording 1 00:31:50.

[160] *Id.* 00:32:53.

[161] *Id.* 00:33:36.

[162] LUMA. Response to Energy Bureau's ROI 1, September 10, 2021.

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The Energy Bureau therefore **APPROVES** the OSHA Recordable Incident Rate, OSHA Fatalities, OSHA Severity Rate, and OSHA DART Rate metrics, with the following **MODIFCATIONS**:

1) Decrease the allocated incentive base points of each labor safety metric to one (1), corresponding to an effective weight of 0.83 percent of the total incentive fee;
2) Update the baselines to reflect performance over FY2023, consistent with Section IV.D. The baselines for the OSHA Recordable Incident, DART, Severity, and Fatality Rates are 2.20, 1.30, 17.90 and 0.08, respectively.
3) Update the Annual Performance Targets for OSHA Severity Rate and OSHA DART Rate using "Approach 1" and update the Annual Performance Targets for Recordable Incident Rate using "Approach 2" based on Section IV.F. Maintain the targets for OSHA Fatalities. The Long-Term Performance Targets for OSHA Recordable Incident, DART, Severity, and Fatality Rates are 2.30, 1.10, 8.46, and 0.00, respectively.
4) Update the Performance Tiers and associated targets for the labor safety metrics, such that incentive earnings opportunities are provided at 75 percent, 100 percent, and 125 percent of the total allocated incentive, consistent with the approach described in Section IV.H.

The Energy Bureau **ACCEPTS** LUMA's proposal to include OSHA Fatalities and OSHA Severity Rate as Key Performance Metrics per Section IV of Annex IX to the OMA and **APPROVES** LUMA's proposed Minimum Performance Levels for the labor safety metrics. The final performance targets and other key parameters for these metrics are presented below in Table 14 through Table 17.

The modifications to the incentive base points and Annual Performance Targets reflect the Energy Bureau's review of LUMA's current performance, and the concerns raised by stakeholders that LUMA has existing non-financial incentives to promote employee and workplace safety. The Energy Bureau emphasizes that the reduced number of incentive points that will be allocated to the OSHA metrics does not represent a de-prioritization of employee safety, but instead acknowledges LUMA's existing incentives to promote workplace safety. The basis for these modifications is further discussed below.

The Energy Bureau agrees with LUMA's proposal to only include incidents related to transmission and distribution and exclude generation-related incidents from these metrics. The Energy Bureau acknowledges LUMA's concerns regarding the accuracy of data reported by PREPA. The Energy Bureau notes that the Benchmarks in the May 21 Resolution and August 18 Resolution include separate Benchmarks for generation, transmission, and distribution and for transmission and distribution only (i.e., excluding generation). In addition, since beginning operation, LUMA has submitted updated data to the Energy Bureau through quarterly reporting.

LUMA's FY2023 performance was better than its proposed baseline values for all safety metrics but the OSHA Fatality Rate metric. The Energy Bureau reviewed LUMA's proposed targets along with LUMA's FY2023 performance for OSHA Recordable Incident, Severity, and DART rate and determines that LUMA has met or exceeded its proposed Year 3 performance targets. A target set at or below baseline performance is not consistent with the principles established in Section 7.1 of Regulation 9137, including that performance metrics should induce behavior that would not otherwise occur absent the incentive mechanism. Therefore, the Energy Bureau **ADOPTS** modifications to the performance targets for the labor safety metrics, as follows: The Energy Bureau modifies performance targets for OSHA Recordable Incident Rate and OSHA DART Rate using LUMA's reported rolling 12-month average FY2023 performance as the baseline and the PREB-established Benchmarks established in the Baseline Order for transmission and distribution only as the Long-Term Performance Target level.

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OSHA Recordable Incident Rate

The Energy Bureau reviewed LUMA's proposed performance targets compared with LUMA's current baseline performance and determined that LUMA's current performance exceeds the most aggressive proposed performance threshold. Further, LUMA 's baseline performance was better than the OSHA Recordable Incident Rate Long-Term Target of 2.30 (Table 14). Therefore, the Energy Bureau set the Target Performance Levels equal to the Long-Term Target and removed the 75-percent and 125-percent incentive tiers, effectively making this metric a binary metric. Thus, LUMA can continue to earn incentives for maintaining its performance equal to or better than the Long-Term Target but cannot earn incentives for lower performance.

Table 14. Performance Targets and Other Key Parameters for OSHA Recordable Incident Rate Metric

	Minimum	75%	100%	125%
Baseline	2.19			
Long-Term Target	2.30			
Year 1	7.88	N/A	2.30	N/A
Year 2	7.25	N/A	2.30	N/A
Year 3	6.67	N/A	2.30	N/A

OSHA DART Rate

LUMA's OSHA DART Rate baseline performance was 1.32. Further, LUMA's FY2023 performance improved 24 percent from its FY2022 performance. The Energy Bureau determined that if LUMA's performance improves along its proposed improvement trajectory, LUMA will reach the benchmark performance level determined set by the Energy Bureau within a year. Therefore, the Energy Bureau used LUMA's proposed improvement trajectory to calculate the 75-percent performance threshold in Year 1, but set the Target Performance Levels in Years 1, 2, and 3 to the PREB-determined Long-Term Target and removed the 75-percent and 125-percent targets in Years 2 and 3. The final performance targets, baseline, and Long-Term Target for this metric are presented below in Table 15.

Table 15. Performance Targets and Other Key Parameters for OSHA DART Rate Metric

	Minimum	75%	100%	125%
Baseline	1.32			
Long-Term Target	1.10			
Year 1	6.17	1.20	1.10	N/A
Year 2	5.67	N/A	1.10	N/A
Year 3	5.22	N/A	1.10	N/A

OSHA Severity Rate

The Energy Bureau derived a Long-Term Target from the improvement trajectory implied by LUMA's proposed performance targets and calculated updated performance targets using LUMA's reported FY2023 performance as the baseline. This approach is consistent with LUMA's approach to calculating its proposed incentive tiers; in the evidentiary hearing, LUMA witness Mr. Clark confirmed that yearly rate of improvement and relationship between the incentive tiers were based on the original trend lines and incentive tiers agreed

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to in the OMA, updated with more current baseline data.[163] The final performance targets, baseline, and Long-Term Target for this metric are presented below in Table 16.

Table 16. Performance Targets and Other Key Parameters for OSHA Severity Rate Metric

	Minimum	75%	100%	125%
Baseline	17.90			
Long-Term Target	8.46			
Year 1	53.38	16.55	16.01	14.75
Year 2	49.12	15.20	14.12	11.60
Year 3	45.19	13.85	12.23	8.46

<u>OSHA Fatality Rate</u>

The Energy Bureau did not modify the OSHA Fatality Rate incentive tiers or targets. The final performance targets, baseline, and Long-Term Target for this metric are presented below in Table 17.

Table 17. Performance Targets and Other Key Parameters for OSHA Fatality Rate Metric

	Minimum	75%	100%	125%
Baseline	0.08			
Long-Term Target	0.00			
Year 1	0.00	N/A	0.00	N/A
Year 2	0.00	N/A	0.00	N/A
Year 3	0.00	N/A	0.00	N/A

B. System Average Interruption Frequency Index (SAIFI)

a) LUMA Proposal

LUMA proposes System Average Interruption Frequency Index (SAIFI) as a performance metric "to incentivize system reliability."[164] LUMA describes SAIFI as "how often the average customer experiences a sustained interruption over a predefined period of time."[165] SAIFI is calculated by dividing the total number of customers interrupted by the total number of customers served. LUMA proposes to only include interruptions that last over five minutes, which is consistent with the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") definition.[166] The OMA includes SAIFI as a performance metric and Key Performance Metric.[167]

[163] AP-2020-0025 Evidentiary-20230208_Meeting Recording 1 0:18:04

[164] *LUMA's Submittal and Request for Approval of Revised Annex IX to the OMA*, Exhibit 1 "LUMA's Performance Metrics Targets," filed on February 25, 2021 in Case No. NEPR-AP-2020-0025, page 21.

[165] *Id.* page 21. SAIFI is a standard industry reliability metric established by the Institute of Electrical and Electronics Engineers, Inc. (IEEE) and defined in the IEEE Guide for Electric Power Distribution Reliability Indices.

[166] *Id.* Page 21.

[167] Annex IX to the T&D OMA, Section I. "General" states the following on performance metrics, "For each Contract Year, the Operator shall be eligible to receive financial incentive compensation ("Incentive Fee") based on the Operator's performance during the Contract Year as measured against the performance goals set forth by the Performance Metrics as described in this Annex IX (*Performance Metrics*). Annex IX, Section VI. "Operator Event of Default" states the following on Key Performance Metrics, "Section 14.1(k) (Events of Default by Operator – Failure to Meet Minimum Performance Threshold) of the Agreement provides for an Operator Event of Default if, during three (3) or more consecutive Contract Years, Operator fails to meet the Minimum Performance Level for any three (3) of the following Performance Metrics and no such failure has been excused by a Force Majeure Event, Outage Event or Owner Fault: (i) Average Speed of Answer; (ii) First Call Resolution;

In pre-filed direct testimony, LUMA witness Mr. Cortez explains how LUMA estimated SAIFI target values:

> *"Since no reliable historical data exists that indicates what degree of T&D reliability improvement can generally be expected from a specific level of funds invested in Puerto Rico, LUMA relied upon my many years of experience in T&D at various utilities and the LUMA current and forecasted annual budgets to estimate an aggressive but attainable annual percent improvement from the baselines to establish future annual targets for LUMA's first three years of operation."*[168]

LUMA proposes target values based on the following relative improvements over the assumed baseline value: an improvement of 7.5 percent by the end of Year 1, a cumulative improvement of 20 percent by the end of Year 2, and a cumulative improvement of 30 percent by the end of Year 3. The estimated improvements represent reductions in SAIFI from the proposed baseline value. For the Minimum Performance Level, 150-percent, 125-percent, 50-percent, and 25-percent performance goals, LUMA says it estimated these values by "reasonably varying" the performance relative to the 100-percent target value.[169]

In the Final Revised Annex IX filings submitted to the Energy Bureau, LUMA's SAIFI targets changed after updating the baseline value. In February 2021, LUMA assumed a baseline SAIFI value of 9.8 interruptions per year. The later submissions assume baseline SAIFI values of 10.6 interruptions per year. LUMA explains that the revisions to the baseline value and corresponding targets reflect the Energy Bureau's May 21 order issued in Case No. NEPR-MI-2019-0007.[170]

LUMA proposes SAIFI Minimum Performance Levels of 10.4, 10.1, and 9.8 interruptions per year for the respective Contract Years.

b) Intervenors

In his direct testimony, LECO witness Dr. Irizarry-Rivera provided an overview of bulk electric system reliability and recommended several additional measures of transmission-system reliability.[171]

Regarding SAIFI, LECO's witness did not oppose this metric but highlighted the variation in SAIFI values across LUMA's service territory. He also stated that SAIFI performance under LUMA improved overall but declined in eight of 26 regions.[172]

LECO witness Mr. Alameda-Lozado discussed reward-penalty schemes and outage compensation in relation to reliability metrics like SAIDI and SAIFI.[173]

ICPO witness Mr. Cosme agreed with including SAIFI as a performance metric and the specification proposed by LUMA. He stated, "To begin with, I agree with LUMA's arguments

(iii) OSHA Fatalities; (iv) OSHA Severe Injuries; (v) System Average Interruption Frequency Index (SAIFI); (vi) System Average Interruption Duration Index (SAIDI); (vii) Customer Average Interruption Duration Index (CAIDI); (viii) Operating Budget; (ix) Capital Budget – Federally Funded; and (x) Capital Budget – Non-Federally Funded (each a "Key Performance Metric" and together the "Key Performance Metrics").

[168] LUMA. Direct Testimony of Don Cortez Direct, August 17, 2021, lines 342-347.

[169] *Id.* Lines 347-352.

[170] *LUMA's Submittal of Request for Approval of Revised Annex IX to the OMA*, Case No. NEPR-AP-2020-0025, filed on August 18, 2021. For the Performance Metrics on OSHA Fatalities, System Average Interruption Frequency Index (SAIFI), System Average Interruption Duration Index (SAIDI), the proposed baseline performance level is based on the May 21st Resolution and Order issued by this Energy Bureau. *See* Exhibit 1, Table 2-3, pages 15-16, and Pre-Filed Testimony of Don Cortez," page 22.

[171] LECO. Direct Testimony of Agustin Irizarry-Rivera, November 17, 2021, page 27-30.

[172] *Id.* page 56, lines 18-19.

[173] LECO. Direct Testimony of Jose Alameda-Lozado, November 17, 2021, page 19-21.

related to SAIFI and SAIDI, specifically, that it should include all events from transmission lines, distribution lines, and substations, as opposed to PREPA's method of only counting distribution line system events."[174]

c) *Rebuttal, Hearing, and Briefs*

LUMA's rebuttal testimony responded to Dr. Irizarry-Rivera's contention that LUMA's proposed metrics were not ambitious enough. LUMA stated, "LUMA's Revised Performance Metrics Targets proposal is not for approval of a rigid, never changing set of performance metrics. Rather, LUMA is proposing an initial set of metrics that are intended to evolve over time as the T&D System is improved. The initial set of metrics considers the current state of the T&D System and realistic measures of improvement in the near term. LUMA is proposing performance metrics that are the foundational elements needed to transform the existing grid into a 21st century grid and operate reliably."[175]

In its legal brief, LUMA discussed the need to update baselines and Minimum Performance Levels given the changes since this proceeding started and each proposal was submitted to the Energy Bureau. Specifically, LUMA proposed that the Energy Bureau, "approve an initial set of Performance Metrics and that further proceedings are pursued to review—once set—the Minimum Performance Levels and Targets (25-percent to 150-percent) for the appropriate metrics with the benefit of new data and while considering changes in circumstances and the state of the T&D system. It is in the public interest to have metrics that are attainable, and that drive the necessary performances to meet contractual, legal, and public policy requirements."[176]

Later in the brief, LUMA stated that its witness' testimony on this metric is uncontested and that the Energy Bureau should approve the proposed baselines, Minimum Performance Level, and Targets submitted in the October 28, 2022, Revised Annex IX.[177]

ICPO's legal brief directly addressed this metric and raised concerns that LUMA's current performance would easily meet the proposed SAIFI targets from the October 2022 proposal. ICPO recommended that the Energy Bureau further review the baselines and targets for this metric.[178]

ICPO's reply brief reiterated its general concerns that the Energy Bureau should not approve LUMA's proposal without considering updated data.[179] Specifically, ICPO refuted that LUMA's testimony on this metric was not controversial and recommended reviewing SAIFI target values to promote performance beyond current achievement.[180]

LECO also agreed that the targets for this metric should be based on updated data. LECO stated, "PREB should reject the proposed incentives based on outdated and inadequate data and require that any future submission be supported by new data, and incorporate updated improvement programs and new federal funding for rooftop solar + storage."[181] In its legal brief, LECO recommended rejecting LUMA's October 2022 proposal for SAIFI and presented a separate proposal.[182] Under LECO's proposal, LUMA would be penalized for failing to meet the worst-case scenario performance (set at LUMA's proposed 25-percent Performance

[174] ICPO. Direct Testimony of Gerardo Cosme Nunez, November 17, 2021, page 3, lines 92-95.

[175] LUMA. Rebuttal Testimony of Don Cortez, February 17, 2022, lines 149-155.

[176] LUMA. Legal Brief, May 11, 2023, page 20.

[177] *Id.* page 78-79.

[178] ICPO. Legal Brief, May 11, 2023, page 10-11.

[179] ICPO. Reply Brief, September 21, 2023, page 8.

[180] *Id.* page 9.

[181] LECO. Legal Brief, May 11, 2023, page 15.

[182] *Id.* page 57.

Goal), base points for the 100-percent target are reduced to 2.5 base points, and achieving the best-case performance at 150-percent would earn 5 base points.[183]

LECO's reply brief recommended an alternative to LUMA's basis for setting the 100-percent performance target and minimums. LECO argued the 100-percent performance target should reflect best-case performance and the baseline should reflect worst-case performance.[184] Based on this recommended framework, LECO presented an updated proposal for the SAIFI performance targets.[185]

In the opening discussion of LUMA's reply briefs to ICPO and LECO, LUMA critiqued the parties' requests to the Energy Bureau to update performance targets with new information. LUMA then tried to distinguish the parties' proposals from their proposal to update Minimum Performance Levels and targets close to when PREPA exits Title III Bankruptcy.[186] LUMA's reply briefs reiterated its position that the SAIFI targets are uncontested and should be approved as proposed.[187,188]

d) *Discussion and Determinations*

Act 120-2018[189] initiated "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."[190] LUMA has a critical role in this transformation as the lead in rebuilding the electric grid and operating a reliable T&D system resilient to future storms. In this initial three-year period, the Energy Bureau prioritizes reversing the trend of declining reliability and implementing key programs to transform the island's electric system. The Energy Bureau also acknowledges that the transformed system envisioned by Act 120-2018 is a long-term process that will extend beyond this initial period and the set of reliability metrics will evolve in the coming years.

In reviewing LUMA's proposal for SAIFI, the Energy Bureau first notes that every party supports this metric. The Energy Bureau also **TAKES NOTICE** that LUMA's performance on SAIFI has improved from the baseline set by the Energy Bureau in 2021. Based on the data in Case No. NEPR-MI-2019-0007, the 12-month rolling average of SAIFI has improved compared to PREPA's historical performance. LUMA's 12-month rolling average for SAIFI in FY2023 was 7.0 interruptions per year compared to the PREPA baseline of 10.6 interruptions per year.[191]

After reviewing the positions and evidence submitted by the parties, the Energy Bureau **APPROVES** the SAIFI metric with **MODIFICATIONS**:

1) Increase the allocated incentive base points to 13, corresponding to an effective weight of 10.8 percent of the total incentive fee.
2) Update the baseline to reflect performance over FY2023, consistent with Section IV.D. The updated baseline value is 7.0 interruptions per year.

[183] *Id.* page 99-100.

[184] LECO. Reply Brief, September 21, 2023, page 14.

[185] *Id.* page 31.

[186] LUMA. Reply to ICPO's Legal Brief, September 21, 2023, at page 4-9 and LUMA Reply Brief to LECO, September 21, 2023, page 24-27.

[187] LUMA. Reply to ICPO's Legal Brief, September 21, 2023, page 10.

[188] LUMA. Reply to LECO's Legal Brief, September 21, 2023, page 78.

[189] Known as the *Puerto Rico Electric Power System Transformation Act,* as amended.

[190] Act 120-2018, page 5.

[191] Case No. NEPR-MI-2019-0007, "Resumen-Metricas-Master_July2023.xlsx," Cell #AD139, "SAIFI (T&D), 12-month rolling average." On October 31, 2023, LUMA submitted a motion to restate values for the SAIFI and SAIDI reliability metrics for Fiscal Year 2023. See also "Resumen-Metricas-Master_October2023.xlsx," Cell #AD139, "SAIFI (T&D), 12-month rolling average."

3) Update Annual Performance Targets using "Approach 1" based on Section IV.F The Long-Term Performance Target is 4.0 interruptions per year.
4) Update the Performance Tiers and associated targets for SAIFI, such that incentive earnings opportunities are provided at 75 percent, 100 percent, and 125 percent of the total allocated incentive, consistent with the approach described in Section IV.H.

The Energy Bureau **ACCEPTS** LUMA's proposal to include SAIFI as a Key Performance Metric per Section IV of Annex IX to the OMA and **APPROVES** LUMA's proposed Minimum Performance Level for SAIFI.

PREB also clarifies that LUMA should prorate the targets and incentive fee for SAIFI during a partial Contract Year.[192]

The final performance targets and other key parameters for this metric are presented below in Table 18.

Table 18. Performance Targets and Other Key Parameters for SAIFI Metric

	Minimum	75%	100%	125%
Baseline	7.0			
Long-Term Target	4.0			
Year 1	10.4	6.6	6.4	6.0
Year 2	10.1	6.1	5.8	5.0
Year 3	9.8	5.7	5.2	4.0

These modifications reflect the Energy Bureau's urgent priority for LUMA to employ resources to improve system reliability. By increasing the effective weight on SAIFI, a higher share of LUMA's annual incentive fee depends on meeting reliability goals, which should motivate LUMA to finish the pending projects and remediation programs that can reduce service interruptions to customers. The Energy Bureau further explains the basis for the remaining modifications below.

The Energy Bureau updates the SAIFI target levels using Approach 1 to reflect recent improvements in SAIFI. Under LUMA's proposed SAIFI targets, its SAIFI performance in FY2023 (7.0 interruptions per year) would surpass the proposed 100-percent performance level in Year 3 (7.4 interruptions per year). Therefore, LUMA could maintain its current performance, or even decline, during the initial three-year period and still meet the proposed targets. The Energy Bureau does not believe this is a reasonable outcome for an incentive metric; nor is it consistent with the guiding principle established in this proceeding that LUMA needs to go "above and beyond" to earn incentive payments.

The Energy Bureau also believes updating the SAIFI performance targets is necessary to continue to progress towards the Energy Bureau's SAIFI Benchmark of 1.0 interruptions per year. FY2023 was a commendable improvement from past performance and updating targets through Approach 1 will encourage further progress on this important reliability metric during the initial three-year period.

While LUMA has proposed a process to update Minimum Performance Levels and target levels as PREPA nears the exit of bankruptcy proceedings, the Energy Bureau believes updating the target values in this decision is also justified, particularly where LUMA's performance exceeds the targets proposed in October 2022. PREB makes this determination primarily to facilitate the transition into LUMA's first Contract Year while making sure any

[192] Under a partial Contract Year, the SAIFI targets and incentive level would adjust in proportion to the duration of the Contract Year. For example, the first Contract Year has a SAIFI target of 6.3 interruptions per year. For a 6-month period, the target would adjust to 6.3/2 = 3.2 interruptions. The other target values for the metric would be adjusted similarly along with the corresponding incentive levels.

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incentive fees earned by LUMA reflect performance targets informed by the best available information.

By updating the targets in this decision, the Energy Bureau provides LUMA time to prepare for the first Contract Year with knowledge of expected performance targets. This update mitigates risk to unnecessary delays in the start of the first Contract Year. Under LUMA's proposed approach of waiting until the exit of Title III bankruptcy to update targets, any delays in the update process will either require a delay in the first Contract Year or let LUMA begin the first Contract Year with the targets proposed in the October 2022 Annex IX filing. By updating targets in this decision, the Energy Bureau is mitigating the risk of either undesirable outcome.

Finally, as described in Section IV.E, this decision adopts a limited process for further updates to performance targets. LUMA states that the exit from the Title III process is expected in 2024,[193] which will allow further review of performance data from FY2024.

C. System Average Interruption Duration Index (SAIDI)

a) LUMA Proposal

LUMA proposes System Average Interruption Duration Index (SAIDI) as a performance metric "to incentivize system reliability."[194] LUMA describes SAIDI as "the total duration of interruption for the average customer during a predefined period of time."[195] SAIDI is calculated by summing the product of the length of each interruption and the number of customers affected by that interruption for all sustained interruptions during the measurement period then dividing by the total number of customers served. Similar to SAIFI, LUMA proposes to only include interruptions that last over five minutes, which is consistent with the IEEE definition.[196] The OMA includes SAIDI as a performance metric and Key Performance Metric.

In pre-filed testimony, LUMA witness Mr. Cortez states that LUMA estimated improvements in SAIDI based on his professional judgment, similar to LUMA's method for setting SAIFI targets:

> *"Since no reliable historical data exists that indicates what degree of T&D reliability improvement can generally be expected from a specific level of funds invested in Puerto Rico, LUMA relied upon my many years of experience in T&D at various utilities and the LUMA current and forecasted annual budgets to estimate an aggressive but attainable annual percent improvement from the baselines to establish future annual targets for LUMA's first three years of operation."*[197]

LUMA proposes SAIDI target values based on the following relative improvements over the baseline: 10 percent by the end of Year 1, cumulative improvement of 25 percent by the end of Year 2, and cumulative improvement of 40 percent by the end of Year 3. Similar to SAIFI, LUMA estimates a Minimum Performance Level, 150-percent, 125-percent, 50-percent, and 25-percent performance goals by "reasonably varying" the 100-percent target level.[198]

[193] LUMA. Reply to ICPO's Legal Brief, September 21, 2023, page 8.

[194] LUMA. Revised Annex IX dated February 25, 2021, page 21-22.

[195] *Id.* page 21. SAIDI is a standard industry reliability metric established by the Institute of Electrical and Electronics Engineers, Inc. ("IEEE") and defined in the IEEE Guide for Electric Power Distribution Reliability Indices.

[196] *Id.* page 21.

[197] LUMA. Direct Testimony of Don Cortez, August 17, 2021, lines 358-363.

[198] *Id.* lines 363-368.

In the Final Revised Annex IX filings submitted to the Energy Bureau, LUMA's SAIDI targets changed after updating the baseline value. In February 2021, LUMA assumed a baseline SAIDI value of 1,307 minutes per year. The later submissions assume baseline SAIDI values of 1,243 minutes per year. LUMA explains that the revisions to the baseline value and corresponding targets reflect the Energy Bureau's May 21 order issued in NEPR-MI-2019-0007.[199]

LUMA proposes SAIDI Minimum Performance Levels of 1,212, 1,155, and 1,118 minutes per year for each respective Contract Year.[200]

b) Intervenors

LECO witness Dr. Irizarry-Rivera did not dispute using SAIDI as a performance metric but highlighted that LUMA's proposed SAIDI targets remain far below the average for U.S. utilities. LECO's witness recommended rejecting LUMA's proposed targets and maintaining the SAIDI Benchmark established in Case No. NEPR-MI-2019-0007.[201]

Dr. Irizarry-Rivera also presented data indicating that average outage duration increased after LUMA assumed operations. When comparing SAIDI values for June–August in 2020 and 2021, LECO's witness stated that average SAIDI increased in 24 out of 26 regions.[202]

Dr. Irizarry-Rivera also recommended penalties and "gating metrics"[203] for the reliability metrics. On the topic of penalties, Dr. Irizarry-Rivera stated, "LUMA's proposal includes only incentives for achieving certain targets, but no penalties if a given level of performance is not maintained. The failure to include penalties is particularly concerning given that electric service has deteriorated in key areas since LUMA took control of the electrical system."[204]

LECO witness Mr. Alameda-Lozado, generally discussed reward-penalty schemes and outage compensation in relation to reliability metrics like SAIDI and SAIFI.[205]

Similar to the SAIFI metric, ICPO witness Mr. Cosme did not dispute including SAIDI as a performance metric or LUMA's specification of the metric.[206]

c) Rebuttal, Hearing, and Briefs

In rebuttal testimony, LUMA witness Mr. Cortez discussed that Puerto Rico's grid requires significant investment to achieve a "20th century" system. He stated, "LUMA is committed to the transformation of Puerto Rico's grid to a modern, 21st century electric system but this cannot be achieved overnight, even if LUMA was starting with a mature, robust 20th century grid, which is not the case. Utilities that are pursuing similar transformation have plans to do so over many years as approved budgets and practical resourcing permit."[207]

[199] LUMA. Revised Annex IX dated August 18, 2021, page 22.

[200] *LUMA's Submission of Revised Annex IX to the T&D* OMA, Exhibit 1 "Revised Performance Metrics Targets: In Compliance with PREB Resolution and Order of August 1, 2022" ("October 2022 Revised Annex IX"), filed on October 28, 2022 in Case No. NEPR-AP-2020-0025 page 17-18.

[201] LECO. Direct Testimony of Agustin Irizarry-Rivera, November 17, 2021, page 31, lines 12-25. In a Resolution and Order issued on May 21, 2021, in Case No. NEPR-MI-2019-0007 at p. 21, the Energy Bureau recommended a Benchmark for SAIDI of 102 minutes a year based on comparison to a peer group of U.S. utilities.

[202] *Id.* Table 4, page 59, lines 23-24.

[203] *Id.* page 54, lines 3-8.

[204] *Id.* page 50, lines 15-19.

[205] LECO. Direct Testimony of Jose Alameda-Lozado, November 17, 2021, page 19-21.

[206] ICPO. Direct Testimony of Gerardo Cosme Nunez, November 17, 2021, page 3, lines 92-95.

[207] LUMA. Rebuttal Testimony of Don Cortez, February 17, 2022, page 9, lines 156-160.

In addition, Mr. Cortez asserted, "In my knowledge and experience, no mainland utility has allowed its assets to become as deteriorated as PREPA or allowed their vegetation management to get this far out of control."[208]

In LUMA's legal brief, LUMA advocated for an update to baselines, targets, and Minimum Performance Levels[209] but also recommended that the Energy Bureau approve the SAIDI targets in the Final Revised Annex IX filing.[210]

ICPO encouraged the Energy Bureau to review LUMA's current performance on this metric.[211]

LECO recommended denying LUMA's proposal on SAIDI and presented an alternative set of targets.[212] Furthermore, LECO strongly recommended that the Energy Bureau adopt Gating Metrics, penalties for underperformance on this metric, and outage compensation.[213]

In its reply brief, ICPO reiterated general support for updating performance targets with current data.[214] LECO recommended updating SAIDI targets based on the same framework described in the discussion of the SAIFI metric.[215] LECO also proposed an alternative set of SAIDI targets based on its recommended framework.[216]

d) Discussion and Determinations

Similar to the preceding discussion on SAIFI, the Energy Bureau believes improving service reliability during the initial three-year period is LUMA's highest priority and the reliability incentive metrics should reflect this importance.

The Energy Bureau also **TAKES NOTICE** that LUMA's SAIDI performance declined in FY2022 relative to earlier years and remained well below the baseline established using PREPA's historical performance. In FY2022, LUMA's system wide SAIDI was 1,564 minutes per year in comparison to the PREPA baseline of 1,243 minutes per year. The FY2022 SAIDI value was also below the Minimum Performance Level proposed by LUMA and would have resulted in a failure to meet a Key Performance Metric if it was the first Contract Year.

However, more recent data indicates that LUMA has reversed the declining trend for SAIDI. Based on the SAIDI data that LUMA submitted for FY2023, the 12-month rolling average for SAIDI improved to 1,218 minutes per customer compared to 1,564 minutes per customer at the end of FY2022.[217]

The Energy Bureau is encouraged by this improving trend but notes that LUMA's SAIDI performance remains far from the Benchmark of 102 minutes established by the Energy Bureau.

[208] *Id.* page 25, lines 528-531.

[209] LUMA. Legal Brief, May 11, 2023, page 19.

[210] *Id.* page 80.

[211] ICPO. Legal Brief, May 11, 2023, page 11-12.

[212] LECO. Legal Brief, May 11, 2023, page 57.

[213] *Id.* page 59-63.

[214] ICPO. Reply Brief, September 21, 2023, page 7-8.

[215] LECO. Reply Brief, September 21, 2023, page 14.

[216] *Id.* page 32.

[217] See Case No. NEPR-MI-2019-0007, "Resumen-Metricas-Master_July2023.xlsx," Cell #AD135, "SAIDI (T&D), 12-month rolling average". On October 31, 2023, LUMA submitted a motion to restate values for the SAIFI and SAIDI reliability metrics for Fiscal Year 2023. See "Resumen-Metricas-Master_October2023.xlsx," Cell #AD135, "SAII (T&D), 12-month rolling average."

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Given the vital importance of continuing to improve service reliability, the Energy Bureau **APPROVES** the SAIDI metric with **MODIFICATIONS**:

1) Increase the allocated incentive base points to 13, corresponding to an effective weight of 10.8 percent of the total incentive fee.
2) Update the baseline to reflect performance over FY2023, consistent with Section IV.D. The updated baseline value is 1,218 minutes per year.
3) Update the Annual Performance Targets using "Approach 1" based on Section IV.F.2. The Long-Term Performance Target is 557 minutes per year.
4) Update the Performance Tiers and associated targets for SAIDI, such that incentive earnings opportunities are provided at 75 percent, 100 percent, and 125 percent of the total allocated incentive, consistent with the approach described in Section IV.H.

The Energy Bureau **ACCEPTS** LUMA's proposal to include SAIDI as a Key Performance Metric per Section IV of Annex IX to the T&D OMA and **APPROVES** LUMA's proposed Minimum Performance Level for SAIFI.

The final performance targets and other key parameters for this metric are presented below in Table 19

Table 19. Performance Targets and Other Key Parameters for SAIDI Metric

	Minimum	75%	100%	125%
Baseline	1,218			
Long-Term Target	557			
Year 1	1,212	1,124	1,086	998
Year 2	1,155	1,029	954	777
Year 3	1,118	935	821	557

Similar to the modifications to SAIFI, the Energy Bureau is increasing the effective weight of SAIDI to reflect the high priority to improve service reliability in Puerto Rico.

In updating the baseline to reflect LUMA's FY2023 improved performance, the Energy Bureau uses Approach 1 to establish updated SAIDI targets. This modification applies a consistent methodology to update both reliability metrics and requires continued annual improvements in reliability to earn an incentive fee. The Energy Bureau believes these modifications are necessary to deter another period of declining SAIDI performance as Puerto Rico experienced during LUMA's early term of operations and incentivize the significant progress that LUMA promised in becoming the T&D Operator.

Similar to the SAIFI metric, the Energy Bureau will maintain the Minimum Performance Levels proposed by LUMA on the October 28, 2022, filing and follow the same method to prorate targets in a partial Contract Year.

D. Vegetation Maintenance Miles Completed ("Vegetation Maintenance")

a) LUMA Proposal

In response to a directive from the Energy Bureau, LUMA proposes a performance incentive for Vegetation Maintenance in its October 2022 Revised Annex IX.[218] LUMA states the

[218] In a Resolution and Order filed in this docket on December 22, 2021, the Energy Bureau ordered LUMA to file a revised Annex IX to the OMA including targets and supporting metrics for the following: (i) Interconnection, (ii) Energy Efficiency/Demand Response, and (iii) Vegetation Management. See: In Re:

performance objective of this metric is to, "incentivize improved system reliability by promoting vegetation maintenance along transmission and distribution lines."[219]

LUMA proposes to measure the number of line miles completed for vegetation maintenance each fiscal year along 230kV, 115kV, 38kV, and primary distribution lines using LUMA's internal work pages, maps, and files. LUMA provides the following formula to calculate this metric:

> *Total Vegetation Maintenance miles completed = # of 230kV maintenance miles completed + 115kV miles of maintenance completed + 38kV miles of maintenance completed + primary distribution miles of maintenance completed*[220]

LUMA proposes targets of 1,600 miles in Year 1, 1,800 miles in Year 2, and 2,000 miles in Year 3 with Minimum Performance Levels set at 10 percent of the 100-percent performance target.

In her direct testimony, LUMA witness Ms. Watkins explained, "Historical data was used to set targets while considering empirical and working knowledge of the T&D system. We considered that in Fiscal Year 2022, as described in LUMA's Vegetation Management Plan, much of LUMA's vegetation management activities were focused on reactive and corrective work in the first six months of operations due to the overall condition of vegetation clearances on the T&D system."[221]

b) Intervenors

In direct testimony, LECO witness Dr. Irizarry-Rivera recommended a performance metric for vegetation maintenance among a list of additional reliability metrics that the Energy Bureau should consider.[222] In March 2022 testimony on additional performance targets, Dr. Irizarry-Rivera stated, "The three additional categories of metrics that the PREB has set forth are well tailored to encourage the necessary transformation to a 21st century electric grid…vegetation management, as noted by filings by both PREB and LUMA, will have numerous complementary effects that improve reliability and public safety."[223]

While LECO's witness is generally supportive of a Vegetation Maintenance metric, he suggested, "LUMA should only be rewarded if its performance in the vegetation management area is one that achieves a hard-to-reach target."[224]

In his testimony on additional performance metrics, ICPO witness Cosme provided qualified support for the Vegetation Maintenance metric, "What LUMA proposes as a new metric for Vegetation Management is simple and straightforward. However, we think it should be included in the metric determination the ratio between Reactive and Corrective vs. Preventive, to measure progress on the reduction of related Vegetation Management backlog."[225]

Performance Targets for LUMA Energy Servco, LLC, Case No. NEPR-AP-2020-0025, Resolution and Order, December 22, 2021.

[219] LUMA. Final Revised Annex IX, October 28, 2022, page 28.

[220] *Id.* page 28.

[221] LUMA. Direct Testimony of Diane Watkins, January 24, 2023, lines 121-125.

[222] LECO. Direct Testimony of Agustin Irizarry-Rivera, November 17,2021, at Table 8, page 35.

[223] LECO. Direct Testimony of Augustin Irizarry-Rivera, March 22, 2022, page 3, lines 4-6 and 10-12.

[224] *Id.* page 11, lines 7-8.

[225] ICPO. Direct Testimony of Gerard Cosme Nunez, December 8, 2022, page 3, lines 114-117.

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c) *Rebuttal, Hearing, and Briefs*

LUMA's testimony presented conflicting positions on the value of a Vegetation Maintenance metric. In rebuttal testimony, LUMA discouraged the Energy Bureau from a performance metric in this area because the reliability operational metrics, specifically SAIDI and SAIFI, will reflect the impact of improved vegetation management on customer outages. LUMA also argued that LECO misapplied a ruling by the California Public Utilities Commission in recommending this metric for Puerto Rico.[226]

In LUMA's legal brief, LUMA further described its methods for setting the Vegetation Maintenance metric and reiterated that the overall impact of vegetation maintenance will be captured by improvements in the SAIDI and SAIFI metrics.[227] LUMA also stated, "if the Energy Bureau determines that a vegetation management metric is to be included in the Revised Annex IX to the T&D OMA, the Energy Bureau should adopt the Vegetation Maintenance Miles Completed metric as proposed by LUMA."[228]

ICPO agreed with the overall proposal from LUMA but stated that the ratio of reactive and corrective vegetation management miles vs. the preventive vegetation management miles was also an important metric to monitor.[229]

LECO first criticized LUMA's testimonies on this metric substituted between Witness Bolzenius and then Witness Watkins.[230]

LECO then stated that LUMA's Vegetation Maintenance metric does not go "above and beyond" and would reward an activity that is a standard part of running a utility.[231] Specifically, LECO criticized that LUMA has only proposed monitoring the number of miles cleared and did not differentiate between difficult tasks and easy-to-fix areas of the T&D system.[232] In addition, LECO raised concerns that the proposed metric excludes secondary distribution lines, which was also a topic on which Commissioners Ugarte and Matteo questioned LUMA's witness during the evidentiary hearing.[233] In closing the brief, LECO recommended the Energy Bureau reject LUMA's proposal on this metric and require a new proposal that accounts for the relative difficulty in vegetation management projects.[234]

ICPO did not directly address the Vegetation Management metric in its reply brief. LECO reiterated its concerns raised previously that the Vegetation Maintenance metric will not encourage LUMA to address "hard-to-reach" areas of its system.[235]

In its reply brief, LUMA disagreed with the ICPO's recommendations on including the ratio of reactive and corrective vs. preventive work in the Vegetation Maintenance metric and reaffirmed its support for this metric as proposed in the October 2022 Annex IX.[236]

In LUMA's reply brief to LECO, LUMA also opposed the recommendation to prioritize "hard-to-reach" areas in the Vegetation Maintenance metric as, "The work location is entirely

[226] LUMA. Rebuttal Testimony of Diane Watkins, January 24, 2023, page 5, lines 70-73.

[227] LUMA. Legal Brief, May 11, 2023, page 90.

[228] LUMA. Legal Brief, May 11, 2023, page 90.

[229] ICPO. Legal Brief, May 11, 2023, page 18.

[230] LECO. Legal Brief, May 11, 2023, page 47-49.

[231] LECO. Legal Brief, May 11, 2023, page 49-50.

[232] *Id.* page 52-53.

[233] *Id.* page 50-51.

[234] *Id.* page 100-101.

[235] LECO. Legal Brief, May 11, 2023, page 16-21.

[236] LUMA. Reply ICPO's Legal Brief, September 21, 2023, page 21-23.

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subjective and should not be the only factor in setting goals."[237] Furthermore, LUMA stated, "There are no industry standards, definitions, or criteria for "relative difficulty" in vegetation management."[238]

d) Discussion and Determinations

In directing LUMA to propose a performance metric on vegetation management, the Energy Bureau stated, "a performance target specifically addressing vegetation management would highlight efforts to reduce vegetation related outages and will directly contribute to the safety and reliability of the Puerto Rico Electric System" and "undertake the needed work for the implementation of important goals of the Puerto Rico energy public policy."[239]

The Energy Bureau still believes that vegetation management is a critical activity for LUMA to improve service reliability in the near term, and LUMA's shifting positions on the topic indicate that further focus is required during this initial three-year period. In review of LUMA's proposal, the Energy Bureau agrees there is limited historical data to identify a baseline level. However, in FY2022 LUMA reported performing 909 miles of vegetation management.[240]

LUMA has proposed target levels of 1,600, 1,800, and 2,000 miles over the first three Contract Years. At LUMA's recent performance level, these targets remain "hard-to-reach" and require continued improvement to its practices, including transitioning the share of reactive and preventive work.

The Energy Bureau also **TAKES NOTICE** of the annual budgets for Vegetation Maintenance filed in Case No. NEPR-MI-2021-0004 (In Re: LUMA Initial Budgets and Related Terms of Service). LUMA is expecting a significant increase in federal funding to support Vegetation Maintenance during the initial term of these targets. For reference, LUMA's proposed targets assumed an annual budget of about $50 million, which is included in the FY2024 Annual Budget. LUMA is projecting an additional $125 million in federal funding for FY2024 and federal funding increasing to about $350 million in FY2025, and $375 million in FY2026.[241]

In consideration of the arguments in this proceeding, the Energy Bureau **APPROVES** the Vegetation Maintenance metric with the following **MODIFICATIONS**:

1) Decrease the allocated incentive base points to four (4), corresponding to an effective weight of 3.3 percent of the total incentive fee.
2) Update the baseline to reflect performance over FY2022, consistent with Section IV.D. The updated baseline value is 909 miles.
3) Update the Performance Tiers and associated targets for Vegetation Management, such that incentive earnings opportunities are provided at 75 percent, 100 percent, and 125 percent of the total allocated incentive, consistent with the approach described in Section IV.H. The 75-percent performance targets will be determined based upon the midpoint between LUMA's proposed 50-percent and 100-percent targets.
4) Require LUMA to report on the ratio of reactive and preventive vegetation management in interim and Annual Incentive Reports.

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[237] LUMA. Reply LECO's Legal Brief, September 21, 2023, page 76-77.

[238] *Id.* page 77.

[239] In Re: Performance Targets for LUMA Energy Servco, LLC, Case No. NEPR-AP-2020-0025, Resolution and Order, December 22, 2021, page 5.

[240] LUMA. Response to Energy Bureau's ROI 10, Questions 8-13, November 16, 2022.

[241] NEPR-MI-2021-0004, *LUMA – Annual Budget Fiscal Year 2024 to 2026*, filed on May 16, 2023, Table A-8, page 205.

The Energy Bureau **APPROVES** LUMA's proposed performance targets and Minimum Performance Levels for Vegetation Maintenance.

The final performance targets and other key parameters for this metric are presented below in Table 20.

Table 20. Performance Targets and Other Key Parameters for Vegetation Maintenance Metric

	Minimum	75%	100%	125%
Baseline	909*			
Long-Term Target	N/A			
Year 1	160	1,200	1,600	1,800
Year 2	180	1,350	1,800	2,000
Year 3	200	1,500	2,000	2,200

*Baseline vegetation maintenance reflects FY22 reported performance.

The Energy Bureau approves this metric while maintaining the performance targets and Minimum Performance Levels proposed by LUMA. The baseline value was updated to reflect the most recent information reported by LUMA in the record of this proceeding. The Energy Bureau is aware of a potentially significant increase in resources dedicated to vegetation management and expects to use the process described in Section IV.E. to review updates to this metric as further details on the timing and scope of federal funding becomes available. Until an update occurs, the Energy Bureau maintains the targets proposed by LUMA for the 100-percent and 125-percent levels. According to FY2022 filings, LUMA performed 909 miles of total vegetation maintenance.[242] Based on current performance and funding levels, the proposed targets will require LUMA to improve its vegetation management practices to reach the proposed targets.

To address concerns raised on the potential overlap of this metric with other reliability outcomes, the Energy Bureau is reducing the effective weight of the Vegetation Maintenance metric while increasing the effective weights of the SAIDI and SAIFI metrics. The Bureau is also reducing the effective weights of the T&D inspection metrics (see below for full explanation). In combination, the Energy Bureau's decisions set the highest priority and weights on SAIFI and SAIDI while providing LUMA targeted incentives to execute its key programs to improve reliability.[243] The Energy Bureau's changes also include a requirement for LUMA to report on the ratio of reactive and preventive work. This requirement will let all stakeholders monitor LUMA's performance on this part of vegetation maintenance during the initial three-year period of the performance metrics.

E. Customer Average Interruption Duration Index (CAIDI)

a) LUMA Proposal

The OMA includes Customer Average Interruption Duration Index (CAIDI) as a performance metric that measures the "the average restoration time a customer may experience" and is calculated as the ratio between SAIDI and SAIFI.[244]

In the February 2021 Revised Annex IX filing, LUMA recommends removing CAIDI based on, "growing industry concerns that CAIDI is very limited as a performance metric." LUMA

[242] LUMA. Response to Energy Bureau's ROI 10, Questions 8-14, November 16, 2022.

[243] LUMA has proposed vegetation management and the T&D inspections in the System Remediation Plans approved and monitored by the Energy Bureau.

[244] Annex IX to the T&D OMA, page 16.

argues, "Since CAIDI is the ratio between SAIDI and SAIFI, CAIDI can be misleading because it can remain the same even when the SAIDI and SAIFI values decrease."[245]

b) Intervenors

LECO witness Dr. Irizarry-Rivera opposed removing CAIDI. He stated, "LUMA proposes to eliminate CAIDI claiming 'it is limited as a performance metric'. I strongly disagree with this claim. CAIDI is the average restoration time, or the time it takes [for] the electric utility to restore service once an interruption occurs. It is probably the most understandable and thus meaningful metric to the general public of all reliability indices. I strongly recommend that PREB maintain CAIDI as a metric."[246] Dr. Irizarry-Rivera's testimony also compared CAIDI data June–August in 2020 and 2021 to highlight the increase in CAIDI during LUMA's initial months of operation.[247]

ICPO witness Mr. Cosme agreed with LUMA's recommendation to eliminate the CAIDI metric. On this topic, Mr. Cosme stated, "I agree with the retirement CAIDI metric, basically for the same reason Mr. Cortez stated in his testimony, that CAIDI metrics may be misleading real performance on grid improvement measurement. This is even more relevant on a grid that is about to go through an expected extensive transformation, as ours is."[248]

c) Rebuttal, Hearing, and Briefs

In rebuttal testimony, LUMA witness Mr. Cortez responded to LECO's opposition by highlighting ICPO's supportive testimony and LUMA's staff participation in IEEE proceedings where the value of CAIDI continues to be discussed among industry experts.[249]

LUMA's legal brief reiterated LUMA's reasoning and testimony to eliminate this metric.[250] ICPO agreed with LUMA's position to eliminate CAIDI but does not support the proposed inspection metrics as substitutes.[251] LECO's brief summarized its arguments in support of maintaining the metric. LECO stated that the most important information to a customer when its power is out is when service will be restored, and this metric measures average restoration time.[252]

The reply brief from LECO and LUMA's response restated their positions for and against including this performance metric in Annex IX.[253,254] ICPO did not address this metric in its reply brief.

d) Discussion and Determinations

The Energy Bureau has reviewed LUMA's recommendation to eliminate CAIDI and the arguments presented by the parties. The Energy Bureau first notes that LUMA reports on CAIDI, SAIDI, and SAIFI performance in Case No. NEPR-MI-2019-0007, and no parties have requested changes to these reporting requirements. Given this metric will still be tracked along with SAIFI and SAIDI, the Energy Bureau **ADOPTS** LUMA's recommendation to exclude

245 LUMA. Revised Annex IX dated February 25, 2021, page 6.

246 LECO. Direct Testimony of Augustin Irizarry-Rivera, November 17, 2021, page 31, lines 4-10.

247 *Id.* page 62.

248 ICPO. Direct Testimony of Gerardo Cosme Nunez, November 17, 2021, page 3, lines 98-101.

249 LUMA. Rebuttal Testimony of Don Cortez, February 17, 2022, page 24, lines 490-507.

250 LUMA. Legal Brief, May 11, 2023, page 77-78.

251 ICPO. Legal Brief, May 11, 2023, page 13.

252 LECO. Legal Brief, May 11, 2023, page 57.

253 LECO. Reply Brief, September 21, 2023, page 13-16.

254 LUMA. Reply to LECO's Legal Brief, September 21, 2023, page 82-86.

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CAIDI as a performance metric for the initial three-year period and will revisit this decision during the next review period.

The Bureau also requires LUMA to **NOTIFY** PREB and parties to this proceeding if the IEEE or its relevant working groups publish any new findings on the value of CAIDI in measuring utility performance.

F. Customers Experiencing Multiple Interruptions (CEMI)

a) LUMA Proposal

The OMA includes a performance metric for Customers Experiencing Multiple Interruptions (CEMI), which is calculated as the ratio of individual customers experiencing one or more sustained interruptions to the total number of customers served.[255] The OMA expected that the baseline performance level would be set during Year 3.[256]

In the Final Revised Annex IX filings to the Energy Bureau, LUMA recommends deferring this metric. Witness Cortez explains, "Setting a meaningful $CEMI_N$ metric is highly dependent on accurate customer information and sufficient customer connectivity in the Outage Management System. Due to data quality issues including a lack of accurate customer information and a lack of customer connectivity in the Outage Management System, LUMA proposes deferring $CEMI_N$."[257]

b) Intervenors

LECO's witness did not address LUMA's recommendation to defer this metric.

ICPO witness Mr. Cosme agreed with deferring the CEMI metric but did not support the proposed substitutes. Mr. Cosme stated, "If they (LUMA) do not feel sure of providing reliable data regarding those metrics, it's fair for them to defer any compensation or penalty related to it. I do not agree with the alternatives, three metrics, related to T&D inspections proposed by LUMA to substitute $CEMI_n$, MAIFI and Reduction of Network Line Losses metrics."[258]

c) Rebuttal, Hearing, and Briefs

LUMA's rebuttal testimony focused on ICPO's opposition to the substitute metrics for CEMI and reiterated that incentive metrics for inspections of T&D infrastructure should improve CEMI and other related reliability metrics.[259]

LUMA's legal brief restated the technical limitations and evidence provided during the evidentiary hearing supporting its recommendation to defer this metric.[260] ICPO's legal brief reiterated support to defer CEMI and MAIFI but did not agree with the inspection metrics proposed to replace these reliability metrics.[261] LECO's brief did not directly address this metric.

This metric was not addressed in the reply briefs.

[255] CEMI is also sometimes referred to as $CEMI_n$ where the *n* specifies a threshold number of outages.

[256] Annex IX to the T&D OMA, page 17.

[257] LUMA. Direct Testimony of Don Cortez, August 17, 2021, lines 168-172.

[258] ICPO. Direct Testimony of Gerardo Cosme Nunez, November 17, 2021, page 3, lines 117-121.

[259] LUMA. Rebuttal Testimony of Don Cortez, February 17, 2022, page 40, lines 844-850.

[260] LUMA. Legal Brief, May 11, 2023, page 74-75.

[261] ICPO. Legal Brief, May 11, 2023, page 13.

d) *Discussion and Determinations*

The Energy Bureau has reviewed LUMA's recommendation to defer CEMI and the positions of the parties. The Energy Bureau **AGREES** with LUMA that adopting this metric without accurate data or the required IT systems would be premature.

The Energy Bureau **ADOPTS** LUMA's proposal to defer implementation but believes CEMI could be a valuable future metric to evaluate reliability more comprehensively. To continue tracking progress towards this metric, LUMA **SHALL REPORT** on the status of the required data collection and IT systems to measure CEMI in the Annual Incentive Fee reports filed with the Energy Bureau.

G. Momentary Average Interruption Frequency Index (MAIFI)

a) *LUMA Proposal*

The OMA includes a performance metric for the Momentary Average Interruption Frequency Index (MAIFI), which indicates the average frequency of momentary interruptions experienced by the average customer. The metric is calculated by dividing the total number of customer interruptions that last less than five minutes by the total number of customers served. The OMA states, "MAIFI is typically caused by natural causes such as animal contacts, lightning strikes, vegetation temporarily contacting a power line."[262]

In the Final Revised Annex IX filings to the Energy Bureau, LUMA also recommends deferring this metric.[263] LUMA witness Mr. Cortez states, "Determining a meaningful MAIFI metric is highly dependent on extensive high-quality monitoring infrastructure (e.g., Supervisory Control and Data Acquisition (SCADA), Advanced Metering Infrastructure (AMI)) and information systems due to the short duration of a momentary interruption. These IT systems are not yet in place in PREPA."[264]

LUMA proposes deferring this metric until data and IT systems are in place to accurately measure the required outage information. LUMA states that a new Energy Management System will be required, which is currently expected in Year 4 or 5 of LUMA's operation.[265]

b) *Intervenors*

LECO witness Dr. Irizarry-Rivera did not address LUMA's proposal to defer MAIFI.

ICPO witness Mr. Cosme provided the same response on MAIFI and the CEMI metric.[266]

c) *Rebuttal, Hearing, and Briefs*

LUMA's rebuttal testimony focused on ICPO's opposition to the substitute metrics for CEMI and reiterated that incentive metrics for inspections of T&D infrastructure should improve CEMI and other related reliability metrics.[267]

LUMA's legal brief also restated the technical limitations and evidence provided during the evidentiary hearing supporting its recommendation to defer this metric.[268] ICPO's legal brief reiterated support to defer CEMI and MAIFI but did not agree with the inspection metrics

[262] Annex IX to the T&D OMA, page18.

[263] LUMA. Revised Annex IX dated February 25, 2021, Table 1-1, page 6.

[264] LUMA. Direct Testimony of Don Cortez, August 17, 2021, lines 188-191.

[265] *Id.* Lines 193-195.

[266] ICPO. Direct Testimony of Gerardo Cosme Nunez, November 17, 2021, page 3, lines 117-121.

[267] LUMA. Rebuttal Testimony of Don Cortez, February 17, 2022, page 40, lines 844-850.

[268] LUMA. Legal Brief, May 11, 2023, page 75-76.

proposed to replace these reliability metrics.[269] LECO's brief did not directly address this metric.

This metric was not addressed in the reply briefs.

d) Discussion and Determinations

The Energy Bureau has reviewed LUMA's recommendation to defer MAIFI and the positions of the parties. The Energy Bureau **AGREES** with LUMA that adopting this metric without accurate data or the required IT systems would be premature.

The Energy Bureau **ADOPTS** LUMA's proposal to defer implementation but believes MAIFI could be a valuable future metric to evaluate reliability more comprehensively. To continue tracking progress towards this metric, LUMA **SHALL REPORT** on the status of the required data collection and IT systems to measure MAIFI in the Annual Incentive Fee reports filed with the Energy Bureau.

H. Transmission Line Inspections and Targeted Corrections

a) LUMA Proposal

Under this metric, LUMA will, "assess the physical integrity of the poles, structures, components and equipment, providing data to develop an overall health rating to identify serious safety issues to either the public or worker that will result in high-priority attention by LUMA."[270] LUMA's objective is, "To incentivize system safety and provide data to make decisions on effective reliability improvements, predictive maintenance, circuit hosting capacity and resiliency upgrades."[271]

LUMA states the calculation involves, "Number of transmission lines inspected with results recorded in a database."[272] After the inspection, LUMA will classify the highest risk assets and incorporate them in a remediation plan within 60 days of identifying the risk. LUMA further states, "That plan shall take into account a coordinated approach to remediation based on severity and risk according to the objectives defined in LUMA's Recovery Transformation Framework."[273]

In developing the target values for each Contract Year, LUMA uses a similar method as the Distribution Line Inspection metric. LUMA proposes cumulative targets to inspect 10 percent of transmission lines in Year 1, 35 percent by Year 2, and 65 percent by Year 3. These percentage values translate into 26, 91, and 169 lines in each Contract Year, respectively.[274]

LUMA does not propose a baseline for this metric because PREPA has not documented the condition of grid assets and the timing of prior inspections is unknown.[275]

[269] ICPO. Legal Brief, May 11, 2023, page 13.

[270] LUMA. Revised Annex IX dated February 25, 2021, page 22.

[271] *Id.* Page 22.

[272] *Id.* Page 22.

[273] *Id.* Page 22.

[274] LUMA. Direct Testimony of Don Cortez, August 17, 2021, Exhibit B, Table 8.

[275] *Id.* Lines 314-316.

b) Intervenors

LECO's witness did not state a specific position on the inspection metrics but offered the general observation that LUMA's performance metrics are focused on traditional utility performance areas.[276]

ICPO recommended that the Energy Bureau not accept this metric because any reliability improvements will be measured by the SAIDI, SAIFI, CEMI, and MAIFI metrics.[277]

c) Rebuttal, Hearing, and Briefs

In rebuttal testimony, LUMA responded to ICPO's concerns by reinforcing that the inspection results will let LUMA identify and repair infrastructure that may create hazards to employees or the public, measure the health of the system against major weather events improving emergency restoration, and better plan financial resources to maintain T&D assets. Through the inspections, LUMA can better prioritize needed repairs to the T&D system. Witness Cortez further underscored the importance of T&D inspections given the lack of asset information collected and maintained by PREPA.[278]

In the legal brief, LUMA reiterated support for all the T&D inspection metrics. LUMA stated, "these inspections are critical to establishing the initial baseline for asset condition to develop the immediate short-term plan. In the case of Puerto Rico, it is even more critical due to the state of disrepair experienced on the system, including multiple large-scale failure events and system outages."[279]

ICPO agreed that inspections are an intrinsic part of LUMA's functions to effectively operate the electric system. However, ICPO did not agree that LUMA should receive incentives for performing this function.[280]

LECO did not dispute including inspections as a metric but proposed an alternative specification that would include penalties for failing to meet the Minimum Performance Level and re-allocate the available base points to require best-case performance at the 150-percent tier to earn the 5 base points that LUMA's proposal allocates to the 100-percent target level.[281]

ICPO's reply brief restated its opposition to the T&D inspection metrics.[282] LECO did not object to this metric but proposed alternative targets and weighting of base points.[283] In its reply brief to ICPO, LUMA repeated its critiques of the ICPO's position and its testimony supporting the inspection metrics.[284] LUMA's reply brief to LECO did not address this metric.

d) Discussion and Determinations

Similar to the discussion and disposition of the Distribution Line Inspection and Targeted Corrections metric, the Energy Bureau has reviewed LUMA's proposal for this metric and the arguments presented by the parties. LUMA proposes this metric as one of three T&D inspection metrics to substitute for the CEMI, MAIFI, Reduction in Line Losses metrics. The Bureau agrees that performing the inspections and recording the data will not improve

[276] LECO. Direct Testimony of Augustin Irizarry-Rivera, November 17, 2021, page 47, lines 19-21.

[277] ICPO. Direct Testimony of Gerardo Cosme Nunez, November 17, 2021, page 4, lines 162-164.

[278] LUMA. Rebuttal Testimony of Don Cortez, February 17, 2022, page 38-40, lines 802-837.

[279] LUMA. Legal Brief, May 11, 2023, page 97.

[280] ICPO. Legal Brief, May 11, 2023, page 12-14.

[281] LECO. Legal Brief, May 11, 2023, page 101-102.

[282] ICPO. Reply Brief, September 21, 2023, page 9.

[283] LECO. Reply Brief, September 21, 2023, page 34.

[284] LUMA. Reply to ICPO's Legal Brief, September 21, 2023, page 14-16.

reliability by itself. LUMA will need to use the information to better prioritize its remediation plans and activities, which it has argued is part of the purpose for this information.

The Energy Bureau **AGREES** with LUMA that systematic inspection of the T&D system can help with the planned remedial efforts and improve reliability if LUMA acts on the information collected through the inspections. Accordingly, PREB **APPROVES** this metric with the following **MODIFICATIONS**:

1) Decrease the allocated incentive base points to two (2), corresponding to an effective weight of 1.7 percent of the total incentive fee.
2) Update the Performance Tiers and associated targets for Transmission Line Inspections and Targeted Corrections, such that incentive earnings opportunities are provided at 75 percent, 100 percent, and 125 percent of the total allocated incentive, consistent with the approach described in Section IV.H. The 75-percent performance targets for this metric will be determined using the midpoint between LUMA's proposed 50-percent and 100-percent targets.
3) Require LUMA to report on remedial action taken on Category 0 and Category 1 assets in the interim and report annually on performance metrics.

The Energy Bureau **APPROVES** LUMA's proposed performance targets and Minimum Performance Levels for Transmission Line Inspections and Targeted Corrections.

The final performance targets and other key parameters for this metric are presented below in Table 21.

Table 21. Performance Targets and Other Key Parameters for Transmission Line Inspections and Targeted Corrections Metric

	Minimum	75%	100%	125%
Baseline	N/A			
Long-Term Target	N/A			
Year 1	4	20	26	33
Year 2	14	69	91	114
Year 3	25	128	169	211

The Energy Bureau's reasoning for these modifications is consistent with the prior discussion on the Distribution Line Inspection and Targeted Corrections metric.

I. Distribution Line Inspections and Targeted Corrections

a) LUMA Proposal

In the February 2021 Revised Annex IX, LUMA proposes three additional performance metrics related to inspections of T&D infrastructure, including Distribution Line Inspections and Targeted Corrections. LUMA also proposes this metric as a Key Performance Metric. LUMA describes this metric as, "The number of distribution line inspections completed with data recorded in a database for analysis."[285] After the inspection, LUMA will classify the highest risk assets and incorporate them in a remediation plan within 60 days of identifying the risk.

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[285] LUMA. Revised Annex IX, February 25, 2021, page 6.

LUMA witness Mr. Cortez states that the performance objective is to, "incentivize system safety and provide data to make decisions on effective reliability improvements, predictive maintenance, circuit hosting capacity and resiliency upgrades."[286]

The metric is described as, "Number of distribution lines (circuits) inspected with results recorded in a database and Category 0 and Category 1 findings shall be incorporated in a plan within 60 days of identification to address. That plan shall consider a coordinated approach to remediation based on severity and risk according to the objectives defined in LUMA's Recovery Transformation Framework."[287]

LUMA witness Mr. Cortez describes the Category 0 and Category 1 findings as, "The overall health asset score will be based on 0 being the [worst] to 4 being the best. Asset scores of 0 and 1 will be the highest risk assets and will be given the highest priority to repair and/or replace."[288]

LUMA does not propose a baseline for this metric and states, "Since PREPA does not have a documented health condition assessment of the grid assets and it is unknown when and if PREPA conducted programed inspections of its assets, there is no data currently available from which to determine a baseline."[289]

LUMA proposes cumulative targets of inspecting 10 percent of its distribution lines in Year 1, 35 percent in Year 2, and 65 percent in Year 3. In absolute terms, these are 106, 370, and 687 lines in total for each respective Contract Year.[290]

b) Intervenors

LECO witness Dr. Irizarry-Rivera did not specifically address this metric but in general reference to LUMA's proposed metrics states, "it is clear that LUMA's proposed performance metrics are focused on traditional utility performance areas. The implicit goal is to achieve a reasonable 20th century utility service."[291]

ICPO witness Mr. Cosme recommended that the Energy Bureau not accept the inspection metrics for the following reason, "The improvement in T&D infrastructure made by concrete actions taken, not inspections or plans, will be reflected in SAIDI, SAIFI, CEMI, and MAIFI performance metrics."[292]

The witness expanded on this concern further, "An inspection by itself is just an integral part for plan development. Inspections alone without actions taken by a developed plan will not lead to any outcome. Likewise, plans that are not executed will not render results, either positive or negative, to be perceived by customers or to be measured by the PREB."[293]

c) Rebuttal, Hearing, and Briefs

On rebuttal, LUMA witness Mr. Cortez responded to ICPO's witness by reinforcing that the inspection results will let LUMA identify and repair infrastructure that may create hazards to employees or the public, measure the health of the system against major weather events improving emergency restoration, and better plan financial resources to maintain T&D assets. Through the inspections, LUMA can better prioritize needed repairs to the T&D

[286] LUMA. Direct Testimony of Don Cortez, August 17, 2021, lines 241-243.

[287] *Id.* lines 252-256.

[288] *Id.* lines 260-262.

[289] *Id.* lines 291-293.

[95] LUMA. Direct Testimony of Don Cortez, August 17, 2021, Exhibit B, Table 7.

[291] LECO. Direct Testimony of Augustin Irizarry-Rivera, November 17, 2021, page 47, lines 19-21.

[292] ICPO. Direct Testimony of Gerardo Cosme Nunez, November 17, 2021, page 4, lines 162-164.

[293] *Id.* page 4, lines 141-145.

system. Mr. Cortez further underscored the importance of T&D inspections given the lack of asset information collected and maintained by PREPA.[294]

In the legal brief, LUMA reiterated support for all the T&D inspection metrics. LUMA stated, "these inspections are critical to establishing the initial baseline for asset condition to develop the immediate short-term plan. In the case of Puerto Rico, it is even more critical due to the state of disrepair experienced on the system, including multiple large-scale failure events and system outages."[295]

ICPO agreed that inspections are an intrinsic part of LUMA's functions to effectively operate the electric system. However, ICPO did not agree that LUMA should receive incentives for performing this function.[296]

LECO did not dispute including inspections as a metric but proposed an alternative specification that would include penalties for failing to meet the Minimum Performance Level and re-allocate the available base points to require best-case performance at the 150-percent tier to earn the 5 base points that LUMA's proposal allocates to the 100-percent target level.[297]

ICPO's reply brief restated its opposition to the T&D inspection metrics.[298] LECO did not object to this metric but proposed alternative targets and weighting of base points.[299] In its reply brief to ICPO, LUMA repeated its critiques of the ICPO's position and its testimony supporting the inspection metrics.[300] LUMA's reply brief to LECO did not address this metric.

d) Discussion and Determinations

The Energy Bureau has reviewed LUMA's proposal, and the arguments presented by the parties. LUMA proposes this metric as one of three T&D inspection metrics to substitute for the CEMI, MAIFI, and Reduction in Line Losses metrics. The Bureau agrees that performing necessary inspections of the T&D system can support improvements to system reliability. However, as ICPO's witness pointed out, inspecting infrastructure, and recording the data will not improve reliability by itself. LUMA will need to act on this information to realize the benefits described in its proposal.

Based on review of the evidence on this metric, the Energy Bureau **AGREES** with LUMA that systematic inspection of the T&D system can help with the planned remedial efforts and improve reliability if LUMA acts on the information collected through the inspections. PREB **APPROVES** this metric with the following **MODIFICATIONS**:

1) Decrease the allocated incentive base points to two (2), corresponding to an effective weight of 1.7 percent of the total incentive fee.
2) Update the Performance Tiers and associated targets for Distribution Line Inspection and Targeted Corrections, such that incentive earnings opportunities are provided at 75 percent, 100 percent, and 125 percent of the total allocated incentive, consistent with the approach described in Section IV.H. The 75-percent performance targets for this metric will be determined using the midpoint between LUMA's proposed 50-percent and 100-percent targets.

[294] LUMA. Rebuttal Testimony of Don Cortez, February 17, 2022, page 38-40, lines 802-837.

[295] LUMA. Legal Brief, May 11, 2023, page 97.

[296] ICPO. Legal Brief, May 11, 2023, page 13-14.

[297] LECO. Legal Brief, May 11, 2023, page 101.

[298] ICPO. Reply Brief, September 21, 2023, page 9.

[299] LECO. Reply Brief, September 21, 2023, page 33.

[300] LUMA. Reply to ICPO's Legal Brief, September 21, 2023, page 14-16.

3) Require LUMA to report on remedial action taken on Category 0 and Category 1 assets in the interim and report annually on performance metrics.

The Energy Bureau **ACCEPTS** LUMA's proposal to include Distribution Line Inspections and Targeted Corrections as a Key Performance Metric per Section IV of Annex IX to the T&D OMA and **APPROVES** LUMA's proposed performance targets and Minimum Performance Levels for Distribution Line Inspections and Targeted Corrections.

The final performance targets and other key parameters for this metric are presented below in Table 22.

Table 22. Performance Targets and Other Key Parameters for Distribution Line Inspections and Targeted Corrections Metric

	Minimum	75%	100%	125%
Baseline	N/A			
Long-Term Target	N/A			
Year 1	16	80	106	133
Year 2	56	278	370	463
Year 3	103	516	687	859

The first three modifications adjust the effective weight and tier levels where LUMA can earn an incentive. These modifications are consistent with the changes to the Vegetation Maintenance metric, which is another complementary activity to improve system reliability, and the recommendations from LECO on this metric. The reporting requirement will let the Energy Bureau and stakeholders track how LUMA acts on the high-risk infrastructure identified by the inspections, and it will address the concerns raised by ICPO. The Energy Bureau approves the targets proposed by LUMA as no further updates on the baseline level of inspections are available in the administrative record.

J. T&D Substation Line Inspections and Targeted Corrections

a) LUMA Proposal

LUMA states this metric will, "assess the physical integrity of the structures, components and equipment, providing data to develop an overall health rating to identify serious safety issues to either the public or worker that will result in high-priority attention by LUMA."[301]

The objective is, "To incentivize system safety and provide data to make decisions on effective reliability improvements predictive maintenance, circuit hosting capacity and resiliency upgrades."[302]

LUMA states this metric is calculated as, "Number of T&D substations inspected with results recorded in a database."[303] After the inspection, LUMA will classify the highest risk assets and incorporate them in a remediation plan within 60 days of identifying the risk. LUMA states, "That plan shall take into account a coordinated approach to remediation based on severity and risk according to the objectives defined in LUMA's Recovery Transformation Framework."[304]

LUMA proposes similar cumulative percentages of inspections as the distribution and transmission line inspection metrics: 10 percent, 35 percent, and 65 percent of total T&D

[301] LUMA. Revised Annex IX dated February 25, 2021, page 23.

[302] *Id.* page 23.

[303] *Id.* page 23.

[304] *Id.* page 23.

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substations by the end of each respective Contract Year.[305] These cumulative percentages translate into 39, 137, and 255 inspections of T&D substations for the respective Contract Years.[306]

Similar to the other inspection metrics, LUMA has not proposed a baseline because, "there is no data currently available from which to determine a baseline."[307]

b) Intervenors

LECO's witness did not state a specific position on the inspection metrics but generally observed that LUMA's performance metrics are focused on traditional utility performance areas.[308]

ICPO recommended that the Energy Bureau not accept this metric because any reliability improvements will be measured by the SAIDI, SAIFI, CEMI, and MAIFI metrics.[309]

c) Rebuttal, Hearing, and Briefs

In rebuttal testimony, LUMA witness Mr. Cortez responded to ICPO's witness by reinforcing that the inspection results will let LUMA identify and repair infrastructure that may create hazards to employees or the public, measure the health of the system against major weather events improving emergency restoration, and better plan financial resources to maintain T&D assets. Through the inspections, LUMA can better prioritize needed repairs to the T&D system. Mr. Cortez further underscored the importance of T&D inspections given the lack of asset information collected and maintained by PREPA.[310]

In the legal brief, LUMA reiterated support for all the T&D inspection metrics. LUMA stated, "these inspections are critical to establishing the initial baseline for asset condition to develop the immediate short-term plan. In the case of Puerto Rico, it is even more critical due to the state of disrepair experienced on the system, including multiple large-scale failure events and system outages."[311]

ICPO agreed that inspections are an intrinsic part of LUMA's functions to effectively operate the electric system. However, ICPO did not agree that LUMA should receive incentives for performing this function.[312]

LECO did not dispute including inspections as a metric but proposed an alternative specification that would include penalties for failing to meet the Minimum Performance Level and re-allocate the available base points to require best-case performance at the 150-percent tier to earn the 5 base points that LUMA's proposal allocates to the 100-percent target level.[313]

ICPO's reply brief restated its opposition to the T&D inspection metrics.[314] LECO did not object to this metric but proposed alternative targets and weighting of base points.[315] In its

[305] LUMA. Direct Testimony of Don Cortez, August 17, 2021, Exhibit B, Table 9.

[306] LUMA. Revised Annex IX dated February 25, 2021, page 23.

[307] LUMA. Direct Testimony of Don Cortez, August 17, 2021, lines 337-339.

[308] LECO. Direct Testimony of Augustin Irizarry-Rivera, November 17, 2021, page 47, lines 19-21.

[309] ICPO. Direct Testimony of Gerardo Cosme Nunez, November 17, 2021, page 4, lines 162-164.

[310] LUMA. Rebuttal Testimony of Don Cortez, February 17, 2022, page 38-40, lines 802-837.

[311] LUMA. Legal Brief, May 11, 2023, page 97.

[312] ICPO. Legal Brief, May 11, 2023, page 12-14.

[313] LECO. Legal Brief, May 11, 2023, page 102.

[314] ICPO. Reply Brief, September 21, 2023, page 9.

[315] LECO. Reply Brief, September 21, 2023, page 34-35.

reply brief to ICPO, LUMA repeated its critiques of the ICPO's position and its testimony supporting the inspection metrics.[316] LUMA's reply brief to LECO did not address this metric.

d) Discussion and Determinations

Similar to the discussion on the other T&D inspection metrics, the Energy Bureau has reviewed LUMA's proposal and the arguments presented by parties in support and against this metric. LUMA proposes it as one of three T&D inspection metrics to substitute for the CEMI, MAIFI, and Reduction in Line Losses metrics. The Bureau agrees that performing the inspections and recording the data will not improve reliability by itself. LUMA will need to use the information to better prioritize its remediation plans and activities, which it has argued is part of the purpose for this information.

The Energy Bureau **AGREES** with LUMA that systematic inspection of the T&D system can help with the planned remedial efforts and improve reliability if LUMA acts on the information collected through these inspections. the Energy Bureau **APPROVES** this metric with the following **MODIFICATIONS**:

1) Decrease the allocated incentive base points to two (2), corresponding to an effective weight of 1.7 percent of the total incentive fee.
2) Update the Performance Tiers and associated targets for T&D Substation Line Inspections and Targeted Corrections, such that incentive earnings opportunities are provided at 75 percent, 100 percent, and 125 percent of the total allocated incentive, consistent with the approach described in Section IV.H. The 75-percent performance targets for this metric will be determined using the midpoint between LUMA's proposed 50-percent and 100-percent targets.
3) Require LUMA to report on remedial action taken on Category 0 and Category 1 assets in the interim and report annually on performance metrics.

The Energy Bureau **APPROVES** LUMA's proposed performance targets and Minimum Performance Levels for T&D Substation Inspections and Targeted Corrections.

The final performance targets and other key parameters for this metric are presented below in Table 23.

Table 23. Performance Targets and Other Key Parameters for T&D Substation Inspections and Targeted Corrections Metric

	Minimum	75%	100%	125%
Baseline	N/A			
Long-Term Target	N/A			
Year 1	6	30	39	49
Year 2	21	104	137	171
Year 3	38	192	255	319

The Energy Bureau's modifications to the T&D Substation Inspections and Targeted Corrections metric follow the changes to the other inspection metrics and follow similar reasoning.

K. NEM Project Activation Duration

a) LUMA Proposal

The December 23 Resolution required LUMA to file a metric and associated targets for the interconnection of distributed energy resources. In its Revised Annex IX, LUMA proposes the

[316] LUMA. Reply to ICPO's Legal Brief, September 21, 2023, page 14-16.

Net Energy Metering (NEM) Project Activation Duration metric, which measures the average number of days between a customer's submission of a complete application for NEM for expedited projects and NEM tariff activation on the customer's account.[317] Expedited cases are those applications for distributed generation systems with generating capacities less than or equal to 25 kW, which LUMA states make up the vast majority (99-percent) of NEM applications.[318]

In his pre-filed direct testimony, LUMA witness Wood describes the NEM Project Activation Duration metric:

> *"This metric tracks the average duration (days) for activating the NEM tariff on the customer's bill. Once a complete application has been received in the Distributed Generation Application Web Portal. For a project to be activated, LUMA must validate the application to ensure it is complete and accurate, install a new bi-directional meter, and change the tariff assigned to the customer's account in the billing system. Once this NEM tariff activation process is complete, the customer will see the benefits of NEM on their next bill."*[319]

LUMA states it lacks the IT system functionality to "stop the clock" when applications are delayed pending customer action. LUMA thus proposes excluding such applications from the calculation of this metric as the timeliness with which these applications receive tariff activation is affected by circumstances outside of LUMA's control.[320]

LUMA proposes 30 days as the Minimum Performance Level for this metric, to align with statutory requirements,[321] and proposes a target threshold of 28 days across all three years.[322]

In his direct testimony, LUMA witness Wood states the average duration for NEM tariff activation for all projects completed in FY2022 was 92 days, but that this number is significantly affected by the backlog of cases LUMA inherited.[323] He states that current program performance level is better represented by the first quarter of FY2023, for which the average duration was 33 days. Wood continues that LUMA chose 28 days as the target threshold because it is more aggressive than both the reference period performance and the proposed minimum threshold and facilitates a "reasonably achievable rate of improvement of the resources and IT systems available."[324]

b) Intervenors

ICPO witness Cosme agreed with LUMA's proposed interconnection metric, so long as the validation process to activate the NEM tariff consists only of a basic review of the customer application, and that no other validation process is required.[325] However, ICPO did not agree with LUMA's proposed target threshold of 28 days and noted that this performance level "is not that much of an improvement" relative to statutory requirements.[326] ICPO recommended

[317] LUMA. Final Revised Annex IX, October 28, 2022, page 30.

[318] LUMA. Direct Testimony of Lee Wood, October 28, 2022, lines 82-84.

[319] *Id.* Lines 70-76.

[320] *Id.* Lines 87-105.

[321] Act 114-2007 requires the average number of days between customer application and NEM tariff activation to be less than or equal to 30 days.

[322] LUMA. Final Revised Annex IX, October 28, 2022, page 18.

[323] LUMA. Direct Testimony of Lee Wood, October 28, 2022, lines 168-175.

[324] *Id.* lines 173-175.

[325] ICPO. Direct Testimony of Gerardo Cosme Núñez, December 13, 2022, lines 64-73.

[326] *Id.* lines 75-77.

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setting the target threshold to 15 days, which would "reflect an outstanding performance by the utility."[327]

Mr. Cosme also proposed that the Energy Bureau consider an additional metric, which he termed "Average Duration for Interconnection Process Completion." This supplemental metric would track the time required to complete the entire interconnection process for expedited systems and not merely the time required for activation of the NEM tariff. Mr. Cosme suggested that such a metric is warranted since LUMA has the authority to revoke initial NEM tariff activation or impose other requirements on subject customers. Mr. Cosme recommended a performance target of 60 days.[328]

LECO did not address LUMA's proposed metric in direct testimony. Rather, LECO's witness Dr. Irizarry-Rivera filed direct testimony on two occasions before LUMA's filing of its Final Revised Annex IX in which he discussed several parts related to an interconnection metric. In the first filing, Dr. Irizarry-Rivera discussed the interconnection metric adopted in Hawaii, along with other approaches to tracking interconnection performance.[329] Dr. Irizarry-Rivera also addressed the interconnection backlog, suggesting that LUMA be penalized for failing to clear it.[330] In the second filing, Dr. Irizarry-Rivera argued that LUMA should only be rewarded for accomplishing difficult tasks, such as achieving interconnections on 4.16 kV lines or converting 4.16 kV lines into 13.2 kV lines, and again recommended that LUMA be penalized for failure to clear the application backlog.[331]

c) Rebuttal, Hearing, and Briefs

LUMA addressed the proposals of intervenors in three rebuttal filings. In Mr. Wood's first rebuttal testimony, he discussed the interconnection backlog and LUMA's performance to address this issue. Mr. Wood opposed LECO's proposal for penalties for failure to address the backlog,[332] but allowed that Dr. Irizarry-Rivera's cited example metric from Hawaii was superior to other approaches discussed by Dr. Irizarry-Rivera. Mr. Wood further explained that the Hawaii metric would need to be adapted to conditions in Puerto Rico to be adopted. He explained that LUMA's current IT systems lacked the ability to track approval times for each step of the interconnection process with the required granularity and suggested that the required system upgrades would not be ready for 12 months.[333]

In Mr. Wood's second rebuttal testimony, he again opposed penalties.[334] Mr. Wood also stated opposition to incentives relating to the number of distributed generation facilities interconnected, as proposed by Dr. Irizarry-Rivera.[335]

In Mr. Cortez's rebuttal testimony, he addressed Mr. Cosme's critique of LUMA's proposed 28-day performance target. Mr. Cortez countered that this target is "aggressive" since there are factors beyond LUMA's control that impact performance on this metric including the rising number of interconnection requests and customer-driven delays.[336] Mr. Cortez further explained that Mr. Cosme's proposed 15-day target is not feasible, since validation of the customers NEM application alone required an average of 12 days for cases arriving and

[327] *Id.* lines 78-80.

[328] *Id.* lines 82-94.

[329] LECO. Direct Testimony of Agustin Irizary-Rivera, November 17, 2021, page 43-46.

[330] LECO. Direct Testimony of Agustin Irizary-Rivera, November 17, 2021, page 106.

[331] LECO. Direct Testimony of Agustin Irizary-Rivera, March 22, 2022, page 5-6.

[332] LUMA. Rebuttal Testimony of Lee Wood, February 17, 2022, lines 319-322.

[333] LUMA. Rebuttal Testimony of Lee Wood, February 17, 2022, lines 430-440.

[334] LUMA. Rebuttal Testimony of Lee Wood, May 11, 2022, lines 92-94.

[335] LUMA. Rebuttal Testimony of Lee Wood, May 11, 2022, lines 209-211.

[336] LUMA. Rebuttal Testimony of Don Cortez, January 23, 2023, lines 89-96.

completed in FY2022, leaving only three days to complete the remainder of the process.[337] According to Mr. Cortez, Mr. Cosme did not support the opinion that the 28-day proposed target is not an improvement relative to the statutory requirement of 30 days for NEM activation.[338]

In its legal brief, LUMA reiterated arguments raised in its rebuttal filings, and concluded that its proposal was "unchallenged."[339]

Through its reply brief, OIPC reiterated the recommendations put forward by Dr. Cosme in his earlier written testimony; these concerned resetting the performance targets for LUMA's proposed NEM metric to 15 days rather than the proposed 28 days to make them more ambitious—especially given that the statutory requirement for process completion is 30 days—and relating to the creation of a second metric to measure the total time to complete the entire interconnection process for expedited systems.

In its legal brief, LECO suggested that the Energy Bureau replace LUMA's proposed NEM metric with a new interconnection metric modeled on a metric adopted by the Hawaii Public Utilities Commission covering the total time to interconnect expedited systems. LECO further suggested PREB incorporate a penalty for failure to connect any system within 30 days.[340]

LUMA responded to ICPO in its reply brief by asserting that ICPO's proposals are not "supported by the record"[341] and proclaiming that its proposal is "unchallenged."[342] LUMA further averred that ICPO "did not submit a proposal supported by evidence or data."[343] LUMA offered a litany of arguments in support of its proposals and against ICPO's. Principally, LUMA suggested that its proposal for a 28-day target is appropriate because it is "more aggressive than 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."[344] LUMA also cited the opinion of its expert that "the proposed target threshold is considered aggressive."[345] LUMA asserted that the process of interconnection is manual and labor-intensive, that the volume of expedited applications is increasing, and that there are factors outside its control that affect the time to complete activation.[346] LUMA further indicated that ICPO's proposed 15-day target is "not feasible" because NEM cases that arrived in Fiscal Year 2022 took an average of 12 days for validation of the application.[347]

In its reply to LECO's brief, LUMA contested LECO's argument that LUMA's failure to complete its DG (distributed generation) portal project indicates the need for the NEM metric to be defined to include penalties, asserting that it had complied with applicable regulations regarding establishing a DG portal.[348] LUMA raised several of the same points from its reply to ICPO's brief concerning the challenge of interconnecting systems and the

[337] LUMA. Rebuttal Testimony of Don Cortez, January 23, 2023, lines 106-113.

[338] LUMA. Rebuttal Testimony of Don Cortez, January 23, 2023, lines 98-100.

[339] LUMA. Legal Brief, May 11, 2023, page 107.

[340] LECO. Legal Brief, May 11, 2023, page 97.

[341] LUMA. Reply to ICPO Legal Brief, September 21, 2023, page 17.

[342] *Id.* page 19.

[343] *Id.* page 18.

[344] *Id.* page 17.

[345] *Id.* page 17.

[346] *Id.* page 17.

[347] *Id.* page 18.

[348] LUMA. Reply to LECO Legal Brief, September 21, 2023, page 60.

increase in the volume of applications.[349] LUMA concluded by asserting that its NEM metric proposal "remains unchallenged."[350]

Neither OIPC nor LECO responded specifically to any points raised by LUMA in its legal brief concerning the proposed NEM metric.

d) Discussion and Determinations

In directing LUMA to propose a performance metric on interconnection, the Energy Bureau emphasized the goal of accelerating the interconnection of distributed resources as required by Act 17-2019.[351] The Energy Bureau now finds that the metric that has been proposed by LUMA for NEM Project Activation Duration reasonably conforms to the Bureau's past direction and will help to advance the public policy objectives of Puerto Rico. LUMA's proposed metric is broadly similar in design to mechanisms adopted in other jurisdictions, including, notably, the interconnection metric in effect in Hawaii cited by LECO as a potential model for Puerto Rico. If formulated correctly, LUMA's interconnection metric can help to incentivize process improvements to best serve LUMA's customers and to meet renewable energy public policy goals.

The Energy Bureau therefore **APPROVES** the NEM Project Activation Duration metric with the following **MODIFICATIONS**:

1) Increase the allocated incentive base points to eight (8), corresponding to an effective weight of 6.7 percent of the total incentive fee.
2) Update the baseline to reflect performance over FY2023, consistent with section IV.D. The updated baseline value is 20.3 days.
3) Update the Annual Performance Targets using "Approach 2" based on Section IV.F. The Long-Term Performance Target is 15 days.
4) Update the Performance Tiers and associated targets for NEM Project Activation Duration, such that incentive earnings opportunities are provided at 75 percent, 100 percent, and 125 percent of the total allocated incentive, consistent with the approach described in Section IV.H.
5) Modify the calculation of performance so all expedited applications, including those cases affected by customer delays, will be counted.

The final performance targets and other key parameters for this metric are presented below in Table 24.

Table 24. Performance Targets and Other Key Parameters for NEM Project Activation Duration Metric

	Minimum	75%	100%	125%
Baseline	20.3			
Long-Term Target	15.0			
Year 1	30.0	19.5	19.2	18.5
Year 2	30.0	18.8	18.2	16.8
Year 3	30.0	18.0	17.1	15.0

The Energy Bureau observes that LUMA has made improvements in its interconnection process and timeliness. LUMA should be commended for progress against the backlog that it inherited and for instituting practices to guard against the build-up of a similar backlog. However, the mere fact of historical progress does not relieve LUMA of the obligation to continue its improvement trend, especially with the potential to earn incentives. The Bureau

[349] *Id.* page 60-62.

[350] *Id.* page 64.

[351] Resolution and Order, *In Re: Performance Targets for LUMA Energy Servco, LLC*, Case No. NEPR-AP-2020-0025, December 22, 2021, p. 3.

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is not compelled by LUMA's justification for a static performance target simply because LUMA does not control the volume of expedited system applications.

LUMA's proposal for the NEM Project Activation Duration metric is unique among the various proposed metrics within Revised Annex IX. As proposed by LUMA, the NEM metric would be both non-binary and without any requirement for performance improvement over the initial three-year period. All other proposed non-binary metrics require improvement over this period, consistent with the principles contained in Regulation 9137.

In the Energy Bureau's view, LUMA has not justified that it is reasonable for the performance targets for this metric to be so close to the statutory minimum performance level, nor has LUMA justified why these targets should not improve over time. The mere fact that applications for NEM tariff activation have increased or are expected to in the future is not sufficient cause for unambitious targets. Similarly, the fact that LUMA's own experts have deemed the proposed performance target to be "aggressive" and "reasonably achievable" does not convince this Energy Bureau that these targets are appropriate. The Energy Bureau reminds LUMA that the aim of performance targets is not that they should only be achievable. Performance targets should deliver meaningful improvements for LUMA's customers. Unfortunately, the performance targets put forward by LUMA for this metric would not engender meaningful performance improvements.

The Energy Bureau finds ICPO's recommendation of a Target Performance Level of 15 days to be a reasonable Benchmark and **ADOPTS** this level as the five-year Target Performance Level to be used to set the targets for the 75-percent, 100-percent, and 125-percent incentive tiers in Years 1 to 3.

The Energy Bureau does not agree with LUMA that ICPO's proposal is unsupported. Nor does the Energy Bureau concur with LUMA that its own proposals are uncontested. On the contrary, both ICPO and LECO offered compelling counterarguments, and the Energy Bureau validates the concerns raised by these intervenors in adopting more ambitious performance targets for this metric.

LUMA argued in its legal brief that the 15-day target supported by ICPO is not feasible due to factors beyond LUMA's control, such as an increasing number of NEM cases and delays in the validation of a customer's application due to missing client information.[352] However, once LUMA puts in place the ability to timestamp customer applications, such customer delays will not impact LUMA's ability to achieve the target. In addition, while LUMA cannot control the number of applications it receives, it can and should plan and prepare for such fluctuations.

While the Energy Bureau will not include penalties with this NEM metric, the Energy Bureau acknowledges and shares the frustration expressed by LECO concerning LUMA's failure thus far to acquire the IT functionality needed to track its performance on tariff activation with the needed granularity. It is unreasonable that LUMA would point to the "IT systems available" as justification for its unambitious performance target proposal when it is LUMA itself that is responsible for this IT status quo. Since LUMA still does not have the ability to timestamp applications and "stop the clock"—a condition entirely of its own doing—LUMA proposes to simply exclude all such cases from the metric calculation. The Energy Bureau acknowledges that LUMA should not be penalized for delays not attributable to LUMA. However, the exclusion of applications considered to have customer delays could let LUMA unduly bolster its performance on this metric. LUMA would have the discretion to exclude applications at will; and once excluded, LUMA would have little incentive to timely manage the remaining activation process steps for these cases once customer issues were resolved.

[352] LUMA. Legal Brief, May 11, 2023, pages 106-107.

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The Energy Bureau determines that LUMA must acquire the IT functionality needed to timestamp customer-delayed cases, with no further delay. In the evidentiary hearing, Mr. Wood stated that LUMA could acquire this functionality within one to two months.[353] Therefore, the Energy Bureau finds it is within LUMA's control to develop the capability to track the duration between each step LUMA must complete, without customer delays affecting the average duration. All expedited cases will count toward this metric, and until LUMA acquires the aforementioned IT functionality, customer delays will also factor into the metric results.

L. Energy Savings as a Percentage of Sales and Demand Response Savings as a Percentage of Peak Demand

In response to the December 22 Resolution, LUMA filed its Final Revised Annex IX, which included proposals for two demand-side management ("DSM") performance metrics: (1) Energy Savings as a Percent of Total Energy Sales ("Energy Efficiency" performance metric) and (2) Peak Demand Savings as a Percent of Total Peak Demand ("Peak Demand" performance metric).

a) LUMA Proposal

Energy Efficiency Performance Metric

LUMA proposes an Energy Efficiency performance metric with a target threshold of 0.10-percent savings as a percent of total sales in Year 1, 0.25 percent in Year 2, and 0.40 percent in Year 3. LUMA indicates that the annual energy savings target threshold in Year 1 and 2 correspond with the planning targets for the first and second year of the Transition Period Plan as established in Regulation 9367, "Regulation for Energy Efficiency" ("EE Regulation") and represent a reasonable ramp-up during the early years of program delivery. There are no proposed Minimum Performance Levels.[354]

LUMA states this performance metric would be calculated as the total gross energy savings achieved by LUMA's DSM programs in megawatt-hours ("MWh") divided by the total forecasted energy sales (MWh) during the same period.[355] LUMA does not specify whether the total energy sales in each year will remain constant over the performance period or be updated each year. Instead, LUMA says it plans to work with the Energy Bureau to create the necessary policy guidelines for calculating the energy savings targets and funding levels to achieve those targets.[356]

LUMA indicates that the proposed target thresholds for the Energy Efficiency performance metric align with the planning targets from the EE Regulation for Year 1 and Year 2.[357] However, LUMA states there is uncertainty around when Year 1 would commence, citing PREPA's pending exit from bankruptcy.[358] LUMA further expects that the specific performance targets may need adjustment based on the actual date of implementation and that those targets will likely need to be adjusted during the Three-Year Plan planning

[353] AP-2020-0025 Evidentiary-20230208_Meeting Recording

[354] LUMA. Final Revised Annex IX, October 28, 2022, page 30-31.

[355] LUMA. Direct Testimony of Lee Wood at page 9, lines 238-244.

[356] LUMA's response to Energy Bureau's ROI 10, Question 34, November 16, 2022.

[357] LUMA. Final Revised Annex IX, October 28, 2022, page 30-31.

[358] LUMA's response to Energy Bureau's ROI 10, Question 39, November 16, 2022.

process.[359] LUMA specifies that it is open to further review and determination of targets for this performance metric after the Transition Period if appropriate.[360]

Peak Demand Performance Metric

LUMA proposes a Peak Demand performance metric with a target threshold of 0.05-percent savings as a percent of total peak demand in Year 1, 0.10 percent in Year 2, and 0.20 percent in Year 3. LUMA indicates that the annual targets are designed to facilitate a reasonable ramp up of program performance during the early years of program delivery. There are no proposed Minimum Performance Levels.[361]

LUMA states this performance metric would be calculated as the total gross annual peak demand savings (MW) achieved during the year, divided by the total forecasted peak demand (MW) for the year.[362] LUMA states that actual peak demand may vary from the forecast, but the programs and its budgets will not be able to fluctuate up or down mid-year to align with the fluctuations in actual peak demand during the year.[363]

b) *Intervenors*

In his pre-filed direct testimony, LECO witness Dr. Irizarry-Rivera suggested several energy efficiency metrics to indicate participation, energy and demand savings, and cost-effectiveness of energy efficiency programs. These metrics included, "percent of customer per year, annual and lifetime energy savings, annual and lifecycle peak demand savings (MW), program costs per MWh energy saved."[364] Dr. Irizarry-Rivera also proposed metrics specific to demand response including percent of customers signed up per year, percent of customers enrolled, MWh of DR provided over the past year, potential and actual peak demand savings, and the number of customers on time-varying rates.[365]

Dr. Irizarry-Rivera encouraged the Energy Bureau to include metrics to benefit low- and moderate-income customers similar to those adopted by the Hawaii Public Utilities Commission. These include targets related to energy and demand savings specific to hard-to-reach customers.[366] He further stated that the Energy Bureau should set baselines for these metrics that should be designed to achieve the 30-percent energy efficiency goals by 2040 as required by Act 17-2019.[367]

In his pre-filed direct testimony, ICPO witness Mr. Cosme agreed with LUMA's proposed energy efficiency and demand response metrics but recommended that the metrics be segmented by each customer class.[368]

c) *Rebuttal, Hearing, and Briefs*

In rebuttal testimony, LUMA witness Mr. Wood stated that he does not agree with LECO's proposed energy efficiency metrics. Mr. Wood described LECO's proposed metrics as those used to measure the results of ratepayer-funded incentive programs that have consistent,

[359] *Ibid.*

[360] LUMA. Response to Energy Bureau's ROI 10, Question 35, November 16, 2022.

[361] LUMA. Final Revised Annex IX, October 28, 2022, page 31.

[362] LUMA. Direct Testimony of Lee Wood at page 9, lines 238-244.

[363] LUMA. Direct Testimony of Lee Wood at page 11, lines 292-2297.

[364] LECO. Direct Testimony of Agustín A. Irizarry-Rivera, November 17, 2021, page 24, lines 1-4.

[365] LECO. Direct Testimony of Agustín A. Irizarry-Rivera, March 22, 2022, page 10, lines 3-9.

[366] *Id.* page 8-9.

[367] *Id.* page 6, lines 20-24.

[368] ICPO. Direct Testimony of Gerardo Cosme Nunez, December 8, 2022, page 3, lines 99-109.

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stable one- to three-year funding cycles, which LUMA does not currently have.[369] In response to LECO's proposed metrics for low- and moderate-income customers, Mr. Wood stated that the EE Regulation establishes that 25 percent of the energy efficiency budget must be allocated to low-income customers, which establishes a mechanism to promote prioritization of providing benefits to low-and moderate-income customers.[370]

Witness Wood also disagreed with LECO's proposed demand response metrics. Mr. Wood stated that LECO's proposed metrics are conventional performance indicators for ratepayer-funded demand response programs. He stated that LUMA cannot directly affect and measure progress towards energy reduction targets until programs are developed, and a consistent funding source or cost-recovery mechanism is established.[371] Specific to LECO's proposal for a time-varying rate metric, Mr. Wood indicated this will require AMI meters, which are not installed in Puerto Rico, and therefore such a metric is not appropriate because LUMA cannot control the outcome.[372]

In its legal brief, LECO responded that LUMA's proposed energy savings targets are deficient. LECO stated that LUMA used the energy savings targets established by the EE Regulation for the first and second year to receive 100 percent of the base points for the metric. LECO argued that the targets do not comply with the established principle of going "above and beyond" nor with the principle that the people of Puerto Rico should not pay incentives for LUMA meeting the minimum.[373] LECO also objected to LUMA "assigning one of the lowest amounts of base points and one of the lowest percentages of effective weight" to energy efficiency and demand response.[374] LECO also requested that energy efficiency and demand management be included as Key Performance Metrics with corresponding effective weights.[375]

LECO requested that the Energy Bureau implement an Energy Savings as a Percent of Sales and a Peak Demand Savings as a Percent of Peak Demand performance metric immediately, instead of deferring it as LUMA proposes. LECO included a set of three proposed Performance Tiers, base points, and penalties for energy savings and peak demand savings metrics in its legal brief.[376]

In its reply brief, LUMA argued that Dr. Irizarry-Rivera's proposal to target low- and moderate-income customers is moot because the EE Regulation establishes that 25 percent of the energy efficiency budget must be allocated to low-income customers.[377] LUMA also disagreed with LECO's proposal for energy efficiency metrics to be designed to achieve the 30-percent energy savings by 2040 stating that proposed targets should be based on forecasted energy sales and stated that LUMA's proposed first- and second-year targets were set at a level aligned with the EE Regulation and were designed to facilitate a reasonable ramp-up of programs.[378] LUMA asserted that its proposed Peak Demand Savings as a Percent of Total Peak Demand performance metric is the industry-standard metric for tracking the

[369] LUMA. Rebuttal Testimony of Lee Wood. May 11, 2022, page 8, lines 143-147.

[370] *Id.* page 9, lines 173-177.

[371] *Id.* page 10, lines 185-192.

[372] LUMA. Rebuttal Testimony of Lee Wood. February 17, 2022, page 20, lines 402-407.

[373] LECO. Legal Brief, May 11, 2023, page 43.

[374] *Id.* page 44.

[375] *Id.* page 94.

[376] *Id.* page 98-99.

[377] LUMA. Reply to LECO's Legal Brief, September 21, 2023, page 65.

[378] *Id.* page 65-66.

performance of peak demand savings from ratepayer-funded demand-side management programs.[379]

In its reply brief, LECO reiterated its recommendations in testimony and its legal brief.[380]

d) Discussion and Determinations

After reviewing the materials in this case, the Energy Bureau finds that LUMA's proposed Energy Efficiency performance metric and Peak Demand performance metric do not comply with the EE Regulation.

LUMA proposes energy savings targets based on the planning targets for the Transition Period Plan.[381] However, Section 2.02(B) of the EE Regulation prohibits LUMA from proposing performance targets based on energy saved for the Transition Period Plan. Section 2.02(B) of the EE Regulation explicitly requires that the Energy Bureau establish activity-based targets for energy efficiency and demand response.

It is also unclear whether Year 1 of the incentive framework will correspond with the Transition Period Plan or the first Three-Year Energy Efficiency Plan ("Three-Year EE Plan") due to uncertainty in the date by when PREPA will exit bankruptcy.

The EE Regulation makes clear that the development of performance metrics and associated targets for the Three-Year EE Plan shall be approved with the Three-Year EE Plan. While Section 4.02(e) of the EE Regulation directs the performance incentive process and requirements to be incorporated into the overall incentive package of PREPA's successor, it specifies that the "Energy Bureau shall set performance targets in that proceeding which are consistent with the approved Three-Year EE Plan."[382] Section 4.02(D)(6) also requires that if "PREPA's successor is an entity subject to a contract that includes performance metrics, that entity shall propose a performance incentive within the Three-Year EE Plan for approval by the Energy Bureau."

Based on the fact LUMA did not propose action-based performance metrics for the Transition Period to comply with the EE Regulation and the Three-Year EE Plan process has not begun, the Energy Bureau finds it is premature to approve performance metrics for energy efficiency. This conclusion aligns with LUMA's suggestion that these performance metrics be deferred.[383]

The Energy Bureau also agrees with LECO that the Energy Efficiency and Peak Demand performance metrics should go "above and beyond" and comply with the principles established in the December 23 Resolution, which indicate that "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 levels."[384] However, the Energy Bureau does not adopt LECO's proposal to implement an energy savings as a percent of sales metric and a peak demand savings as a percent of peak demand performance metric immediately, as savings-based incentives are not permitted during the transition period plan. In addition, because a Three-Year EE Plan has not yet been established, it is not clear whether LECO's proposed targets for Year 2 and Year 3 will stretch LUMA to go "above and beyond." Establishing performance metrics as part of the Three-Year EE Plan development and

[379] *Id.* page 66.

[380] LECO. Reply Brief, September 21, 2023, page 1.

[381] LUMA. Final Revised Annex IX, October 28, 2022, page 30-31.

[382] EE Regulation, Section 2.02 E(1).

[383] LUMA. Response to Energy Bureau's ROI 10, Question 35, November 16, 2022.

[384] Resolution and Order, *In Re: Performance Targets for LUMA Energy Servco, LLC*, Case No. NEPR-AP-2020-0025, December 23, 2020.

approval process will help make sure energy efficiency and peak demand targets are based on available program budgets and energy and peak demand savings potential.

Last, the Energy Bureau appreciates the suggestion from ICPO that the performance metrics be segmented by each customer class. The Energy Bureau encourages ICPO to propose this recommendation as part of the Three-Year EE Plan.

The Energy Bureau **APPROVES** the Energy Efficiency performance metric and the Peak Demand performance metric with the following **MODIFICATIONS**:

1) Increase the incentive base points for the Energy Efficiency and Peak Demand performance metrics to six (6) points each (12 total), corresponding to an effective weight of five (5) percent each (10 percent total) of the total incentive fee. The 12 base points established here sets the total allotment of points for Energy Efficiency and Demand Response, but the ultimate allocation of these base points will be determined through the approval of the Three-Year EE Plan.
2) Should a Contract Year occur during the Transition Period Plan, there will be no Performance Targets for Energy Efficiency and Peak Demand for that Contract Year. The 12 base points allotment for the Energy Efficiency and Peak Demand performance metrics shall instead be allocated equally across the performance metrics in the Technical, Safety, and Regulatory Performance Category for the Contract Year.
3) The Energy Bureau **ORDERS** LUMA, in a separate proceeding, to propose performance metrics and associated targets that adhere to Section 4.02(D)(6)(2) of the EE Regulation as part of LUMA's Three-Year EE Plan.
4) Upon approval of the Three-Year EE Plan by the Energy Bureau, the performance metrics approved therein shall begin.
5) Within the order approving the Three-Year EE Plan, the Energy Bureau shall specify which Years (Year 1, Year 2, Year 3) in the Revised Annex IX correspond to the fiscal years within the Three-Year EE Plan.
6) As provided for in Section 4.02(E) of the EE Regulation, the Energy Bureau shall use the evaluation, measurement, and verification processes established in the Three-Year EE Plan to determine LUMA's achieved performance level with the approved performance metrics for compensation.
7) In the event a Three-Year EE Plan is not approved by the Energy Bureau by July 1, 2026, the target thresholds as included in the Final Revised Annex IX for Energy Savings as a Percent of Total Energy Sales and for Peak Demand Savings as a Percent of Total Peak Demand will serve as a backstop and will go into effect until a Three-Year EE Plan is ultimately approved or the Energy Bureau issues an Order or Resolution with changes to the process for establishing EE performance metrics and incentives as permitted in Section 4.02(E)(2) of the EE Regulation.
8) Update the Performance Tiers and associated targets for Energy Efficiency performance metric and the Peak Demand performance metric, such that incentive earnings opportunities are provided at 75 percent, 100 percent, and 125 percent of the total allocated incentive, consistent with the approach described in Section IV.H.

These modifications are illustrated in the below tables. For illustrative purposes Year 1 is assumed to correspond with the Transition Period Plan; however, should Year 2 also correspond with the Transition Period Plan, there would be no target or backstop.

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Table 25. Energy Savings as a Percent of Total Energy Sales

Annex IX Year	Three-Year Plan Approved	Backstop – No Three-Year Plan
Year 1	No Target (Transition Period Plan)	No Target (Transition Period Plan)
Year 2	TBD – Target as approved for Year 1 of Three-Year Plan	As proposed in Final Revised Annex IX (Threshold Target 0.25%)
Year 3	TBD – Target as approved for Year 2 of Three-Year Plan	As proposed in Final Revised Annex IX (Threshold Target 0.40%)

Table 26. Peak Demand Savings as a Percent of Total Peak Demand

Annex IX Year	Three-Year EE Plan Approved	Backstop – No Three-Year EE Plan
Year 1	No Target (Transition Period Plan)	No Target (Transition Period Plan)
Year 2	TBD – Target as approved for Year 1 of Three-Year Plan	As proposed in Final Revised Annex IX (Threshold Target 0.10%)
Year 3	TBD – Target as approved for Year 2 of Three-Year Plan	As proposed in Final Revised Annex IX (Threshold Target 0.20%)

Table 27. Backstop Performance Targets and Other Key Parameters for Energy Savings as a Percent of Total Energy Sales Performance Metric[385]

	Minimum	75%	100%	125%
Baseline	N/A			
Long-Term Target	N/A			
Year 1	N/A	N/A	N/A (Transition Period Period)	N/A
Year 2	N/A	0.19%	0.25%	0.31%
Year 3	N/A	0.30%	0.40%	0.50%

Table 28. Backstop Performance Targets and Other Key Parameters for Peak Demand Savings as a Percent of Total Peak Demand Performance Metric[386]

	Minimum	75%	100%	125%
Baseline	N/A			
Long-Term Target	N/A			
Year 1	N/A	N/A	N/A (Transition Period Period)	N/A
Year 2	N/A	0.08%	0.10%	0.13%
Year 3	N/A	0.15%	0.20%	0.25%

The Energy Bureau also clarifies the treatment of the Energy Efficiency and Peak Demand performance metrics during a partial Contract Year. In the event a partial Contract Year occurs during the Three-Year EE Plan, the Energy Efficiency and Peak Demand performance incentives shall not be prorated. LUMA shall be responsible for meeting the fiscal year Energy Efficiency and Peak Demand Performance targets to be approved as part of the Three-Year EE Plan and therefore is entitled to the opportunity to receive the full base points for the corresponding fiscal year.

[385] The 100-percent and 125-percent Performance Targets are those presented in Table 2-20 of Final Revised Annex IX, October 28, 2022. The 75-percent Performance Target is 75 percent of the 100-percent target, which mirrors LUMA's methodology for calculating the Performance Tiers.

[386] The 100-percent and 125-percent Performance Targets are those presented in Table 2-21 of Final Revised Annex IX, October 28, 2022. The 75-percent Performance Target is 75 percent of the 100-percent target, which mirrors LUMA's methodology for calculating the Performance Tiers.

Finally, the Energy Bureau declines to adopt LECO's recommendation for a deduction or penalty for this metric. The Energy Bureau finds that including positive incentives without penalties is reasonable since LUMA will institute the first ever performance incentive scheme in Puerto Rico.

C. Financial Metrics

A. Operating Budget

a) LUMA Proposal

In his pre-filed direct testimony, LUMA witness Mr. Kostyk describes the Operating Budget metric as designed to measure LUMA's ability to stay within budget and to incentivize effective cost management.[387] The Operating Budget metric is a Key Performance Metric in the OMA, and LUMA maintained this designation in its proposal.[388] Mr. Kostyk describes the Operating Budget metric calculation as follows:

> *"This metric will be evaluated as actual operating expenses for a given Fiscal Year divided by the approved T&D operating budget for the same Fiscal Year as incurred. As defined in Section 7.3(b) of the OMA the Budgets include 2% Excess Expenditures. Budget amendments, as defined in (i) through (iv) in Section 7.4 and 14.5(e) of the OMA, shall be deemed to be included in the initially approved Budgets (denominator) for purposes of this calculation. Further, any funds drawn from the Outage Event Reserve Account and the Contingency Reserve Account, as they have specific requirements, do not contribute to this metric. LUMA proposes that any approved budget amendment for items outside LUMA's control also adjusts the budget metric denominator by the same amount. It is also proposed that any financial adjustments or corrections made to PREPA's pre-fiscal year 2022 historical books and records be excluded from the calculation."*[389]

Mr. Kostyk notes that the Operating Budget metric was established in the OMA and that LUMA is not proposing any changes to the OMA language, apart from excluding outage events from the calculation.[390]

LUMA proposes the Operating Budget as a binary metric, where the operator can earn full base points by not exceeding the budget.[391] LUMA's proposed Minimum Performance Level is equal to the Target Performance Level, or 100 percent of the operating budget.[392] Mr. Kostyk states that targets were set "with the intention to effectively manage and strength the resiliency of the T&D system" and that "LUMA intends to spend all of its budgeted amount to assist in stabilization efforts and allowing for approved amendment changes if and when the budget is adjusted due to efficient operations or extenuating circumstances."[393] LUMA proposes a baseline of 100 percent of the operating budget.[394] LUMA states that "while the FY2020 data PREPA submitted shows an 80.4% baseline, LUMA remains at 100% of the

[387] LUMA. Direct Testimony of Kalen Kostyk, August 17, 2021, lines 70-71.

[388] LUMA. Final Revised Annex IX, October 28, 2022, page 20-38.

[389] *Id.* lines 72-83.

[390] *Id.* lines 123-127.

[391] LUMA. Final Revised Annex IX, October 28, 2022, page 11.

[392] LUMA. Final Revised Annex IX, October 28, 2022, page 19.

[393] LUMA. Direct Testimony of Kalen Kostyk, August 17, 2021, lines 167-169.

[394] LUMA. Final Revised Annex IX, October 28, 2022, page 32.

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budget... it is in the customers' best interest that LUMA use the funds appropriately to build a stronger more resilient utility."[395]

The budgets are designed to provide efficient, reliable, cost-effective services to customers. The financial performance metrics encourage spending 100 percent of the budget to achieve this goal.[396]

b) Intervenors

In its legal brief, LECO stated that LUMA's submission does not give PREB or the public adequate information to understand LUMA's budget process. According to LECO, LUMA did not indicate the functions or events that drive the budgeting process, such as where the internal inputs for the budget process specifically come from, whether there are other "External Dependencies" besides professional services and vendor or external fees, and whether payments to affiliated corporations are included in the "External Dependencies."[397]

LECO asserted that LUMA should not be rewarded for meeting its budgets if LUMA is able to adjust the budget throughout the year. LECO pointed to an example from FY2022 where PREB approved a budget amendment that LUMA submitted in June of that year.[398] LECO argued that LUMA should not receive an incentive payment for staying within budget when the budget can be easily amended.[399]

LECO claimed that LUMA should be able to estimate its annual budget relatively accurately from the outset. According to LECO, the objective of the initial budget process is to assess the accuracy of the process by verifying deviances at the end of the year. LECO called this process into question, asserting that deviations from the budget should be verified at shorter intervals. LECO further claimed that deviations from the budget should be limited to emergency and unforeseeable circumstances.[400]

LECO claimed that LUMA's budgeting process seems to revolve more around the use of federal funds rather than compliance with PREB's performance metrics. According to LECO, LUMA's exclusion of the requisite PREB approval is indicative of the relative importance that LUMA ascribes to FEMA approval, since LUMA assumes that PREB will largely grant its requests. LUMA cited Section 7.3(b) of the OMA which dictates that the budget can include excess expenditures up to 2 percent "treated as T&D Pass thru as if initially budgeted."[401] LECO argued that the ability to treat 2 percent of spending above the budgeted amount as "pass thru" expenses without consequences will likely result in LUMA routinely exceeding the budget. LECO further argued that LUMA's ability to easily seek amendments to the budget will promote excess spending that will have adverse rate impacts.[402]

c) Rebuttal, Hearing, and Briefs

In its legal brief, LUMA claimed that it "intends to spend all of its budgeted amounts to assist in stabilization efforts."[403] LUMA stated that "regarding the baseline for the Operating Budget Performance Metric, the record of this proceeding shows that the baseline of 80.4%... which

[395] *Ibid.*

[396] LUMA. Revised Annex IX filed February 25, 2021, page 19.

[397] LECO. Legal Brief, May 11, 2023, restating sections from LUMA's Motion Submitting Direct Testimonies on Performance Metrics, Direct Testimony of Kalen Kostyk, page 77.

[398] LECO. Legal Brief, May 11, 2023, restating sections from Kostyk Direct Testimony, page 77, lines 75-77.

[399] LECO. Legal Brief, May 11, 2023, page 78-79.

[400] LECO. Legal Brief, May 11, 2023, page 78-79.

[401] LECO. Legal Brief, May 11, 2023, restating sections from LUMA's proposal, page 78.

[402] LECO. Legal Brief, May 11, 2023, page 78-79.

[403] LUMA. Legal Brief, May 11, 2023, page 116.

provides for underspending, is not appropriate."[404] LUMA further stated, "The 80.4-percent baseline set by the Energy Bureau for the Operating Expenses metric derives from data submitted by PREPA. PREPA underspent its budget while collecting associated revenues and delivering below-standard service."[405] LUMA stated that its target is to spend 100 percent of its budget to build a stronger, resilient utility; provide customer benefits; and meet its obligations under the T&D OMA and energy public policy. LUMA asserted that its desire to meet performance targets in other categories would drive LUMA to use budgeted funds to deliver improved services, and that by underspending by as much as 20 percent (per the 80.4-percent baseline) it would be unable to improve the system to the extent it has planned.[406] LUMA argued that it would be unreasonable to set a minimum threshold below 100 percent for this metric.[407]

LUMA expressed concern that underspending its budget could negatively affect the "reliability and performance of the electrical grid"[408] as well as its performance on other metrics. In its legal brief, LUMA used the example of vegetation management as an area where underspending could lead to poor outcomes. LUMA explained how underspending on vegetation management might temporarily achieve budget savings but could lead to outages that would affect other performance metrics like SAIDI and SAIFI; "Reducing costs in one area could negatively impact other areas, and, consequently, LUMA's performance and goals to improve the utility's overall state."[409]

d) Discussion and Determinations

The Energy Bureau finds it is in the customers' best interest that LUMA use all approved funds to meet the approved projects, programs, and initiatives in the Initial Budget Proceedings as required by the applicable Rate Order. While spending less than what is budgeted may temporarily achieve financial savings, the system may suffer.

The Energy Bureau finds that the changes to the original definition and calculation of this performance metric from the OMA that have been introduced by LUMA in the Final Revised Annex IX are flawed. The Energy Bureau notes that in the T&D OMA, LUMA did not receive an incentive for spending less than the approved budget. This was an added provision in LUMA's Revised Annex IX, dated February 25, 2021.

The Energy Bureau also finds it important to note that Section 7.3(c) of the T&D-OMA[410] provides LUMA with the flexibility to reallocate funds with no approval for cumulative amounts not to exceed 5 percent of the approved budget. Section 7.3(e) of the T&D-OMA[411]

[404] LUMA. Legal Brief, May 11, 2023, page 118.

[405] LUMA. Legal Brief, May 11, 2023, page 118.

[406] LUMA. Legal Brief, May 11, 2023, page 118-119.

[407] Evidentiary Hearing, AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 2 [2:13:10-2:3:24].

[408]LUMA. Legal Brief, May 11, 2023, page 119-120.

[409] LUMA. Legal Brief, May 11, 2023, page 119-120.

[410] Section 7.3(c) of the T&D-OMA specifically states that LUMA "shall have complete flexibility, subject to compliance with the Contract Standards and prior consultation with, but not subject to approval by, Administrator or PREB, to (i) reallocate, accelerate or postpone expenditures within the approved Operating Budget, (ii) reallocate, accelerate or postpone expenditures within the approved Capital Budget – Federally Funded, subject to the Federal Funding Requirements, and (iii) reallocate, accelerate or postpone expenditures within the approved Capital Budget – Non-Federally Funded, in each case, (x) in order to address changed operational or commercial circumstances or new legal or regulatory requirements and (y) in such a manner that the reallocations do not exceed five percent (5%) of the Budget in which such reallocations are made or the expenditures are not postponed for a period longer than one (1) year. Any such reallocated amounts shall be treated as if initially budgeted in the Budget in which such reallocations are made in all respects, including with respect to the associated Performance Metrics set forth in Annex IX (Performance Metrics)."

[411] Section 7.3(e) of the T&D-OMA states that LUMA "may, from time to time, propose to amend the approved Operating Budget and Capital Budget for a given Contract Year, including to account for any for Federally Funded Capital Improvements that have been Obligated since the date the Capital Budget – Federally Funded

provides for a procedure for LUMA to amend the approved budget if LUMA becomes aware that actual expenditures are expected to exceed the budget by more than 5 percent. Additionally, Section 7.3(b) of the T&D-OMA includes in the budget an approved 2-percent overrun, giving LUMA greater spending flexibility.[412] Each of the latest submitted T&D Operating Budgets were approved with a 2 percent reserve for overruns.[413]

If the metric will be evaluated as actual operating expenses for a given fiscal year divided by the approved T&D Operating Budget for the same fiscal year as incurred, then the approved T&D Operating Budget for that year includes the 2-percent overrun as required in Section 7.3(b) of the OMA.[414] So if the year-end metric is 100 percent, that means that the T&D actuals were 2 percent higher than the budget.

The Energy Bureau finds that while the ideal is for T&D Operating Actuals to equal 100 percent of the budget, it is appropriate to establish the performance target for this metric as a range between spending at 95 percent of the budget and spending at 100 percent of the budget. There are three reasons for constructing the target as such. First, there may be some variance between forecast and actual spending, and it is not reasonable to expect LUMA to precisely expend 100 percent of its budget. Second, as noted, the budget already includes a 2-percent overrun. Third, as also noted, LUMA statutorily has the right to amend its budget at will if its actual spending is within 5 percent of the budgeted amount. Thus, it is not meaningful to distinguish between total spending at 95 percent and at 100 percent of the budget, since LUMA has the 5-percent budget flexibility as provided in Section 7.3(c) of the T&D OMA.

Based on the discussion above, the proposed Operating Budget metric by LUMA is not in line with the objectives for performance metrics articulated earlier in this proceeding to be designed to maximize net benefits for customers. After reviewing the positions and evidence submitted by the parties, the Energy Bureau **APPROVES** the Operating Budget metric with following **MODIFICATION**:

1) The metric will be reformulated so the target is met if the actual operating expenses for a given fiscal year divided by the approved T&D Operating Budget (as amended) for the same fiscal year as incurred is between 95 percent[415] and 100 percent.

then in effect was approved; provided that any such amendment shall be compliant with the applicable Rate Order. If, during a Contract Year, Operator becomes aware that T&D Pass-Through Expenditures or Generation Pass-Through Expenditures for such Contract Year are expected to exceed a Budget for such Contract Year (taking into account the allowances for Excess Expenditures), then (i) with respect to the Operating Budget and Capital Budget, Operator shall promptly notify PREB and Administrator and prepare and submit to PREB a proposed amended Operating Budget or Capital Budget for such Contract Year, as the case may be, which amendment shall require and be subject to approval by PREB, and (ii) with respect to the Generation Budget, (x) Operator shall notify PREB, Administrator and Owner and (y) Owner shall, as promptly as practical, prepare and submit to PREB a proposed amended Generation Budget, which amendment shall require and be subject to approval by PREB."

[412] Section 7.3(b) of the T&D-OMA states that "Each Budget shall include up to a maximum of two percent (2%) in excess of the total amount for excess expenditures that may arise in any Contract Year ("Excess Expenditures"); provided that such Excess Expenditures shall at all times be otherwise compliant with the applicable Rate Order. Any Excess Expenditures incurred by Operator during a Contract Year shall be treated as T&D Pass-Through Expenditures and as if initially budgeted for such Contract Year. Each reference herein to a Budget or Default Budget shall be deemed to include such Excess Expenditures to the extent such Excess Expenditures are incurred."

[413] Resolution and Order, *In Re: LUMA Initial Budgets and Related Terms of Service*, Case No.: NEPR-MI-2021-0004, May 31, 2021, Attachment A, Section 5.5, Improvement Portfolios – Total Capital Expenditures; Resolution and Order, *In Re: LUMA Initial Budgets and Related Terms of Service*, Case No.: NEPR-MI-2021-0004, February 27, 2023, Attachment B, *FY 2023 Conditionally Approved Budgets*, and Resolution and Order, *In Re: LUMA Initial Budgets and Related Terms of Service*, Case No.: NEPR-MI-2021-0004, June 25, 2023, Attachment C, Approved FY24 T&D (LUMA) Budgets.

[414] *Ibid.*

[415] The 95-percent limit provides for the 5 percent of the Budget flexibility LUMA has as specified in Section 7.3(b) of the T&D-OMA.

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This modification reflects the Energy Bureau's priority for LUMA to deliver on plans for the approved fiscal year and measure LUMA on the delivery of services in alignment with the PREB-approved budget. The Energy Bureau's modifications to the targets on this metric are consistent with the positions of all parties in the legal briefs. LUMA will have the ability to petition for updates on its own or the Energy Bureau can initiate further review on its own motion.

Table 29. Performance Targets and Other Key Parameters for Operating Budget Metric

Baseline	80.4%			
Long-Term Target	100%			
Incentive Level	**Minimum**	**75%**	**100%**	**125%**
Year 1	100%	N/A	95%-100%	N/A
Year 2	100%	N/A	95%-100%	N/A
Year 3	100%	N/A	95%-100%	N/A

B. Capital Budget (Federally Funded)

a) LUMA Proposal

In its legal brief, LECO stated that LUMA's submission does not give the Energy Bureau or the public adequate information to understand LUMA's budget process. According to LECO, LUMA failed to indicate the functions or events that drive the budgeting process, such as where the internal inputs for the budget process specifically come from, whether there are other "External Dependencies" besides professional services and vendor or external fees, and whether payments to affiliated corporations are included in the "External Dependencies."[416]

LECO asserted that LUMA should not be rewarded for meeting its budget if LUMA is able to adjust the budget throughout the year. LECO pointed to an example from FY2022 where PREB approved a budget amendment that LUMA submitted in June of that year.[417] LECO argued that LUMA should not receive an incentive payment for staying within budget when the budget can be easily amended.

LECO claimed that LUMA should be able to estimate its annual budget relatively accurately from the outset. According to LECO, the objective of the initial budget process is to assess the accuracy of the process by verifying deviances at the end of the year. LECO called this process into question, asserting that deviations from the budget should be verified at shorter intervals. LECO further claimed that deviations from the budget should be limited to emergency and unforeseeable circumstances.

LECO claimed that LUMA's budgeting process seems to revolve around the use of federal funds rather than compliance with the Energy Bureau's performance metrics. According to LECO, LUMA's exclusion of the requisite Energy Bureau approval is indicative of the relative importance that LUMA ascribes to FEMA approval, since LUMA assumes that the Energy Bureau will largely grant its requests. LUMA cited Section 7.3(b) of the T&D OMA which dictates that the budget can include excess expenditures up to 2 percent "treated as T&D Pass thru as if initially budgeted."[418] LECO argued that the ability to treat 2 percent of spending above the budgeted amount as "pass thru" expenses without consequences will likely result in LUMA routinely exceeding the budget. LECO further argued that LUMA's

[416] LECO. Legal Brief, May 11, 2023, restating sections from LUMA's Motion Submitting Direct Testimonies on Performance Metrics, Direct Testimony of Kalen Kostyk, page 77.

[417] LECO. Legal Brief, May 11, 2023, restating sections from Kostyk Direct Testimony, page 77, lines 75-77.

[418] LECO. Legal Brief, May 11, 2023, restating sections from LUMA's proposal, page 78.

ability to easily seek amendments to the budget will promote excess spending that will have adverse rate impacts.[419]

b) Rebuttal, Hearing, and Briefs

In its legal brief, LUMA stated that the Capital Budget: Federally Funded targets were set with the intention to effectively manage and strengthen the resiliency of the T&D System,[420] and that it intends to spend all its budgeted amount to assist in stabilization efforts.[421]

LUMA stated that its goal "is to use the funds appropriately to build a more robust, resilient utility to provide customer benefits and meet its obligations under the T&D OMA and energy public policy." LUMA claimed that its desire to meet performance targets will drive it to use the PREB-approved budget to improve services, and that, "If LUMA is expected to spend approximately 20 [percent] below budget, LUMA would be unable to improve the system to the extent it has planned."[422]

LUMA claimed that an incentive to underrun the budget affects the implementation of improvement programs, delays plans, and affects the other performance metrics outlined in this proceeding, affecting LUMA's ability to improve its services and earn what was negotiated in the T&D OMA.[423]

c) Discussion and Determinations

From the preceding discussion on the Capital Budget: Federally Funded metric, the Energy Bureau finds it is in the customers' best interest that LUMA use all approved funds to meet the approved projects, programs, and initiatives in the Initial Budget Proceedings as required by the applicable Rate Order. Underspending may temporarily achieve financial savings, but the system as a whole might suffer as a result and thus underspending would ultimately not be in the best interest of the ratepayers. The Energy Bureau notes that in the OMA, this proposed metric did not include the ability for LUMA to receive an incentive payout for performance below 100 percent of the metric. This was an added provision in LUMA's Revised Annex IX, dated February 25, 2021.

Section 7.3(c) of the T&D-OMA[424] gives LUMA the flexibility to reallocate funds with no approval for cumulative amounts not to exceed 5 percent of the approved budget. Section 7.3(e) of the T&D-OMA[425] provides for a procedure for LUMA to amend the approved budget

[419] LECO. Legal Brief, May 11, 2023, page 78-79.

[420] LECO. Legal Brief, May 11, 2023, page 78-79.

[421] LUMA. Legal Brief, May 11, 2023, page 116.

[422] *Id.* page 118-119.

[423] LUMA. Legal Brief, May 11, 2023, page 119.

[424] Section 7.3(c) of the T&D-OMA specifically states that LUMA "shall have complete flexibility, subject to compliance with the Contract Standards and prior consultation with, but not subject to approval by, Administrator or PREB, to (i) reallocate, accelerate or postpone expenditures within the approved Operating Budget, (ii) reallocate, accelerate or postpone expenditures within the approved Capital Budget – Federally Funded, subject to the Federal Funding Requirements, and (iii) reallocate, accelerate or postpone expenditures within the approved Capital Budget – Non-Federally Funded, in each case, (x) in order to address changed operational or commercial circumstances or new legal or regulatory requirements and (y) in such a manner that the reallocations do not exceed five percent (5%) of the Budget in which such reallocations are made or the expenditures are not postponed for a period longer than one (1) year. Any such reallocated amounts shall be treated as if initially budgeted in the Budget in which such reallocations are made in all respects, including with respect to the associated Performance Metrics set forth in Annex IX (Performance Metrics)."

[425] Section 7.3(e) of the T&D-OMA states that LUMA "may, from time to time, propose to amend the approved Operating Budget and Capital Budget for a given Contract Year, including to account for any for Federally Funded Capital Improvements that have been Obligated since the date the Capital Budget – Federally Funded then in effect was approved; provided that any such amendment shall be compliant with the applicable Rate Order. If, during a Contract Year, Operator becomes aware that T&D Pass-Through Expenditures or Generation Pass-Through Expenditures for such Contract Year are expected to exceed a Budget for such Contract Year (taking into account the allowances for Excess Expenditures), then (i) with respect to the Operating Budget and

if LUMA becomes aware that actual expenditures are expected to exceed an approved budget by more than 5 percent. Additionally, Section 7.3(b) of the T&D-OMA includes in the budget an approved 2-percent overrun, giving LUMA greater spending flexibility.[426] Each of the latest submitted and approved Capital Budget: Federally Funded were approved with a 2-percent reserve for overruns.[427] If the metric is evaluated as actual operating expenses for a given fiscal year divided by the approved Capital Budget: Federally Funded for the same fiscal year as incurred, then the approved Capital Budget: Federally Funded for that year includes the 2-percent overrun as required in Section 7.3(b) of the T&D OMA.[428] So if the year-end metric is 100 percent that means that the T&D Actuals were 2 percent higher than the budget.

If another objective of the metric is to make sure the federally funded Actuals equal 100 percent of the budget (or within the approved confines) it is logical that there has to a be a lower limit to the metric to make it effective and of value to the ratepayers. Mr. Kostyk reiterated that PREPA's historical underrunning of the budget resulted in its inability to properly manage and operate the system, and that LUMA created its baselines with this in mind.[429]

The proposed Capital Budget: Federally Funded metric proposed by LUMA is not in line with the objectives for performance metrics articulated earlier in this proceeding to be designed to maximize net benefits for customers. After reviewing the positions and evidence submitted by the parties, the Energy Bureau **APPROVES** the Capital Budget: Federally Funded metric with the following **MODIFICATION**:

1) The metric will achieve its binary performance result if the actual Capital: Federally Funded expenses for a given fiscal year divided by the approved Capital Budget: Federally Funded (as amended) for the same fiscal year as incurred is between 95 percent[430] and 100 percent.

This modification reflects the Energy Bureau's priority for LUMA to deliver on plans for the approved fiscal year and measure LUMA on the delivery of services in alignment with the budget approved by the Energy Bureau. The Energy Bureau's modification to the targets on this metric is consistent with the positions of all parties in the legal briefs. LUMA will have the ability to petition for updates on its own or the Energy Bureau can initiate further review on its own motion.

Capital Budget, Operator shall promptly notify PREB and Administrator and prepare and submit to PREB a proposed amended Operating Budget or Capital Budget for such Contract Year, as the case may be, which amendment shall require and be subject to approval by PREB, and (ii) with respect to the Generation Budget, (x) Operator shall notify PREB, Administrator and Owner and (y) Owner shall, as promptly as practical, prepare and submit to PREB a proposed amended Generation Budget, which amendment shall require and be subject to approval by PREB."

[426] Section 7.3(b) of the T&D-OMA states that "Each Budget shall include up to a maximum of two percent (2%) in excess of the total amount for excess expenditures that may arise in any Contract Year ("Excess Expenditures"); provided that such Excess Expenditures shall at all times be otherwise compliant with the applicable Rate Order. Any Excess Expenditures incurred by Operator during a Contract Year shall be treated as T&D Pass-Through Expenditures and as if initially budgeted for such Contract Year. Each reference herein to a Budget or Default Budget shall be deemed to include such Excess Expenditures to the extent such Excess Expenditures are incurred."

[427] Resolution and Order, *In Re: LUMA Initial Budgets and Related Terms of Service*, Case No.: NEPR-MI-2021-0004, May 31, 2021, Attachment A, Section 5.5, Improvement Portfolios – Total Capital Expenditures; Resolution and Order, *In Re: LUMA Initial Budgets and Related Terms of Service*, Case No.: NEPR-MI-2021-0004, February 27, 2023, Attachment B, *FY 2023 Conditionally Approved Budgets*, and Resolution and Order, *In Re: LUMA Initial Budgets and Related Terms of Service*, Case No.: NEPR-MI-2021-0004, June 25, 2023, Attachment C, Approved FY24 T&D (LUMA) Budgets.

[428] *Ibid.*

[429] LUMA. Direct Testimony of Mr. Kalen Kostyk, August 17, 2021.

[430] Provides for the 5 percent of the Budget flexibility LUMA has as specified in Section 7.3(b) of the T&D-OMA.

Table 30. Performance Targets and Other Key Parameters for Capital Budget: Federally Funded Metric

Baseline	N/A%			
Long-Term Target	N/A%			
Incentive Level	**Minimum**	**75%**	**100%**	**125%**
Year 1	100%	N/A	95%-100%	N/A
Year 2	100%	N/A	95%-100%	N/A
Year 3	100%	N/A	95%-100%	N/A

C. Capital Budget (Non-Federally Funded)

a) LUMA Proposal

In his pre-filed direct testimony, LUMA witness Mr. Kostyk describes the Capital Budget: Non-Federally Funded metric as designed to measure LUMA's ability to stay within budget and "to incentivize effective cost management of non-federally funded projects."[431] The Capital Budget: Non-Federally Funded metric is a Key Performance Metric in the T&D OMA, and LUMA maintained this designation in its proposal.[432] Mr. Kostyk describes the Capital Budget: Non-Federally Funded metric calculation as follows:

> *"This metric will be evaluated as actual Federally Non-Funded Capital expenses for a Fiscal Year, as incurred, divided by approved Capital Budget: Non-Federally Funded for the same Fiscal Year. As defined in Section 7.3(b) of the OMA the Budgets include 2% Excess Expenditures. Budget amendments, as defined in (i) through (iv) in Section 7.4 and 14.5(e) of the OMA, shall be deemed to be included in the initially approved Budgets (denominator) for purposes of this calculation. Further, any funds drawn from the Outage Event Reserve Account and the Contingency Reserve Account, as they have specific requirements, do not contribute to this metric."*[433]

LUMA proposes, the Capital Budget: Non-Federally Funded as a binary metric; as such, "exceeding 102 [percent] of the applicable budget results in no points while spending less than or equal to 100[percent] of the applicable budget results in awarding full Base Points."[434] LUMA's proposed Minimum Performance Level is equal to the Target Performance Level, or 100 percent of the operating budget.[435] Mr. Kostyk states that "LUMA intends to spend all of its budgeted amount to assist in stabilization efforts and allowing for approved amendment changes if and when the budget is adjusted due to efficient operations or extenuating circumstances."[436]

Regarding the binary performance metrics on Operating Budget, and Capital Budgets, a baseline performance level has been proposed before the beginning of the first Contract Year in the OMA. The financial performance metrics are designed, "to comply with the Initial Budgets that… were compiled within the current rate structure and will not require a rate increase."[437]

b) Intervenors

In its legal brief, LECO stated that LUMA's submission does not give the Energy Bureau or the public adequate information to understand LUMA's budget process. According to LECO,

[431] LUMA. Direct Testimony of Kalen Kostyk, August 17, 2021, lines 70-71.

[432] LUMA. Final Revised Annex IX, October 28, 2022, page 19-20.

[433] *Id.* lines 104-112.

[434] LUMA. Final Revised Annex IX, October 28, 2022, page 11.

[435] LUMA. Final Revised Annex IX, October 28, 2022, page 19.

[436] LUMA. Direct Testimony of Kalen Kostyk, August 17, 2021, lines 167-169.

[437] LUMA. Revised Annex IX dated February 25, 2021.

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LUMA did not indicate the functions or events that drive the budgeting process, such as where the internal inputs for the budget process specifically come from, whether there are other "External Dependencies" besides professional services and vendor or external fees, and whether payments to affiliated corporations are included in the "External Dependencies."[438]

LECO asserted that LUMA should not be rewarded for meeting its budgets if LUMA is able to adjust the budget throughout the year. LECO pointed to an example from FY2022 where PREB approved a budget amendment that LUMA submitted in June of that year.[439] LECO argued that LUMA should not receive an incentive payment for staying within budget when the budget can be easily amended.

LECO claimed that LUMA should be able to estimate its annual budget relatively accurately from the outset. The objective of the initial budget process is to assess the accuracy of the process by verifying deviances at the end of the year. LECO called this process into question, asserting that deviations from the budget should be verified at shorter intervals. LECO further claims that deviations from the budget should be limited to emergency and unforeseeable circumstances.

LECO continued to assert that LUMA's budgeting process seems to revolve around the use of federal funds rather than compliance with the Energy Bureau's performance metrics. According to LECO, LUMA's exclusion of the requisite Energy Bureau approval indicates the relative importance that LUMA ascribes to FEMA approval, since LUMA assumes that the Energy Bureau will largely grant its requests. LUMA cited Section 7.3(b) of the OMA which dictates that the budget can include excess expenditures up to 2 percent "treated as T&D Pass thru as if initially budgeted."[440] LECO argued that the ability to treat 2 percent of spending above the budgeted amount as "pass thru" expenses without consequences will likely result in LUMA routinely exceeding the budget. LECO further argued that LUMA's ability to easily seek amendments to the budget will promote excess spending that will have adverse rate impacts.[441]

c) *Rebuttal, Hearing, and Briefs*

In its legal brief, LUMA claimed that it "intends to spend all of its budgeted amounts to assist in stabilization efforts."[442] LUMA further stated that the uncontested record shows that the targets regarding Capital Budget: Non-Federally Funded "were set with the intention to effectively manage and strengthen the resiliency of the T&D System."[443]

LUMA stated that its goal "is to use the funds appropriately to build a more robust, resilient utility to provide customer benefits and meet its obligations under the T&D OMA and energy public policy." LUMA claimed that its desire to meet performance targets will drive it to use the PREB-approved budget to improve services, and that, "If LUMA is expected to spend approximately 20 [percent] below budget, LUMA would be unable to improve the system to the extent it has planned."[444]

LUMA asserted that an incentive to underrun the budget affects the implementation of improvement programs, delays plans, and affects the other performance metrics outlined in

[438] LECO. Legal Brief, May 11, 2023, restating sections from LUMA's Motion Submitting Direct Testimonies on Performance Metrics, Direct Testimony of Kalen Kostyk, page 77.

[439] LECO. Legal Brief, May 11, 2023, restating sections from Kostyk Direct Testimony, page 77.

[440] LECO. Legal Brief, May 11, 2023, restating sections from LUMA's proposal, page 78.

[441] LECO. Legal Brief, May 11, 2023, page 78-79.

[442] LUMA. Legal Brief, May 11, 2023, page 116.

[443] *Ibid.*

[444] *Id.* page 118-119.

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this proceeding, affecting LUMA's ability to improve its services and earn what was negotiated in the T&D OMA.[445]

d) Discussion and Determinations

The Energy Bureau finds it is in the customers' best interest that LUMA use the funds appropriately to build a stronger more resilient utility. The Capital Budget: Non-Federally Funded metric should incentivize LUMA to focus on using all approved funds to meet the approved projects, programs, and initiatives in the Initial Budget Proceedings as required by the applicable Rate Order. While spending less than what is budgeted may temporarily achieve financial savings, the system as a whole may suffer. Underspending will not deliver results in the best interest of the ratepayers. The Energy Bureau notes that in the OMA, this proposed metric did not include an incentive for spending less than 100 percent of the budget. This was an added provision in LUMA's Revised Annex IX, dated February 25, 2021.

Section 7.3(c) of the T&D OMA[446] gives LUMA the flexibility to reallocate funds with no approval for cumulative amounts not to exceed 5 percent of the approved budget. Moreover, Section 7.3(e) of the T&D OMA[447] provides for a procedure for LUMA to amend the approved budget if LUMA becomes aware that actual expenditures are expected to exceed an approved budget by more than 5 percent. Additionally, Section 7.3(b) of the T&D OMA includes in the budget an approved 2-percent overrun, giving LUMA greater spending flexibility.[448] Each of the latest submitted and approved Capital Budget: Non-Federally Funded were approved with a 2-percent reserve for overruns.[449] If the metric is evaluated as actual operating

[445] LUMA. Legal Brief, May 11, 2023, page 119.

[446] Section 7.3(c) of the T&D-OMA specifically states that LUMA "shall have complete flexibility, subject to compliance with the Contract Standards and prior consultation with, but not subject to approval by, Administrator or PREB, to (i) reallocate, accelerate or postpone expenditures within the approved Operating Budget, (ii) reallocate, accelerate or postpone expenditures within the approved Capital Budget – Federally Funded, subject to the Federal Funding Requirements, and (iii) reallocate, accelerate or postpone expenditures within the approved Capital Budget – Non-Federally Funded, in each case, (x) in order to address changed operational or commercial circumstances or new legal or regulatory requirements and (y) in such a manner that the reallocations do not exceed five percent (5%) of the Budget in which such reallocations are made or the expenditures are not postponed for a period longer than one (1) year. Any such reallocated amounts shall be treated as if initially budgeted in the Budget in which such reallocations are made in all respects, including with respect to the associated Performance Metrics set forth in Annex IX (Performance Metrics)."

[447] Section 7.3(e) of the T&D-OMA states that LUMA "may, from time to time, propose to amend the approved Operating Budget and Capital Budget for a given Contract Year, including to account for any for Federally Funded Capital Improvements that have been Obligated since the date the Capital Budget – Federally Funded then in effect was approved; provided that any such amendment shall be compliant with the applicable Rate Order. If, during a Contract Year, Operator becomes aware that T&D Pass-Through Expenditures or Generation Pass-Through Expenditures for such Contract Year are expected to exceed a Budget for such Contract Year (taking into account the allowances for Excess Expenditures), then (i) with respect to the Operating Budget and Capital Budget, Operator shall promptly notify PREB and Administrator and prepare and submit to PREB a proposed amended Operating Budget or Capital Budget for such Contract Year, as the case may be, which amendment shall require and be subject to approval by PREB, and (ii) with respect to the Generation Budget, (x) Operator shall notify PREB, Administrator and Owner and (y) Owner shall, as promptly as practical, prepare and submit to PREB a proposed amended Generation Budget, which amendment shall require and be subject to approval by PREB."

[448] Section 7.3(b) of the T&D-OMA states that "Each Budget shall include up to a maximum of two percent (2%) in excess of the total amount for excess expenditures that may arise in any Contract Year ("Excess Expenditures"); provided that such Excess Expenditures shall at all times be otherwise compliant with the applicable Rate Order. Any Excess Expenditures incurred by Operator during a Contract Year shall be treated as T&D Pass-Through Expenditures and as if initially budgeted for such Contract Year. Each reference herein to a Budget or Default Budget shall be deemed to include such Excess Expenditures to the extent such Excess Expenditures are incurred."

[449] Resolution and Order, *In Re: LUMA Initial Budgets and Related Terms of Service*, Case No.: NEPR-MI-2021-0004, May 31, 2021, Attachment A, Section 5.5, Improvement Portfolios – Total Capital Expenditures; Resolution and Order, *In Re: LUMA Initial Budgets and Related Terms of Service*, Case No.: NEPR-MI-2021-0004, February 27, 2023, Attachment B, *FY 2023 Conditionally Approved Budgets*, and Resolution and Order, *In Re: LUMA Initial Budgets and Related Terms of Service*, Case No.: NEPR-MI-2021-0004, June 25, 2023, Attachment C, Approved FY24 T&D (LUMA) Budgets. Determination on LUMA's FY23 Annual Budgets and LUMA's FY24 Annual Budgets pre-filing requirements - dated February 27, 2023: Attachment B

expenses for a given fiscal year divided by the approved Capital Budget: Non-Federally Funded for the same fiscal year as incurred, then the approved Capital Budget: Non-Federally Funded for that year includes the 2-percent overrun as required in Section 7.3(b) of the OMA.[450] So if the year-end metric is 100 percent that means that the T&D Actuals were 2 percent higher than the budget.

If another objective of the metric is to make sure the non-federally funded Actuals equal 100 percent of the budget (or within the approved confines) it is logical that there has to a be a lower limit to the metric to make it effective and of full value to the ratepayers. Mr. Kostyk reiterated that PREPA's historical underrunning of the budget resulted in its inability to properly manage and operate the system, and that LUMA created its baselines with this in mind.[451]

The proposed Capital Budget: Non-Federally Funded metric proposed by LUMA is not in line with the objectives for performance metrics articulated earlier in this proceeding to be designed to maximize net benefits for customers. After reviewing the positions and evidence submitted by the parties, the Energy Bureau **APPROVES** the Capital: Non-Federally Funded metric with the following **MODIFICATION**:

1) The metric will achieve its binary performance result if the actual Capital: Non-Federally Funded expenses for a given fiscal year divided by the approved Capital Budget: Non-Federally Funded (as amended) for the same fiscal year as incurred is between 95 percent[452] and 100 percent.

This modification reflects the Energy Bureau's priority for LUMA to deliver on plans for the approved fiscal year and measure LUMA on the delivery of services in alignment with the budget approved by the Energy Bureau. The Energy Bureau's modification to the targets on this metric is consistent with the positions of all parties in the legal briefs. LUMA will have the ability to petition for updates on its own or the Energy Bureau can initiate further review on its own motion.

Table 31. Performance Targets and Other Key Parameters for Capital Budget: Non-Federally Funded Metric

Baseline	N/A%			
Long-Term Target	N/A%			
Incentive Level	**Minimum**	**75%**	**100%**	**125%**
Year 1	100%	N/A	95%-100%	N/A
Year 2	100%	N/A	95%-100%	N/A
Year 3	100%	N/A	95%-100%	N/A

D. Reduction in Network Line Losses

a) LUMA Proposal

The OMA includes a performance metric for the Reduction in Network Line Losses, which indicates the utility's ability to reduce line losses, which occur due to resistance along the electrical lines. In the OMA, the metric and targets are determined by "a straight-line

[450] *Ibid.*

[451] LUMA. Direct Testimony of Mr. Kalen Kostyk, August 17, 2021.

[452] Provides for the 5 percent of the Budget flexibility LUMA has as specified in Section 7.3(b) of the T&D-OMA.

calculation using the baseline Performance Level in Year 0 and assuming the Target Performance Level is met in Year 10 instead of Year 5."[453]

In the Final Revised Annex IX filings to the Energy Bureau, LUMA recommends deferring this metric.[454] Mr. Cortez in his testimony testified that, "PREPA does not currently allocate losses to the components of the T&D system, such as lines. Such allocation requires the development of an appropriate model, as well as additional metering and other measures and is currently targeted for Year 2 of the LUMA operations of the T&D system."[455]

b) Intervenors

LECO witness Dr. Irizarry-Rivera did not directly address LUMA's proposal to defer the Reduction in Network Line Losses but recommended "that the PREB impose a metric and requires LUMA provide regular reports of System Losses and LUMA's plan to reduce system losses."[456]

ICPO witness Mr. Cosme provided high-level commentary on the Reduction in Network Line Losses, saying that "if they [LUMA] do not feel sure of providing reliable data regarding those metrics, it's fair for them to defer any compensation of penalty related to it."[457]

c) Rebuttal, Hearing, and Briefs

In response to Dr. Irizarry-Rivera, LUMA witness Mr. Cortez in his rebuttal testimony stated that "PREPA does not currently allocate losses to the components of the system, making this metric highly theoretical and not based on actual data that would be required to set a baseline. An adequate line loss study will be started in Year 1 to outline the approach and data requirements for line loss calculations, [will] require at least eight months after LUMA takes control of the assets[,] and is highly dependent on the ability to accurately update the PREPA distribution system model. Instrumentation from SCADA is not available to track circuit phase loading which is required from all circuits. The installation of circuit measurement devices, [and] instrumentation, will be considered in the approach as a part of the study. The technology currently does not exist in the grid to accurately monitor and calculate system losses."[458]

In its legal brief, LUMA echoed the recommendations to defer this metric due to technical limitations and other evidence in the evidentiary hearing. Mr. Cortez asserted that it would be impossible to track this metric due to a lack of adequate information such as up-to-date electrical diagrams, a measurement of energy coming into the system, and additional metering using smart meters.[459]

d) Discussion and Determinations

The Energy Bureau has reviewed LUMA's recommendation to defer the Reduction in Network Line Losses and the positions of the parties. The Energy Bureau **AGREES** with LUMA's assertion that the measurement of this metric requires the development of a proper model and additional metering.

The Energy Bureau **ADOPTS** LUMA's proposal to defer implementation of the metric for the Reduction in Network Line Losses until Year 2. To continue tracking progress towards this

[453] Annex IX to the T&D OMA, page 22.

[454] LUMA. Final Revised Annex IX, October 28, 2022, Table 1-1, page 8.

[455] LUMA. Direct Testimony of Mr. Don Cortez, August 17, 2021, page 10, lines 196-202.

[456] LECO. Direct Testimony of Agustín Irrizarry-Rivera, page 26-27.

[457] ICPO. Direct Testimony of Gerardo Cosme Nunez, November 17, 2021, page 3, lines 117-121.

[458] LUMA. Rebuttal Testimony of Don Cortez, February 17, 2022, page 20, lines 398-408.

[459] LUMA. Legal Brief, page 76-77.

metric, LUMA **SHALL REPORT** on the status of the required development of appropriate models and the data collection to measure the Reduction in Network Line Losses in the Annual Incentive Fee reports filed with the Energy Bureau until implementation.

E. Overtime

a) LUMA Proposal

In his pre-filed direct testimony, LUMA witness Mr. Kostyk explains that the Overtime metric measures the utility's ability to manage labor expenses and is designed "to incentivize efficient payroll expense."[460] Mr. Kostyk states that the Overtime metric is calculated as "The amount of overtime expenses divided by the amount of total non-exempt base compensation expenses, expressed as a percentage."[461]

LUMA proposes a baseline of 23 percent, which was based on information in PREPA's FY2021 Certified Budget request.[462] Mr. Kostyk explains that as PREPA did not provide historical overtime data, "LUMA utilized the FY2021 Certified Budget as the best proxy of current overtime expectations."[463]

LUMA proposes a Year 1 target of 20 percent, and an improvement trajectory of 1 percent each year (i.e., 19 percent in Year 2 and 18 percent in Year 3). Mr. Kostyk discusses the reasoning for the proposed Overtime targets, and explains, "LUMA's Overtime metric targets were set with the intention to recognize root causes in labor and wage expectations and improve performance over time. Each year, LUMA plans to strengthen its ability to forecast overtime by implementing a timekeeping system and enable processes that allow for more timely and accurate labor data by project."[464]

b) Intervenors

In its legal brief, LECO stated that "LUMA's proposal to use PREPA's 2021 approved budget as a baseline for Overtime metrics is not appropriate given the significantly different circumstances facing PREPA in 2021. PREPA's Fiscal Plans certified by the Financial Oversight and Management Board for Puerto Rico ("FOMB") indicate that PREPA was understaffed."[465] LECO asserted that understaffing caused much higher workforce overtime.[466] LECO claimed that "using PREPA's 2021 approved Budget, as proposed by LUMA, is clearly not an adequate baseline for the overtime metric."[467] Moreover, LECO argued that "LUMA should not collect an overtime metric incentive payment if LUMA does not comply with other critical service metrics, such as duration of service interruptions"[468]

c) Rebuttal, Hearing, and Briefs

During the evidentiary hearing, LUMA witness Mr. Kostyk stated that the Overtime metric was set to recognize root causes in labor and wage expectations and improving performance

[460] LUMA. Direct Testimony of Kalen Kostyk, August 17, 2021, lines 116-117.

[461] *Id.* lines 118-119.

[462] *Id.* lines 160-161.

[463] *Id.* lines 160-162.

[464] *Id.* lines 173-176.

[465] PREPA.2021 Fiscal Plan for the Puerto Rico Electric Power Authority as certified by the Financial Oversight and Management Board for Puerto Rico (May 27, 2021).

[466] LECO. Legal Brief, May 11, 2023, page 75.

[467] LECO. Legal Brief, May 11, 2023, page 76.

[468] *Ibid.*

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over time.[469] According to Mr. Kostyk, LUMA established the baseline and targets using the FY2022 Certified Budget, which it believed to be the best representation of the data it reviewed, to set achievable targets for the first three years. LUMA wanted to show improvements year-over-year and used PREPA's budget baseline for its fiscal year with the purpose of showing continual improvement. LUMA did not have sufficient data to set targets in a scientific or linear fashion, as it had not yet started operations.[470]

In its legal brief, LUMA asserted that the Overtime metric is designed to achieve efficiencies in payroll expenses. LUMA explained that incentivizing the control of overtime by setting standards and targets decreases expenses, while also promoting personnel efficiency and reducing the risk of safety and health incidents around the workplace.[471]

d) Discussion and Determinations

The Energy Bureau believes that LUMA's proposal for the Overtime metric is a good start to incentivize efficiencies in payroll expenses. The metric as presented ensures LUMA focuses on the ability to achieve efficiency in payroll expenses through the control of overtime without affecting the ability to operate the T&D infrastructure.

The Energy Bureau finds that LUMA's proposed year-over-year target improvements represent a reasonable rate of improvement.

After reviewing the positions and evidence submitted by the parties, the Energy Bureau **APPROVES** the Overtime metric with the following **MODIFICATION**:

1) Update the Performance Tiers and associated targets for Overtime such that incentive earnings opportunities are provided at 75 percent, 100 percent, and 125 percent of the total allocated incentive, consistent with the approach described in Section IV.H.

The Energy Bureau **ADOPTS** this modification for the Overtime metric to ensure LUMA continues to improve overtime expense management.

The Energy Bureau will let LUMA and other parties request further modification to the baselines and targets for this metric as PREPA approaches its exit from Title III Bankruptcy. The Energy Bureau is also interested in establishing updates based on the most current information as LUMA approaches the first Contract Year. LUMA will have the ability to petition for updates on its own or the Energy Bureau can initiate further review on its own motion.

Table 32. Performance Targets and Other Key Parameters for Overtime Metric

	Minimum	75%	100%	125%
Baseline	23%			
Long-Term Target	17%			
Year 1	23%	21%	20%	19%
Year 2	22%	20%	19%	18%
Year 3	21%	19%	18%	17%

[469] AP-2020- 0025 Evidentiary Hearing-20230209_Meeting Recording 2 [2:28:37-2:28:56].

[470] AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 2 [2:32:07-2:32:18].

[471] LUMA. Legal Brief, May 11, 2023, page 155.

F. Days Sales Outstanding: General Customers

a) LUMA Proposal

After several iterations, in its Revised Annex IX, dated February 25, 2021, LUMA proposes bifurcating the Days Sales Outstanding ("DSO") metric into general customers and government customers. Days Sales Outstanding: General Customers measures the ability to collect bills from general customers and Days Sales Outstanding: Government Customers measures the ability to collect bills from government customers. LUMA witness Mr. Fonseca explains that "LUMA has opted to split these out with different measurements as a result of the vastly different collection period for each of these customer types[472] LUMA also proposes new base points for each metric.

Since the bifurcation of the DSO performance metric and the deferral of the Reduction in Network Line Losses performance metric, the total financial performance base points were reduced from 38 in the T&D OMA Annex IX to 33. LUMA proposes a slight increase in the effective weightings for each of the individual finance metrics.

For both DSO performance metrics, General Customers and Government Customers, LUMA proposes a baseline based on the period of May 2019 through March 2020, which LUMA found is the most stable period for baseline calculations.[473]

<u>Days Sales Outstanding: General Customer</u>

In his pre-filed direct testimony, LUMA witness Mr. Fonseca states that the Days Sales Outstanding: General Customer metric is designed to "measure the ability to collect payments for general clients' customer billings and is calculated by dividing the year-end amount of general customers' receivable[474] by the total year-end value of general customers' credit sales and multiplying the result by the number of days in that year."[475]

b) Intervenors

In its legal brief, LECO argued that the baseline for the DSO metrics should be based on industry standards rather than the proposed nine-month period from May 2019 to February 2020. LECO claimed that the baseline, "was calculated using very limited data for periods of extreme irregularity in the electric system after Hurricane Maria."[476] Additionally, LECO stated that "Measures related to PREPA's bankruptcy have had adverse impacts on PREPA's DSO numbers. The closure of many commercial offices in 2019 created havoc for customers to make timely payments which affected DSO numbers and should not anchor the DSO metric to the low bar that LUMA proposes."[477]

LECO noted that FOMB[478] supports the contracting of LUMA because of the FOMB's historical concerns about cash flow and liquidity under PREPA. Echoing FOMB's concerns, LECO argued that DSO is an important metric because it aims to improve the reliability of cash collection which in turn improves PREPA's liquidity. LECO stated in its legal brief that "LUMA is just proposing a 2 [percent] reduction in DSO for Years 1,2,3 and starting from a very low

[472] LUMA. Response to Energy Bureau's ROI 3, Question 41, September 16, 2021.

[473] LUMA. Direct Testimony of Juan Fonseca, August 17, 2021, lines 75-86.

[474] Receivables are all funds owed to LUMA for energy used by the customer that has not yet been paid.

[475] LUMA. Direct Testimony of Juan Fonseca, August 17, 2021, lines 47-51.

[476] LECO. Legal Brief, May 11, 2023, page 76.

[477] LECO. Legal Brief, May 11, 2023, page 76.

[478] The FOMB was created under the Puerto Rico Oversight, Management and Economic Stability Act of 2016.

performance baseline. A 2[-percent] reduction implies that it will take LUMA 53 years to reach industry standards of less than 45 days."[479]

c) Rebuttal, Hearing and Briefs

According to LUMA, the Days Sales Outstanding: General Customers metric "is calculated [on] a net basis. The adjustments made to gross DSO include subtracting Contributions in Lieu of Taxes…, Street Lighting, and Uncollected Reserve Account."[480] According to Mr. Fonseca, LUMA does not "have a formal procedure to calculate the DSO, because the DSO is a math equation dividing the sales vs collections vs days (365)." He clarified that "the baseline data submitted on the DSO baseline and Target report is the same as the M-8 report."[481]

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 30 days after a bill is sent for general clients and earlier than 45 days for Government accounts.[482] Moreover, Mr. Fonseca testified during the evidentiary hearing that LUMA established a Minimum Performance Target of 148 days, which was obtained by comparison with electric utilities in Brazil that have similar levels of customers and poverty as PREPA .[483]

d) Discussion and Determinations

From the preceding discussion on the DSO metric, the Energy Bureau believes that subtracting Contributions in Lieu of Taxes, Street Lighting, and Uncollected Reserve Accounts from the DSO metric ensures that the metric focuses on the ability to collect payment and is not distorted by adjustment, such as the Uncollectable Reserves. All parties echoed the concern that the metric could be susceptible to possible distortions due to adjustments. The Energy Bureau does not want accounting changes or any other changes in adjustments that do not reflect a material underlying change in the business to impact the metric.

The proposed improvement in DSO year-over-year proposed by LUMA is not in line with the objectives to go "above and beyond" and "Achieve Public Policy Earlier."

After reviewing the positions and evidence submitted by the parties, the Energy Bureau **APPROVES** the Days Sales Outstanding: General Customer metric with the following **MODIFICATIONS**:

1) Update the Annual Performance Target using "Approach 1a" based on Section IV.F. The Long-Term Performance Target is 70 days.
2) Update the Performance Tiers and associated targets for Days Sales Outstanding: General Customers, such that incentive earnings opportunities are provided at 75 percent, 100 percent, and 125 percent of the total allocated incentive, consistent with the approach described in Section IV.H.

These modifications reflect the Energy Bureau's priority for LUMA to employ available resources to improve collections. The Energy Bureau's modifications to the targets in this metric are consistent with the positions of all parties in the legal briefs. In addition, the Energy Bureau will allow LUMA and other parties to request further modifications to the baselines and targets for this metric as PREPA approaches its exit from Title III Bankruptcy.

[479] LECO. Legal Brief, May 11, 2023, page 76.

[480] LUMA. Response to Energy Bureau's ROI 3, Question 42, September 16, 2021.

[481] *Ibid.*

[482] Exhibit 58 of the Evidentiary Hearing, lines 107-110.

[483] Evidentiary Hearing AP-2020-0025 Evidentiary-20230209_Meeting Recording 2 [3:01-3:03].

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The Energy Bureau is also interested in establishing updates based on the most current information as LUMA approaches the first Contract Year. LUMA will have the ability to petition for updates on its own or the Energy Bureau can initiate further review on its own motion.

Table 33. Performance Targets and Other Key Parameters for Days of Sales Outstanding: General Customer Metric

Baseline	131			
Long-Term Target				
Incentive Level	**Minimum**	**75%**	**100%**	**125%**
Year 1	148	122	119	111
Year 2	145	113	106	90
Year 3	142	105	94	70

G. Days Sales Outstanding: Government Customers

a) LUMA Proposal

After several iterations, in its Revised Annex IX, dated February 25, 2021, LUMA proposes bifurcating the DSO metric into Days Sales Outstanding: General Customers and Days Sales Outstanding: Government Customers. Days Sales Outstanding: General Customers measures the ability to collect bills from general customers and Days Sales Outstanding: Government Customers measures the ability to collect bills from government customers. Mr. Fonseca explains that "LUMA has opted to split these out with different measurements as a result of the vastly different collection period for each of these customer types."[484]

Since the bifurcation of the DSO performance metric and the deferral of the Reduction in Network Line Losses performance metric, the total financial performance base points were reduced from 38 in the OMA Annex IX to 33. LUMA proposes a slight increase in the effective weightings for each of the individual finance metrics.

For both DSO performance metrics, General Customers and Government Customers, LUMA is proposing a baseline based on the period of May 2019 through March 2020, which LUMA found is the most stable period for baseline calculations (normal period of operation).[485]

<u>Days of Sales Outstanding: Government Customers</u>

In his pre-filed direct testimony, LUMA witness Mr. Fonseca states that the Days Sales Outstanding: General Customer metric is designed to measure the ability to collect payments for government customers billing and is "calculated by dividing the year-end amount of government accounts receivable by the total year-end value of government credit sales and multiplying the result by the number of days in that year. It is a performance metric that will reflect the impact of government collections."[486]

b) Intervenors

In its legal brief, LECO argued that the baseline for the DSO metrics should be based on industry standards rather than the proposed nine-month period from May 2019 to February 2020. LECO claimed that the baseline, "was calculated using very limited data for periods of extreme irregularity in the electric system after Hurricane Maria. LUMA's proposed baseline is calculated over a nine-month period (May 2019–Feb 2020) instead of a 12-month period."[487] Additionally, LECO stated that, "Measures related to PREPA's bankruptcy have

[484] LUMA. Response to Energy Bureau's ROI 3, Question 41, September 16, 2021.

[485] LUMA. Direct Testimony of Mr. Juan Fonseca, pages 17-18.

[486] LUMA. Direct Testimony of Mr. Juan Fonseca, August 17, 2021, lines 52-58.

[487] LECO. Legal Brief, May 11, 2023, page 76.

had adverse impacts on PREPA's DSO numbers. The closure of many commercial offices in 2019 created havoc for customers to make timely payments which affected DSO numbers and should not anchor the DSO metric to the low bar that LUMA proposes. LUMA's DSO metric should not be based on nine months of PREPA's worst performance years due to understaffing and underinvestment, but rather, it should follow industry standards."[488]

LECO noted that FOMB[489] supports the contracting of LUMA because of the FOMB's historical concerns about cash flow and liquidity under PREPA. Echoing FOMB's concerns, LECO argued that DSO is an important metric because it aims to improve the reliability of cash collection which in turn improves PREPA's liquidity. LECO stated in its legal brief that "LUMA is just proposing a 2[-percent] reduction in DSO for Years 1,2,3 and starting from a very low performance baseline."[490]

c) *Rebuttal, Hearing, and Briefs*

In response to Energy Bureau requirements of information, Mr. Fonseca claimed that LUMA does not have a formal procedure to calculate the DSO because, "the DSO is a math equation dividing the sales vs collections vs days (365)."[491] He clarified that "the baseline data submitted on the DSO baseline and Target report is the same as the M-8 report."[492]

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 30 days after a bill is sent for general clients and earlier than 45 days for government accounts.[493] 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."[494] According to Mr. Fonseca, "The Minimum Performance Level for the DSO: Government Customers' Performance Metric of 850 days was obtained considering PREPA's historical data due to the specific peculiarities of the government in Puerto Rico."[495]

d) *Discussion and Determinations*

The Energy Bureau finds that Contributions in Lieu of Taxes, Street Lighting, and Uncollected Reserve Accounts should be subtracted from the DSO metric to ensure the metric focuses on the ability to collect payment and is not distorted by adjustment, such as the Uncollectable Reserves. All parties expressed concern that the metric could be susceptible to possible distortions due to adjustments. The Energy Bureau does not want accounting changes or any other unwarranted adjustments to impact the metric.

The proposed improvement in DSO year-over-year proposed by LUMA is not in line with the objectives for performance metrics articulated earlier in this proceeding to go "above and beyond" and "Achieve Public Policy Earlier."

After reviewing the positions and evidence submitted by the parties, the Energy Bureau **APPROVES** the Days Sales Outstanding: Government Customer metric with the following **MODIFICATIONS**:

488 LECO. Legal Brief, May 11, 2023, page 76.

489 The FOMB was created under the Puerto Rico Oversight, Management and Economic Stability Act of 2016.

490 LECO. Legal Brief, May 11, 2023, page 76.

491 LUMA. Response to Energy Bureau's ROI 3, Question 42, September 16, 2021.

492 *Ibid.*

493 Exhibit 58 of the Evidentiary Hearing, lines 107-110.

494 Evidentiary Hearing Transcript, February 9, 2023; AP 2020-0025 Evidentiary-20230209_Meeting Recording 2 starting [3:03:50].

495 *Ibid.*

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1) Update the Annual Performance Target using "Approach 1a" based on Section IV.F. The Long-Term Performance Target is 401 days.
2) Update the Performance Tiers and associated targets for Days Sales Outstanding: Government Customers, such that incentive earnings opportunities are provided at 75 percent, 100 percent, and 125 percent of the total allocated incentive, consistent with the approach described in Section IV.H.

These modifications reflect the Energy Bureau's priority for LUMA to employ available resources to improve collections. The Energy Bureau's modifications to the metric targets are consistent with the positions of all parties in the legal briefs. In addition, the Energy Bureau will let LUMA and other parties request further modification to the baselines and targets for this metric as PREPA approaches its exit from Title III Bankruptcy. The Energy Bureau is also interested in establishing updates based on the most current information as LUMA approaches the first Contract Year. LUMA will have the ability to petition for updates on its own or the Energy Bureau can initiate further review on its own motion.

Table 34. Performance Targets and Other Key Parameters for Days of Sales Outstanding: Government Customer Metric

Baseline	754			
Long-Term Target	401			
Incentive Level	**Minimum**	**75%**	**100%**	**125%**
Year 1	850	704	683	636
Year 2	833	653	613	518
Year 3	815	603	542	401

D. Major Outage Events

Section 7.(c) of the T&D OMA states that if any MOE prevents LUMA from achieving one or more performance metrics, LUMA shall be entitled to earn the Incentive Fee provided they achieve the MOE Performance Metrics.

A. Major Outage Events Performance Metrics

a) LUMA Proposal

In pre-filed direct testimony, LUMA witness Mr. Hurtado stated that the T&D OMA outlines metrics and targets for "providing reliable electrical service during normal conditions" and highlights that the "Performance Metrics are not intended to, cannot and do not provide any quantitative measurement of utility performance during a major outage event."[496] Therefore, LUMA proposes the MOE performance metrics to measure the performance during an MOE. LUMA proposes 16 metrics that measure performance in preparation before an event and operational response and communications during a period of an MOE. The T&D OMA states, "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 Performance Metrics during such period of time."[497]

LUMA proposes to define an MOE 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*

[496] LUMA. Direct testimony of Mario Hurtado. August 18, 2021. at Lines 149-154.

[497] LUMA. Revised Annex IX dated August 18, 2021, page 33.

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(≥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."[498]

LUMA proposes to categorize MOEs according to the following criteria:

"Events are categorized based on forecasted impact and revised post-event based on actual impact, to be measured from the start of the operational response (after the event has passed and when it is physically safe to dispatch crews) to when less than ten thousand (<10,000) T&D Customers remain interrupted for more than 8 hours as follows:

- *3 to 5 days*
- *5 to 10 days*
- *Greater than 10 days"*[499]

LUMA proposes to score storm response on a scale of 1,000 total points where the preparation metrics comprise 250 points, operational response metrics are worth 450 points, and communications total 350 points.

LUMA states that the MOE performance metrics were included during the negotiations of the T&D OMA with the P3A to measure storm response in Puerto Rico.[500] LUMA's proposal, under direction from the P3A, was modeled after the storm response scorecard approved by the New York Public Service Commission and used to track storm response by investor-owned utilities and the Long Island Power Authority ("LIPA").[501]

Mr. Hurtado states that LUMA developed the scorecard according to the following process, "Specifically, we reviewed the State of New York Public Service Commission's scorecard for reporting on emergency response for electric utilities. The three categories and metrics are generally aligned with the NY PSC scorecard methodology."[502]

b) Intervenors

In direct testimony, LECO's witnesses did not directly address LUMA's proposal for MOE performance metrics but witness Dr. Irizarry-Rivera stated, "public safety measures are absent in LUMA's proposal of performance metrics."[503] Dr. Irizzary-Rivera recommended Emergency Response Time as a performance metric to achieve public safety.[504]

ICPO witness Mr. Cosme opposed LUMA's proposal because tracking these metrics could divert LUMA's resources during a storm event when the focus should be on responding to the major event. He also stated that the Estimated Time of Restoration (ETR) and ETR accuracy are the primary measures of importance, "I believe that the better incentive for an

[498] *Id.* at p. 33.

[499] *Id.* page 33.

[500] LUMA response to Energy Bureau's ROI 2, Question 18(b), September 16, 2021.

[501] *Id.*

[502] LUMA. Direct Testimony of Mario Hurtado, August 18, 2021, lines 175-179. See Table 2 - Section III.C. for LUMA's proposed categories and metrics.

[503] LECO. Direct Testimony of Agustin Irizarry-Rivera, November 17, 2021, page 22, lines 12-14.

[504] *Id.* page 25, lines 14-15.

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electric utility is to recover normal operational status as soon as possible in order to start providing services in order to produce the associated revenues."[505]

Mr. Cosme recommended that the Energy Bureau only approve metrics related to ETR and ETR accuracy and that these should be for monitoring purposes only, not for an incentive metric.[506]

c) Rebuttal, Hearing, and Briefs

In its rebuttal, LUMA witness Mr. Tonsi responded to the assertions by the LECO and ICPO witnesses. LUMA disagreed with LECO's recommendation for a specific public safety metric because, "within the MOE metrics there are multiple existing statistics or measures that ensure that LUMA is focused on the safety of the public, emphasizing communication with the public regarding safety around utility facilities and work sites."[507] LUMA referred to the preparation phase metric within the MOE scorecard, which required public notifications of a pending storm event and communications with the Puerto Rico Emergency Management Bureau Regional Offices as well as other relevant government entities.[508] LUMA also pointed out that the metric for downed wires addresses response time between a reported downed wire and the initiation of appropriate action to make sure LUMA responds as quickly as possible to eliminate a risk to public safety.[509] Finally, LUMA cited its training to internal staff and first responders on the risks of electricity as another safety response it is performing.[510]

LUMA contended that LECO's proposal for an emergency response time metric, "does not consider the realities of utility emergency restoration or LUMA's operations and ignores LUMA's ERP [Emergency Response Plan]."[511] LUMA's witness provided several examples of situations where it may be dangerous or infeasible for LUMA's staff to respond to an emergency within 60 minutes. In addition, LUMA stated that the proposal from LECO did not account for the range in severity and impacts from storm events.[512]

LUMA's witness also disagreed with ICPO's recommendations to the Energy Bureau on the MOE performance metrics. First, Mr. Tonsi stated, "The MOE metrics were negotiated as part of the T&D OMA and are based on the New York Public Service Commission (NYPSC) Order. LUMA was asked to follow the NYPSC Major Event Scorecard as best as possible."[513] LUMA also described that tracking the proposed metrics are part of prudent management of outages and the utility industry will see more utilities with similar metrics, "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 enables LUMA to prioritize key objectives."[514]

In response to ICPO witness Mr. Cosme's recommendation to only track ETR and ETR accuracy, LUMA stated "Good emergency management organizations have a guiding principle of being proactive versus reactive…I see Mr. Cosme's focus on ETRs only as an

[505] ICPO. Direct Testimony of Gerardo Cosme Nunez, November 17, 2021, page 5, lines 206-208.

[506] *Id.* page 6, lines 228-230.

[507] LUMA. Rebuttal Testimony of Terry Tonsi, page 5, lines 81-83.

[508] *Id.* page 5-6, lines 83-91.

[509] *Id.* page 6, lines 91-95.

[510] *Id.* page 6, lines 95-102.

[511] *Id.* page 6, lines 111-112.

[512] *Id.* page 6-7, lines 112-133.

[513] *Id.* page 8, lines 142-145.

[514] *Id.* page 8, lines 153-156.

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example of reactive response versus the overall MOE metrics that have an impact on the overall response to an MOE."[515]

During the evidentiary hearing, Commissioners questioned LUMA witnesses on numerous aspects of implementing the MOE metrics, such as lessons from Hurricane Fiona,[516] LUMA's response to downed wires,[517] triggers to apply the MOE metrics,[518] differences between MOE metrics and performance metrics during "steady state" conditions,[519] and origin of the MOE metrics.[520] In response to questions from Commissioner Ramos on LUMA potentially earning up to one-and-a-half (1.5) times the incentive fee, LUMA witness Mr. Hurtado clarified that LUMA did not intend to earn an incentive fee over the part available under the MOE period.[521]

LUMA's legal brief further discussed testimony during the evidentiary hearing, particularly that LUMA adapted the scorecard from the New York Public Service Commission as the basis for its proposal.[522] LUMA's legal brief also clarified details on implementing the scorecard for an incentive payment. On this topic, LUMA witness Mr. Hurtado stated, "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." As a specific example, LUMA offered, "If the Major Outage Event occupies 10% of the year, that portion of the year would not be ruled by the regular Performance Metrics. If the fee was $10.0 million, LUMA would earn $1.0 million if it met the MOE Metrics."[523]

In addition, LUMA clarified that, "the MOE metrics do not provide an additional incentive."[524] Instead, "in the overall incentive that exists, if there's a Major Outage Event, these metrics – or these specific types of events would be applied that would be included in the report that go to the Energy Bureau, and the Energy Bureau would have the opportunity to gauge the performance of the utility during the event as well as during regular operations."[525]

ICPO's legal brief raised concerns about the uncertain duration of MOEs and if an initial event becomes sustained for a long period. ICPO requested the Energy Bureau to clarify the applicability and duration of the MOE metrics.[526]

LECO raised several concerns with LUMA's MOE proposal in its legal brief. LECO criticized LUMA's proposal for earning incentives for just meeting the Minimum Performance Level by performing the tasks in the preparation phase.[527] LECO also criticized LUMA's proposed weighting on metrics that involve significant public safety hazards, such as downed wires.

[515] *Id.* page 11, lines 212-216.

[516] Evidentiary Hearing, Vol. 4, page 826, line 3- page 827, line 4 (T. Tonsi English Portion); AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [0:56:17].

[517] Evidentiary Hearing, Vol. 4, page 827, line 4- page 829, line 11 (T. Tonsi English Portion); AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [0:58:01].

[518] Evidentiary Hearing, Vol. 4, page 832, line 18 - page 837, line 14 (M. Hurtado English Portion); AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:06:35].

[519] Evidentiary Hearing, Vol. 4, page 837, line 18 - page 840, line 1 (M. Hurtado English Portion); AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:12:54].

[520] Evidentiary Hearing, Vol. 4, page 845, line 8 - page 846, line 7 (M. Hurtado English Portion); NEPR-AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [1:22:35].

[521] Evidentiary Hearing, Vol. 4, page 923, line 22- page 926, line3 (M. Hurtado English Portion); NEPR-AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 2 [2:20:39].

[522] LUMA. Legal Brief, May 11, 2023, page 139.

[523] LUMA. Legal Brief, May 11, 2023, page 138.

[524] LUMA. Legal Brief, May 11, 2023, page 138.

[525] LUMA. Legal Brief, May 11, 2023, page 138.

[526] ICPO. Legal Brief, May 11, 2023, page 30-32.

[527] LECO. Legal Brief, May 11, 2023, page 84-85. For reference, LUMA proposes a Minimum Performance Level of 250 points which is equal to the maximum potential points in the preparation phase. Under LUMA's proposal, LUMA would begin to earn incentive payments for scores above 250 points.

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LECO believed these should have higher relative weighting.[528] LECO also discussed that LUMA's proposal does not address longstanding geographic equity concerns that power restoration times for mountainous communities consistently lag other parts of the island.[529]

ICPO's reply brief stated that LUMA has not sufficiently addressed its concerns about the lack of clarity on the MOE event criteria.[530] In its reply brief, LECO heavily criticized the proposed MOE metrics.[531] Given these concerns, LECO recommended that the Energy Bureau deny the proposal and require LUMA to file new MOE metrics. LECO stated that a revised proposal should include penalties, ensure LUMA restores power quickly and safely, and should incorporate energy justice to avoid the same communities experiencing extended outages during MOEs.[532]

LUMA's reply brief to ICPO provided additional explanation and detail on the definition and application of the criteria to determine an MOE.[533] LUMA's reply brief to LECO offered an extensive response to LECO's criticisms of the MOE metrics. The response clarified that the basis for LUMA's proposal was the scorecard approved by the New York Public Service Commission and some metrics in the scorecard (such as downed wire response, ETR, and ETR accuracy) address restoration of power, which LECO said was lacking from the proposal and a major deficiency.[534]

d) Discussion and Determinations

The Energy Bureau finds that major event response is a priority function for LUMA as the T&D operator of Puerto Rico's electricity grid. From this perspective, the Energy Bureau supports a quantitative evaluation tool to measure LUMA's response to each MOE. LUMA and the P3A's decision to use an existing scorecard from another storm-prone jurisdiction is a reasonable approach.

During the evidentiary hearing, the Energy Bureau raised concerns about the ambiguities in how these metrics operate in practice during inherently challenging events such as major storms. During the evidentiary hearing, LUMA witness Mr. Hurtado also admitted to uncertainties in the implementation of the MOE performance metrics. The parties to the proceeding have raised their concerns on these uncertainties and LUMA's legal brief has helped resolve some of the Energy Bureau's concerns.

Given the high importance of improving storm response and measuring this response quantitatively, the Energy Bureau **APPROVES** LUMA's proposed MOE performance metrics with the following **CLARIFICATIONS:**[535]

- LUMA will include the Energy Bureau in the preparation phase communications to government agencies on upcoming storms that could trigger an MOE;
- After an event triggers the MOE criteria, LUMA will inform the Energy Bureau as soon as reasonably possible;
- LUMA will include a Post-MOE Report in the Quarterly Report following the conclusion of an MOE;

[528] LECO. Legal Brief, May 11, 2023, page 85-86.

[529] LECO. Legal Brief, May 11, 2023, page 88.

[530] ICPO. Reply Brief, September 21, 2023, page 17.

[531] LECO. Reply Brief, September 21, 2023, page 21-24.

[532] *Id.* Page 37-38.

[533] LUMA. Reply to ICPO's Legal Brief, September 21, 2023, page 37-40.

[534] LUMA. Reply to LECO's Legal Brief, September 21, 2023, page 110-122.

[535] Nothing set forth herein to calculate LUMA's Incentive Fee releases LUMA from complying with established guidelines for emergency preparedness/response in accordance with LUMA's Emergency Response in *In re: Puerto Rico Electric Power Authority's Emergency Response Plan,* Case No.: NEPR-MI-2016-0006.

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- The Post-MOE Report shall include:
  - A description of the MOE;
  - LUMA's actions to restore power and address major safety hazards, such as downed wires;
  - LUMA's scores on the MOE metrics, where known and available;
  - For MOE performance metric scores that remain unknown, LUMA shall provide the best available estimate and update the report when scores are known;
  - LUMA's estimate of the time period affected by the storm; and
  - LUMA's best estimate of the Performance Metrics Incentive Fee that LUMA may be entitled to earn for the period that the MOE continues.[536]
- In the annual Incentive Fee Report, LUMA shall provide a detailed explanation on how the MOE affected LUMA's performance metrics, document LUMA's performance on the MOE scorecard, and provide all supporting information required to determine the incentive fee earned by LUMA ~~metrics~~during the period that the MOE continues;
- Consistent with LUMA's testimony in the evidentiary hearing and legal brief, LUMA shall not be entitled to an incentive fee over the 100-percent target level of the MOE performance metric; and
- The incentive tiers for the MOE metrics are adjusted to allow LUMA to earn an incentive fee for a 50-percent range of performance consistent with the other performance metrics.

Table 35. Performance Targets and Other Key Parameters for Major Outage Event Metric

	Minimum	50%	100%
Baseline	N/A		
Long-Term Target	N/A		
Year 1	250	500	1,000
Year 2	250	500	1,000
Year 3	250	500	1,000

The Energy Bureau's clarifications on MOE reporting provide further transparency on LUMA's storm response performance without detracting from the response during and after the major event. They also address concerns raised by Commissioners during the evidentiary hearing and parties in their legal briefs on potential ambiguity in the time period(s) in which the MOE metrics are in effect.

Specifically, LUMA will be deemed to have achieved a level of performance upon which to base its eligibility to earn the Performance Metrics Incentive Fee that it may be entitled to earn during the period that the MOE continues, after reaching a score of 500 points on the MOE Metrics, and the potential incentive fee that could be earned from the Performance Metrics that form the basis for the Incentive Compensation Pool for that period increases proportionately to 100 percent with a score of 1,000 on the MOE metrics.

These clarifications simplify the scoring structure and are consistent with LUMA's testimony that the MOE metrics do not provide an additional incentive.[537] These clarifications maintain a 50-percent range of performance on the MOE metrics, which is consistent with the adjustment to the incentive tiers for the other performance metrics.

[536] The MOE Performance Metrics are employed by the Energy Bureau to gauge LUMA's preparedness and response to a Major Outage Event, however, these metrics are not part of the Performance Metrics that form the basis for the Incentive Compensation Pool. For example, during an MOE, the Energy Bureau may determine that LUMA's response to Down Wires was adequate as established in LUMA's Emergency Response Plan in *In re: Puerto Rico Electric Power Authority's Emergency Response Plan,* Case No.: NEPR-MI-2016-0006. However, LUMA will not earn Incentive Compensation for adequately having responded to Down Wires. This type of response is established by the Emergency Response Plan and is not part of the Incentive Compensation Pool.

[537] Evidentiary Hearing, Vol. 4, page 926, line 8 - page 926, line 16 (M. Hurtado English Portion); NEPR-AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 2 [2:23:57].

The Energy Bureau's clarifications also address the concerns raised by ICPO and LECO. LUMA has to earn a score of at least 500 before beginning to earn an incentive fee, which requires satisfactory performance on MOE metrics beyond the preparation phase.

As LUMA, the Energy Bureau, and stakeholders gain experience with the application of the MOE performance metrics, the Energy Bureau will review how the metrics and applicable incentive fee improve LUMA's response to MOEs.

VI . Further Processes to Finalize Annex IX and Implementation Activities for LUMA's Performance Metrics

Shortly after issuing this Final R&O, the Energy Bureau will open a separate proceeding to review updates to Annex IX consistent with the approvals and directives in this Final R&O. The Energy Bureau will also consider using the new proceeding for the Baseline Update Process described in Section IV.E and review of the Annual Incentive Fee report. The opening order of the new proceeding will further describe the intended scope of the docket.

VI. Findings of Fact and Conclusions of Law

In the interest of maintaining clarity and coherence in this Final Resolution and Order, any findings of fact which are located within the Conclusions of Law section shall be recognized and treated as findings of fact. Similarly, any conclusions of law present within the Findings of Fact section shall be acknowledged as conclusions of law. Furthermore, all findings of fact and conclusions of law, irrespective of their placement in other sections of this Final Resolution and Order's corpus, shall be considered as effectively incorporated into the appropriate sections of Findings of Fact or Conclusions of Law, as applicable. This action safeguards the integrity and precision of the Energy Bureau's decisions, reflecting its commitment to a clear, exact, and systematic arrangement of information in its official resolutions.

A. Findings of Fact

1. The performance metrics that LUMA proposes for the initial three-year period, including those metrics that LUMA proposes to defer and LUMA's proposed MOE performance metrics, are aligned in their overall design and objectives with the public policy objectives of Puerto Rico.
2. The performance metrics that LUMA proposes be designated as Key Performance Metrics all relate to critical dimensions of LUMA's performance. The public policy of Puerto Rico has prioritized these performance dimensions.
3. The inclusion of three years of performance targets will provide LUMA with an appropriate timeframe for making performance improvements within a stable performance-incentive framework.
4. The minimum performance levels that have been proposed by LUMA reasonably correspond to the thresholds for acceptable performance.
5. Current baseline performance is best indicated by the performance results for the last completed performance period, which is Fiscal Year 2023 (FY23).
6. The baseline performance level informs the appropriate level for performance targets.
7. Updates to baselines generally necessitate updates to performance targets.
8. LUMA has not proposed a consistent approach to setting performance targets for its performance metrics.
9. LUMA approach to setting performance targets lacks transparency.
10. The use of Long-Term Performance Targets in establishing performance targets for the initial three-year period enhances consistency and transparency in setting performance targets.

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11. The inclusion of performance tiers at the 25-percent, 50-percent, and 150-percent levels in LUMA's incentive structure is unduly complex and could lead to compensating LUMA for non-exemplary performance.
12. Replacing the 50-percent performance level with a 75-percent performance level in the incentive structure will provide a stronger incentive to LUMA to achieve meaningful performance improvements.
13. The inclusion of deadbands in performance incentive mechanisms helps to ensure that incentives are only paid for meaningful performance improvements.
14. Defining performance targets so that they represent the minimum, not maximum performance required to earn the associated incentive facilitates the use of deadbands.
15. Defining performance targets so that they represent the minimum, not maximum performance required to earn the associated incentive enhances transparency in the performance incentive structure.
16. The allocation of base points at the metric level should reflect the relative importance of the outcomes associated with these metrics, the extent to which financial incentive is required to induce the target outcome, and the appropriateness of providing financial reward for the given outcome.
17. The allocation of base points at the metric level that has been proposed by LUMA does not consistently reflect the relative importance of the outcomes associated with these metrics, the extent to which financial incentive is required to induce the target outcome, and the appropriateness of providing financial reward for the given outcome.
18. The allocation of base points at the performance category level should reflect the relative importance of these performance categories overall and of the specific metrics that are included therein.
19. The allocation of incentives at the performance category level that has been proposed by LUMA appropriately reflects the relative importance of the performance categories overall and of the specific metrics that are included therein.
20. LUMA's proposed allocation of incentive base points to each of the two J.D. Power metrics is too high.
21. The baseline for each of the J.D. Power metrics proposed by LUMA represents the most recent performance period for which data are available.
22. The performance targets for each of the J.D. Power metrics as proposed by LUMA are not designed to maximize net benefits for customers.
23. LUMA has not sufficiently explained how the composition of the J.D. Power index scores, including the factors that are considered and the weights assigned to these factors in the overall score, are appropriate for use in evaluating its customer satisfaction.
24. LUMA has not sufficiently demonstrated that the survey methodology utilized by J.D. Power is appropriate for use with its customers.
25. LUMA's proposed allocation of incentive base points to the Average Speed of Answer metric is too high.
26. The baseline for the Average Speed of Answer metric proposed by LUMA does not represent the most recent performance period for which data are available.
27. The performance targets for the Average Speed of Answer metric proposed by LUMA are not designed to maximize net benefits for customers.
28. LUMA's proposed allocation of incentive base points to the Customer Complaint Rate metric is too low.
29. The baseline for the Customer Complaint Rate metric proposed by LUMA does not represent the most recent performance period for which data are available.
30. The performance targets for the Customer Complaint Rate metric proposed by LUMA are not designed to maximize net benefits for customers.

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31. Both those complaints designated by the Energy Bureau as NEPR-QR and those complaints designed by the Energy Bureau as NEPR-RV represent formal complaints received by the Energy Bureau.
32. LUMA's proposed allocation of incentive base points to the Abandonment Rate metric is too high.
33. The baseline for the Abandonment Rate metric proposed by LUMA does not represent the most recent performance period for which data are available.
34. The performance targets for the Abandonment Rate metric proposed by LUMA are not designed to maximize net benefits for customers.
35. LUMA's proposed allocation of incentive base points to each of the labor safety metrics is too high.
36. The baselines for each of the labor safety metrics proposed by LUMA do not represent the most recent performance period for which data are available.
37. The performance targets for the OSHA Severity Rate metric, the OSHA DART Rate metric, and the Recordable Incident Rate are not designed to maximize net benefits for customers.
38. LUMA's proposed allocation of incentive base points to the SAIFI metric is too low.
39. The baseline for the SAIFI metric proposed by LUMA does not represent the most recent performance period for which data are available.
40. The performance targets for the SAIFI metric proposed by LUMA are not designed to maximize net benefits for customers.
41. LUMA's proposed allocation of incentive base points to the SAIDI metric is too low.
42. The baseline for the SAIDI metric proposed by LUMA does not represent the most recent performance period for which data are available.
43. The performance targets for the SAIDI metric proposed by LUMA are not designed to maximize net benefits for customers.
44. LUMA's proposed allocation of incentive base points to the Vegetation Maintenance metric is too high.
45. The CAIDI metric may provide additional visibility into reliability performance beyond what is provided by the other approved reliability metrics; however, additional information is required.
46. Implementing the CEMI metric is contingent on LUMA first collecting accurate data and acquiring the requisite IT systems.
47. Implementing the CEMI metric is contingent on LUMA first collecting accurate data and acquiring the requisite IT systems.
48. LUMA's proposed allocation of incentive base points to the Transmission Line Inspections and Targeted Corrections metric is too high.
49. The performance targets for the Transmission Line Inspections and Targeted Corrections metric proposed by LUMA are not designed to maximize net benefits for customers.
50. Performing the transmission line inspections and recording the data will not improve reliability by itself.
51. LUMA's proposed allocation of incentive base points to the Distribution Line Inspections and Targeted Corrections metric is too high.
52. The performance targets for the Distribution Line Inspections and Targeted Corrections metric proposed by LUMA are not designed to maximize net benefits for customers.
53. Performing the distribution line inspections and recording the data will not improve reliability by itself.
54. LUMA's proposed allocation of incentive base points to the T&D Substation Line Inspections and Targeted Corrections metric is too high.

55. The performance targets for the T&D Substation Line Inspections and Targeted Corrections metric proposed by LUMA are not designed to maximize net benefits for customers.
56. Performing the T&D substation line inspections and recording the data will not improve reliability by itself.
57. LUMA's proposed allocation of incentive base points to the NEM Project Activation Duration metric is too low.
58. The baseline for the NEM Project Activation Duration metric proposed by LUMA does not represent the most recent performance period for which data are available.
59. The performance targets for the Project Activation Duration metric proposed by LUMA are not designed to maximize net benefits for customers.
60. Calculation should include all applications, even those with customer delays…
61. It is LUMA's responsibility to acquire the IT functionality to stop the clock on customer-delayed applications.
62. LUMA's proposed allocation of incentive base points to each of the Energy Savings as a Percentage of Sales and Demand Response Savings as a Percentage of Peak Demand metrics is too low.
63. The ultimate allocation of base points for Energy Savings as a Percentage of Sales and Demand Response Savings as a Percentage of Peak Demand metrics will be determined through the approval of the Three-Year EE Plan.
64. Determination of performance targets, incentive allocation, and evaluation, measurement, and verification for achieved performance for the Energy Savings as a Percentage of Sales and Demand Response Savings as a Percentage of Peak Demand metrics should occur consistent with the EE Regulation.
65. Should a Contract Year occur during the Transition Period Plan, there will be no Performance Targets for the Energy Savings as a Percentage of Sales and Demand Response Savings as a Percentage of Peak Demand metrics for that Contract Year.
66. The performance targets that have been proposed by LUMA for the Energy Savings as a Percentage of Sales and Demand Response Savings as a Percentage of Peak Demand metrics do not adhere to Section 4.02(D)(6)(2) of the EE Regulation.
67. The performance targets that have been proposed by LUMA for the Energy Savings as a Percentage of Sales and Demand Response Savings as a Percentage of Peak Demand metrics are appropriately ambitious to serve as backstops until a Three-Year EE Plan is ultimately approved or the Energy Bureau issues an Order or Resolution with changes to the process for establishing EE performance metrics and incentives as permitted in Section 4.02(E)(2) of the EE Regulation, should a Three-Year EE Plan is not approved by the Energy Bureau by July 1, 2026.
68. The performance years in the Revised Annex IX (Year 1, Year 2, Year 3) do not necessarily correspond to the same years as the fiscal years within the Three-Year EE Plan.
69. It is in the customers' best interest that LUMA use all approved budgetary funds to meet the approved projects, programs, and initiatives.
70. The definition proposed by LUMA for the Operating Budget metric will not maximize net benefits for customers.
71. The definition proposed by LUMA for the Capital Budget (Federally Funded) metric will not maximize net benefits for customers.
72. The definition proposed by LUMA for the Capital Budget (Non-Federally Funded) metric will not maximize net benefits for customers.
73. Measurement of the Reduction in Network Line Losses metric requires the development of a proper model and additional metering.
74. The performance targets for the Overtime metric proposed by LUMA are not designed to maximize net benefits for customers.

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75. Subtracting Contributions in Lieu of Taxes, Street Lighting, and Uncollected Reserve Accounts from the Days Sales Outstanding metrics ensures that the metrics focus on the ability to collect payment and are not distorted by adjustment, such as the Uncollectable Reserves.
76. The performance targets for the Days Sales Outstanding: General Customers metric proposed by LUMA are not designed to maximize net benefits for customers.
77. The performance targets for the Days Sales Outstanding: Government Customers metric proposed by LUMA are not designed to maximize net benefits for customers.
78. Major event response is a priority function for LUMA as the T&D operator of Puerto Rico's electricity grid.
79. The scoring approach proposed by LUMA for the MOE metrics could result in LUMA earning an incentive fee over the 100-percent target level of the MOE performance metric.

B. Conclusions of Law

1. Act 17-2019 amended section 1.2 of Act 57-2014 to state, "... It is hereby declared as the public policy of the Government of Puerto Rico that an independent electric power regulatory entity with broad powers and duties shall be created to ensure compliance with the public policy on energy, the provisions of this Act, and to ensure that energy costs are just and reasonable by overseeing and reviewing the rates of electric power service companies. The regulatory entity shall thoroughly scrutinize the power grid's maintenance and establish performance-based incentive and penalty mechanisms."
2. Section 1.5(3) of Act 17-2019 and Section 6.3(j) of Act 57-2014 establish the Energy Bureau's authority and responsibility to establish performance-based incentives and penalty mechanisms.
3. Act 17-2019 amended section 6.25 of Act 57-2014 to include a set of criteria that the Energy Bureau shall consider when developing performance-based incentives and penalties.
4. Pursuant to the provisions of Section 1.5(3) of Act 17-2019 and Section 6.3(j) of Act 57-2014, provisions, the Energy Bureau adopted Regulation 9137, known as the Regulation for Performance Incentive Mechanisms, establishing the process for implementing Performance Incentive Mechanisms.
5. Section 7.1 of Regulation 9137 also established the principles the Energy Bureau should apply in establishing Performance Incentive Mechanisms.
6. Section 7.1 (B) of Regulation 9137 states that "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."
7. Section 7.1 (C) of Regulation 9137 states that "Performance Incentive Mechanisms shall be defined, easily interpreted, and easily verified."
8. Section 7.1 (E) of Regulation 9137 states that "Performance Incentive Mechanisms shall be designed to maximize net benefits for customers."
9. Section 7.1 (F) of Regulation 9137 states that "Performance Incentive Mechanisms shall provide the affected Company with no more total financial incentives than are needed to align their performance with the public interest."
10. Section 7.1 (B) (2) of Regulation 9137 states "For all for-profit companies regulated by the Energy Bureau, the Bureau may impose penalties for noncompliance under its authority pursuant to 6.36 of Act 57-2014."
11. Section 5 (f) and Section 9(b) of Act 114-2007 require net-metering customers to receive tariff activation on their account within 30 days of customer application. Section 5(f) of Act-114-2007 states, "PREPA or the Contractor shall credit every participant of the Net Metering Program promptly and expeditiously. Such credit shall be clearly shown in the monthly bill for the next billing cycle, following the installation of the Meter, not later than thirty (30) days after having notified the certification of the distributed generator installed by a professional engineer or

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expert electrician, both members of their professional associations and admitted to the practice of their profession."

Any party adversely affected by this Final Decision may file a motion for reconsideration before the Puerto Rico Energy Bureau pursuant to Regulation No. 8543, section 11.01 and applicable provisions contained in Act 38-2017, known as the Government of Puerto Rico's Uniform Administrative Proceedings Act. The motion must be filed within twenty (20) days from the filing of a notice of this Final Decision. The request for reconsideration should be filed with the Puerto Rico Energy Bureau's Clerk's Office located at World Plaza Building, 268 Muñoz Rivera Avenue, Plaza Level Suite 202, San Juan, PR 00918. The request for reconsideration may also be electronically filed with the Energy Bureau to the following electronic address: https://radicacion.energia.pr.gov. A copy of the request for reconsideration must be served by First Class U. S. Mail to all parties notified in the present Final Decision within the time afforded above.

The Energy Bureau should consider the request for reconsideration within fifteen (15) days from its filing. If the Energy Bureau expressly denies the request or if no action is taken regarding such request within fifteen (15) days, the term for requesting judicial review will begin from the date the reconsideration request is denied or upon the expiration of the fifteen-day (15) period, as the case may be. If the Energy Bureau entertains the request for reconsideration, the term to request review will begin from the date the request for reconsideration is definitely resolved. The Energy Bureau's decision should be issued and notified within ninety (90) days from the filing of the request for reconsideration. If the Energy Bureau entertains the request for reconsideration but fails to act on the request within ninety (90) days from the filing, it will lose jurisdiction over the matter, unless the Energy Bureau, for just cause and within the ninety (90) day period, extends for no more than thirty (30) additional days.

The affected party that does not file the reconsideration proceeding referred above may file for judicial review before the Puerto Rico Appeals Court within thirty (30) days from the filing and notice of this Final Decision pursuant to Regulation 8543, Section 11.03, applicable provisions of Act 38-2017.

Be it notified and published.

Edison Avilés Deliz
Chairman

Lillian Mateo Santos
Associate Commissioner

Ferdinand A. Ramos Soegaard
Associate Commissioner

Sylvia B. Ugarte Araujo
Associate Commissioner

Antonio Torres Miranda
Associate Commissioner

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CERTIFICATION

I hereby certify that the majority of the members of the Puerto Rico Energy Bureau has so agreed on January 26, 2024. I also certify that on January 26, 2024, a copy of this Resolution and Order was notified by electronic mail to margarita.mercado@us.dlapiper.com, yahaira.delarosa@us.dlapiper.com, lionel.santa@prepa.pr.gov; jcassel@earthjustice.org; hrivera@jrsp.pr.gov, contratistas@jrsp.pr.gov, agraitfe@agraitlawpr.com, rstgo2@gmail.com, pedrosaade5@gmail.com, flcaseupdates@earthjustice.org, rolando@bufete-emmanuelli.com, notificaciones@bufete-emmanuelli.com, jessica@bufete-emmanuelli.com, zoe@emmanuelli.law; rhoncat@netscape.net, larroyo@earthjustice.org; lvelez@earthjustice.org; rmurthy@earthjustice.org; and I have proceeded with the filing of the Resolution and Order issued by the Puerto Rico Energy Bureau.

For the record, I sign this in San Juan, Puerto Rico, on January 26, 2024.

Sonia Seda Gaztambide
Clerk

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Appendix A. Timeline and History of the Proceeding

On June 22, 2020, LUMA Energy, LLC[538] as ManagementCo, and LUMA Energy ServCo, LLC[539] as ServCo (collectively, "LUMA"); the Puerto Rico Electric Power Authority ("PREPA"); and the Puerto Rico Public-Private Partnerships Authority entered into an Operation and Maintenance Agreement ("OMA") under which LUMA will manage PREPA's transmission and distribution system ("T&D System").

As a certified electric service company and the operator of the T&D System, LUMA is subject to compliance with Performance-Based Incentives Mechanisms.[540]

Pursuant to its statutory authority, on December 23, 2020, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Resolution and Order under Case No.: NEPR-MI-2019-0007 ("December 23 Resolution") through which it commenced a proceeding to establish the baseline (*i.e.*, PREPA's current performance) and the targets or minimum compliance benchmarks with which the Puerto Rico's electric system should comply ("Baseline Proceeding").

As such, and in accordance with the December 23 Resolution, on December 23, 2020, the Energy Bureau issued another Resolution and Order through which it commenced the instant adjudicative procedure to evaluate and establish the performance targets and performance-based incentives and penalties to be applicable to LUMA ("December 23 Order").

In its December 23 Order, the Energy Bureau established the following principles to guide LUMA in preparing its request for the establishment of PIMs:

[538] Resolution, *In Re: Request for Certification LUMA Energy , LLC*, Case No.: NEPR-CT-2020-0008, November 4, 2020.

[539] Resolution, *In Re: Request for Certification LUMA Energy ServCo, LLC,* Case No.: NEPR-CT-2020-0007, November 20, 2020.

[540] Regarding Performance Metrics, Section 4.2(f) of the OMA, provides:

> (f) Performance Metrics. Promptly (and in any event within sixty (60) days) following the Effective Date, the Parties shall establish a planning team composed of representatives of each of the Parties, and ManagementCo, with input from such team, shall prepare a revised Annex IX (Performance Metrics), including (i) proposed baseline, target and minimum performance levels for certain Performance Metrics, (ii) Key Performance Metrics and (iii) Major Outage Event Performance Metrics, together with an explanation of the basis for each of the foregoing. ManagementCo shall submit to Administrator the proposed revised Performance Metrics and, within thirty (30) days following its receipt of such proposed revised Annex IX (Performance Metrics), Administrator, acting reasonably, shall provide ManagementCo comments on the appropriateness of the proposed Annex IX (Performance Metrics) and recommend any changes or modifications it believes are necessary or appropriate. If Administrator does not respond within such thirty (30) day period, Administrator shall be deemed to have no objection to such proposed revised Annex IX (Performance Metrics) being submitted by ManagementCo to PREB. The Parties agree that, within thirty (30) days following receipt of Administrator's comments, if any, or the end of Administrator's review period described in the immediately preceding sentence, if Administrator has no comments, Operator shall submit for PREB's review the proposed revised Annex IX (Performance Metrics), incorporating or rejecting any of the modifications or changes suggested by Administrator, together with an explanation of any of Administrator's comments, as ManagementCo shall reasonably deem appropriate in its sole discretion. PREB shall review, and approve, deny, or propose modifications to, such proposed revised Annex IX (Performance Metrics) in accordance with Applicable Law. ManagementCo shall be required to respond promptly to any changes or modifications from PREB to the proposed revised Annex IX (Performance Metrics) and submit any updates to the proposed revised Annex IX (Performance Metrics) to PREB for its approval. If PREB does not respond within ninety (90) days after receipt of the proposed revised Annex IX (Performance Metrics) or any update thereto, ManagementCo may proceed for purposes of this Agreement as if PREB had approved such proposed revised Annex IX (Performance Metrics). The illustrative Performance Metrics, as identified in Annex IX (Performance Metrics) shall be revised and replaced accordingly on, or prior to, the Service Commencement Date. *See* Section 4.2 and Annex IX of the OMA.

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 levels.

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, and other similar mandates.

3. **Further Efficiencies and Savings** – As applicable, 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 affect 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 the ratepayers.

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.

The Energy Bureau ordered LUMA to ensure any filing to be presented before the Energy Bureau pursuant to Section 4.2 of the OMA: (i) considers the outcomes of the proceeding under Case No.: NEPR-MI-2019-0007; and (ii) at a minimum, align its proposal to the foregoing principles.

On January 14, 2021, the Energy Bureau held a Pre-Filing Technical Conference. The purpose of the Conference was to clarify questions LUMA might have regarding the principles that would guide LUMA in preparing its request for the establishment of PIMs and other related matters.

On January 20, 2021, the Puerto Rico Institute of Competitiveness and Sustainability ("ICSE" by its Spanish acronym) filed before the Energy Bureau a document titled *Motion Requesting Intervention and an Open Adjudicatory Process Concerning Performance Based Incentive Mechanism Targets*, which was denied by the Energy Bureau on January 22, 2021, due to its premature nature. The Energy Bureau encouraged ICSE to pursue participation in the instant case once LUMA had filed its request for the establishment of PIMs and the Energy Bureau had published the procedural calendar for the instant case indicating the timeline for filing requests for intervention.

On February 25, 2021, LUMA filed a document titled *LUMA's Submittal and Request for Approval of Revised Annex IX to the OMA* ("LUMA's February 25 Request"). LUMA's February 25 Request included a high-level description of the proposed performance incentive framework along with an argument for the consistency of the proposal with the OMA, applicable laws, regulations, and orders of the Energy Bureau. Exhibit 1 of LUMA's February 25 Request explained the proposal while Exhibit 2 of LUMA's February 25 Request offered a comparison of the proposal with the framework that had been included in the OMA. LUMA requested approval of its February 25 Request for an initial three (3) year period, along with a review of the performance baselines, metrics, and targets after six (6) months from the date LUMA commences its operations.

On April 8, 2021, the Energy Bureau set the initial procedural calendar for the instant case to evaluate LUMA's February 25 Request ("April 8 Resolution"). As part of the procedural calendar, the Energy Bureau established the deadline for LUMA to file a revised version of its February 25 Request. The Energy Bureau noted that such filing shall be consistent with

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the Energy Bureau's final determination under Case No.: NEPR-MI-2019-0007. The April 8 Resolution also established in detail how the Energy Bureau would carry out this adjudicative procedure, including filing of requests for intervention, pre-filing of the proposed witnesses' testimonies, discovery of evidence, evidentiary hearing, public hearing, public comments, and filing of legal briefs.

On April 23, 2021, and April 30, 2021, the Independent Consumers Protection Office of the Puerto Rico Public Service Regulatory Board ("ICPO") and PREPA filed separate requests to intervene in the instant case, which were granted by the Energy Bureau on May 7, 2021, and May 13, 2021, respectively.

Since the Energy Bureau had yet to issue a final determination under Case No.: NEPR-MI-2019-0007 and because that final determination was necessary for LUMA's revision of LUMA's February 25 Request, on May 14, 2021, the Energy Bureau amended the procedural calendar established in the April 8 Resolution and granted LUMA until June 4, 2021, to file the revised version of the February 25 Request.

On May 19, 2021, ICSE filed before the Energy Bureau a document titled *Motion to Intervene as Amicus Curiae*, which was granted by the Energy Bureau on May 26, 2021.

On May 21, 2021, after an extensive and thorough process, which included ample opportunity for stakeholders and the general public to participate, the Energy Bureau issued a Resolution and Order in Case No.: NEPR-MI-2019-0007 ("May 21 Resolution"), through which it established baselines and benchmarks for certain performance metrics.

According to the OMA, the Energy Bureau's approval of the Performance Metrics is a condition precedent to the commencement of operations, unless otherwise mutually agreed between the parties, either satisfied as determined or waived in writing. Thus, on June 2, 2021, the Energy Bureau requested LUMA to file a copy of the waiver signed by the parties to the OMA regarding the Performance Metrics. LUMA submitted an executed copy of the requested waiver on June 4, 2021.

On June 3, 2021, LUMA filed a document titled *Request to Re-Schedule Proceedings* ("June 3 Motion"). In its June 3 Motion, LUMA informed that it would be filing a request for clarifications and/or partial reconsideration of the May 21 Resolution in Case No.: NEPR-MI-2019-0007. LUMA requested that the Energy Bureau modify the procedural calendar established in the instant case to allow for the conclusion of procedural events in connection with the May 21 Resolution issued in the Baseline Proceeding before the filing the revised Request for the Approval of the Revised Annex IX to the OMA.

On June 4, 2021, the Energy Bureau issued a Resolution and Order in which it reminded LUMA that, in the future, it would only entertain requests filed in a timely manner, unless there is just cause. Despite the foregoing, the Energy Bureau amended the procedural calendar and granted LUMA until August 11, 2021, to file the revised version of the February 25 Request.

On June 30, 2021, Comité Diálogo Ambiental, Inc. and El Puente: Enlace Latino de Acción Climática (El Puente de Williamsburg) ("Environmental Entities"), filed a document titled *Motion Requesting Access to Information and Opportunity to Informed Participation, Commencement of Investigations, Scheduling of Public Hearings, and Other Remedies* ("June 30 Motion"). The June 30 Motion, in its relevant part, briefly discussed some of the performance metrics proposed by LUMA in its filings under this case.

On July 2, 2021, after a review of the June 30 Motion, the Energy Bureau noted that the Environmental Entities can, and have the opportunity to, file a request for intervention in the instant case, under applicable requirements. The Energy Bureau construed the June 30 Motion as a general comment to be included in the administrative record. The Energy Bureau

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invited the Environmental Entities to further provide meaningful contributions in the instant case, under the corresponding procedural calendar, may it be as intervenors or as part of the general public comments process.

On July 9, 2021, ICSE submitted its comments on LUMA's proposed performance targets.

On July 15, 2021, the Puerto Rico Local Environmental and Civil Organizations[541] ("LECO") filed before the Energy Bureau a document titled *Joint Petition for Intervention*, request granted by the Energy Bureau on August 5, 2021.

On July 22, 2021, LUMA filed before the Energy Bureau a document titled *Request to Amend Procedural Calendar to Allow Discovery on Intervenor Testimonies and Filing of Rebuttal Testimonies* ("July 22 Motion"). Through its July 22 Motion, LUMA requested the Energy Bureau to clarify the due date for LUMA to submit pre-filed testimonies of its witnesses. Also, LUMA requested the Energy Bureau to amend the procedural calendar to: (i) allow LUMA to conduct discovery on the written testimonies to be filed by intervenors; and (ii) authorize LUMA to file rebuttal written testimony. Additionally, on August 6, 2021, LUMA filed before the Energy Bureau a document titled *Urgent Request to Reschedule the August 11th Deadline* ("August 6 Motion") due to time constraints based on the considerable number of witnesses it had identified that shall submit pre-filed testimonies.

On August 9, 2021, the Energy Bureau clarified that LUMA shall include its witnesses pre-filed testimonies as part of its revised request. The Energy Bureau determined that it was prudent to include as part of the procedural calendar the opportunity to: (i) conduct discovery on the written testimony filed by intervenors; and (ii) file rebuttal written testimony to any intervenor pre-filed testimony. The Energy Bureau amended the procedural calendar in accordance and granted LUMA until August 18, 2021, to file its revised version of the February 25 Request.

On August 18, 2021, el Colegio de Ingenieros y Agrimensores de Puerto Rico ("CIAPR") filed before the Energy Bureau a document titled *Petition to Intervene as Amicus Curiae*, which was granted by the Energy Bureau on August 26, 2021.

On August 18, 2021, LUMA filed before the Energy Bureau a document titled *LUMA's Submittal of Request for Approval of Revised Annex IX to the OMA* ("August 18 Revised Request"). Through the August 18 Revised Request, LUMA requested the Energy Bureau to approve the revised Annex IX in Section 2.0 of Exhibit 1 to the August 18 Revised Request. On the same date, LUMA filed a document titled *Motion Submitting Pre-Filed Testimonies* ("Pre-Filed Testimonies Motion") of witnesses it intended to present at the evidentiary hearing.

On August 20, 2021, LUMA filed before the Energy Bureau a document titled *Motion Submitting Redline Version of the Revised Request for Approval of Revised Annex IX to the OMA* ("August 20 Motion"). LUMA submitted a redline version of the comparison between Annex IX to the OMA executed on June 22, 2020, and the August 18 Revised Request.

On August 23, 2021, LUMA filed before the Energy Bureau a document titled *Motion Submitting Amended Exhibit to the Revised Request for Approval of the Revised Annex IX to the OMA* ("August 23 Motion"). Through the August 23 Motion, LUMA submitted an amended version of the Revised Annex IX and requested the Energy Bureau to substitute it for the Exhibit 1 in the August 18 Revised Request. LUMA indicated that the only difference between Exhibit 1 of the August 18 Revised Request and the one filed through the August 23 Motion

[541] Comité Diálogo Ambiental, Inc.; El Puente de Williamsburg, Inc. - Enlace Latino de Acción Climática; Alianza Comunitaria Ambientalista del Sureste, Inc.; Coalición 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 (collectively, "LECO").

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was in Appendix B, which states the number of associated exhibits for each of LUMA's primary witnesses.

On August 25, 2021, upon review of the documents related to the August 18 Revised Request, the Pre-Filed Testimonies Motion, the August 20 Motion, and the August 23 Motion (collectively, "Revised Filing"), the Energy Bureau determined that the information filed by LUMA complied with the minimum requirements established by the Energy Bureau to continue its evaluation as part of the instant case.

On September 9, 2021, LUMA requested that the Energy Bureau receive and accept the Pre-Filed Testimony of Mr. Jorge González in substitution of the one filed for Mrs. Esther C. González on August 18, 2021. Through the referenced motion, LUMA informed that Mrs. González was no longer with the company. Said request was granted by the Energy Bureau on September 10, 2021.

On September 24, 2021, LUMA filed before the Energy Bureau a document titled *Motion Requesting Authorization to Submit Revised Pre-Filed Testimony of Melanie Jeppesen, Second Amended Revised Annex IX to the OMA and Redline of Second Amended Revised Annex IX to the OMA* ("September 24 Motion"). In its September 24 Motion, LUMA stated that, as part of the responses and objections regarding the Energy Bureau's Fourth Requirement of Information, the witness Ms. Melanie Jeppesen clarified certain information regarding customer complaints, which resulted in a change of the customer complaint rate. LUMA indicated that, due to the aforementioned change, the proposed targets in the Customer Complaint Rate metric needed to be revised.

LUMA requested the Energy Bureau to receive and accept Ms. Jeppesen's revised pre-filed testimony as a substitution to the one filed on August 18, 2021. Further, LUMA argued that, considering the revisions made to the Customer Complaint Rate metric targets, the Amended Revised Annex IX to the OMA filed on August 23, 2021, needed to be revised to be consistent with the new calculations. Therefore, LUMA requested the Energy Bureau to receive and accept Exhibit 2 of the September 24 Motion (*i.e.* Second Amended Revised Annex IX to the OMA) as a substitution to Exhibit 1 of the Revised Request for Approval of the Revised Annex IX to the OMA filed on August 18, 2021, and later amended on August 23, 2021.

After reviewing LUMA's arguments, on September 27, 2021, the Energy Bureau granted the September 24 Motion. The Energy Bureau substituted the pre-filed testimony of Ms. Jeppesen filed on August 18, 2021, with the one filed as part of the September 24 Motion. The Energy Bureau also substituted Exhibit 1 of the August 18 Motion and Exhibit 1 of the August 23 Motion with Exhibit 2 of the September 24 Motion.

On October 20, 2021, the Energy Bureau amended the procedural calendar ("October 20 Resolution"). The October 20 Resolution established new deadlines to allow the parties additional time to conduct discovery, as per requested in motions filed by the ICPO, LECO, and LUMA. Also, the Energy Bureau scheduled a Pre-Hearing Conference to address any conflicts that could arise with the agenda of the Evidentiary Hearing and/or to discuss case management and calendar options for the hearing.

On November 17, 2021, ICPO and LECO submitted the pre-filed testimonies of their proposed witnesses.

On December 17, 2021, LECO submitted a document titled *Moción Solicitando la Traducción, Adaptación y Resumen de la Propuesta sobre las Métricas de Desempeño presentadas por LUMA Energy* ("December 17 Motion"). Through the December 17 Motion, LECO requested that the Energy Bureau issue an order requiring LUMA to translate to Spanish and summarize, using simplified and easy to understand language, the Performance Metrics in Exhibit 1 of LUMA's August 23, 2021, Motion and the written witnesses' testimonies submitted by LUMA.

After conducting a thorough and detailed review of the filings, including the ROI's and the responses from the parties, the Energy Bureau concluded that additional performance-based incentive metrics had to be evaluated as part of the instant procedure. On December 22, 2021, the Energy Bureau determined that the establishment of performance targets for Interconnection, Energy Efficiency/Demand Response, and Vegetation Management was needed in order to further the goals of the Puerto Rico energy public policy. Therefore, the Energy Bureau ordered LUMA to: (a) no later than January 18, 2022, file a revised Annex IX to the OMA including targets and supporting metrics for the following: (i) Interconnection, (ii) Energy Efficiency/Demand Response, and (iii) Vegetation Management; and (b) on or before January 18, 2022, provide a supplemental or revised direct pre-filed testimony for the additional performance targets ("December 22 Resolution").

On December 30, 2021, LUMA filed an opposition to LECO's December 17 Motion. LUMA argued that LECO's request was unduly late and runs counter to the course of proceedings in this docket. LUMA also expressed there was no requirement in the applicable regulation to translate submissions to Spanish. LUMA further argued that LECO lacked standing to pursue remedies on behalf of third parties and citizens in general and had not shown that they may move forward with requests lodged on behalf of third parties. LUMA also contended that the legal norms cited by LECO did not support its request that only LUMA translate its filings using simplified language while not extending that requirement to LECO and other parties. Finally, LUMA asserted that translating documents to Spanish had practical complications such as the delay of the instant proceeding and further costs to customers, especially when considering LECO is requesting them in such a short amount of time. Notwithstanding the above, LUMA expressed that it was amenable to presenting a summary of its revised targets in Spanish for the benefit of the general public.

On January 7, 2022, LUMA submitted a document titled *LUMA's Request for this Energy Bureau to Modify the Procedural Calendar Set Forth in the Resolution and Order of December 22, 2021* ("January 7 Motion"). In its January 7 Motion, LUMA requested the Energy Bureau to extend the January 18, 2022, deadline for the submission on the new performance metrics to February 17, 2022.

On January 14, 2022, the Energy Bureau determined that a Summary in Spanish of LUMA's Second Revised Performance Metrics Target was a reasonable measure and ordered LUMA to file said Spanish Summary. Also, on January 14, 2022, the Energy Bureau issued an amended procedural calendar and granted LUMA's request to submit the revised Annex IX and supporting written testimony on February 17, 2022.

On January 27, 2022, LECO requested an amendment to the procedural calendar to authorize discovery on LUMA's rebuttal testimonies. LUMA filed an opposition to said request on February 7, 2022. LUMA argued LECO's request was unfounded and would only delay the instant proceeding. After a review of LECO's request and LUMA's opposition, on February 15, 2022, the Energy Bureau granted LECO's request and let the parties conduct discovery on LUMA's rebuttal on intervenors' written testimonies.

On February 1, 2022, February 17, 2022, and March 3, 2022, LUMA submitted its witnesses' rebuttal testimonies.

On February 11, 2022, LUMA submitted a summary in Spanish of its Revised Performance Metrics Targets.

February 17, 2022, LUMA submitted a document titled *LUMA's Response in Opposition and Objection to December 22, 2021 Resolution and Order and Request to Vacate or Grant LUMA Relief from the December 22, 2021 Resolution and Order on Additional Metrics* ("February 17 Motion"). LUMA requested the Energy Bureau to vacate or grant LUMA relief from the December 22 Resolution requiring LUMA to submit the three (3) additional performance metrics and revised Annex IX to the OMA.

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On March 22, 2022, LECO submitted a direct testimony on additional performance metrics.

On April 27, 2022, and May 11, 2022, LUMA submitted supplemental rebuttal testimonies.

On May 26, 2022, LECO filed a document titled *Motion Requesting the Imposition of Penalties in LUMA's Performance-Based Mechanisms* ("May 26 Motion"). In the May 26 Motion, LECO requested the Energy Bureau to affirm its authority to impose penalties pursuant to the Puerto Rico energy statutory framework, as part of the performance-based mechanism to be determined in this proceeding. On June 23, 2022, LUMA filed an opposition to LECO's May 26 Motion. According to LUMA, the imposition of penalties as part of the performance-based mechanism was inappropriate and inconsistent with the applicable statutory and contractual frameworks.

On August 1, 2022, the Energy Bureau denied LUMA's February 17 Motion ("August 1 Resolution"). The August 1 Resolution ordered LUMA to file a revised Annex IX to the OMA to include targets and supporting metrics for Interconnection, Energy Efficiency/Demand Response, and Vegetation Management by August 21, 2022. The August 1 Resolution also required LUMA to provide supplemental or revised direct pre-filed testimony for the targets and supporting metrics in response to the December 22 Resolution.

On August 15, 2022, LECO filed a document titled *Request to Authorize Discovery on LUMA's Supplemental Testimony* ("August 15 Motion"). In the August 15 Motion, LECO requested that the Energy Bureau grant LECO the opportunity to conduct discovery on LUMA's supplemental testimony pertaining to the additional metrics. On August 17, 2022, ICPO filed a document titled, *Moción Uniéndonos a Solicitud de LECO Sobre Descubrimiento de Prueba de Nuevas Métricas* ("August 17 Motion"). In the August 17 Motion, ICPO also requested that the Energy Bureau grant the opportunity to conduct discovery on LUMA's supplemental testimony on additional metrics.[542]

On August 18, 2022, LUMA filed a document titled *Motion to Request Extension of Time to Submit a Revised Annex IX and Written Direct Testimony in Compliance with the Resolution and Order August 1, 2022* ("August 18 Motion"). In the August 18 Motion, LUMA requested that the Energy Bureau allow LUMA to submit supplemental testimony and a revised Annex IX in compliance with the August 1 Resolution on September 21, 2022.

On September 9, 2022, LUMA filed a document titled *Amended Request for Extension of Time to Submit a Revised Annex IX and Pre-filed Written Direct Testimony in Compliance with the Resolution and Order August 1, 2022* ("September 9 Motion"). In the September 9 Motion, LUMA requested that the Energy Bureau allow LUMA to submit supplemental testimony and a revised Annex IX in compliance with the August 1 Resolution on October 6, 2022.

On September 16, 2022, after evaluating LUMA's arguments and the intervenor requests, the Energy Bureau amended the procedural calendar to allow additional time to conduct the discovery.

On September 30, 2022, LUMA filed a document titled *Motion to Amend Procedural Calendar, Requiring Additional Time to Submit Revised Annex IX and Pre-filed Written Direct Testimonies due to Change in Circumstances, and Proposing Amended Procedural Calendar* ("September 30 Motion"). In the September 30 Motion, LUMA requested that the Energy Bureau allow LUMA to submit supplemental testimony and a revised Annex IX in compliance with the August 1 Resolution on October 28, 2022. LUMA argued that its response to Tropical Storm Fiona both in terms of storm preparation and storm response had diverted key personnel and resources from the preparation of pre-filed testimonies as required by the Energy Bureau.

[542] The Energy Bureau noted that LECO requested ten (10) days and that ICPO requested eighteen (18) days.

On October 4, 2022, the ICPO filed a document titled *Moción en Oposición a Moción Radicado por LUMA en Solicitud de Prórroga y Recalendarización de los Procesos Radicada por LUMA* ("October 4 Motion"). The ICPO requested the Energy Bureau to deny the September 30 Motion arguing that LUMA had more than ten (10) months to comply with the December 22 Resolution.

On October 5, 2022, the Energy Bureau issued a Resolution and Order granting the intervenors three (3) days to respond to the September 30 Motion and the October 4 Motion within three (3) days.

On October 10, 2022, LECO filed a document titled *LECO's Response to LUMA's Motion to Amend Procedural Calendar, Requesting Additional Time to Submit Revised Annex IX and Pre-Filed Written Testimonies Due to Change In Circumstances, and Proposing Amended Procedural Calendar* ("October 10 Motion"). LECO requested that the Energy Bureau impose the necessary penalties which have been duly warned to LUMA and assure that such penalties are not passed to the ratepayers but imposed to LUMA's shareholders.

On October 14, 2022, the Energy Bureau issued a Resolution and Order through which, among other things, it amended the procedural calendar for the instant proceeding, establishing that the Evidentiary Hearing would be held from February 7, 2023, to February 10, 2023 ("October 14 Resolution"). Additionally, after a review of LECO's August 15 Motion and ICPO's August 17 Motion, through the October 14 Resolution, the Energy Bureau determined that the ability for intervenors to conduct discovery on the additional metrics was a reasonable measure. Thus, the Energy Bureau granted LECO and ICPO's request for time for additional discovery on LUMA supplemental written testimony and the amended parts of Annex IX.

The Energy Bureau also determined that the period for discovery on LUMA's supplemental testimony shall be limited to fourteen (14) days. Additionally, the Energy Bureau granted LUMA's request to file supplemental testimony and a revised Annex IX in compliance with the August 1 Resolution on or before October 28, 2022. The Energy Bureau ordered LUMA to provide both a clean and a blackline version of the revised Annex IX in its filing to identify the amended parts. The Energy Bureau reminded LUMA that such revised Annex IX shall comply with the principles established by the Energy Bureau in the Resolution and Order opening the instant procedure.

On October 28, 2022, LUMA submitted its testimonies on the additional metrics and a revised version of Annex IX to the OMA.

On December 13, 2022, ICPO submitted a direct testimony on the additional metrics.

On January 23, 2023, LUMA submitted rebuttal testimonies on supplemental testimony on additional metrics.

On January 25, 2023, LUMA filed a document titled *Joint Motion Requesting the Energy Bureau to Set the Order of Witnesses for the Evidentiary Hearing*.

On January 26, 2023, LUMA filed a document titled *Motion Requesting Authorization to Substitute Pre-Filed Testimonies* ("January 26 Motion"). Through the January 26 Motion, LUMA informed that Mr. Jorge Meléndez, whose pre-filed testimony covers the performance metrics related to safety, was no longer employed by LUMA. LUMA further indicated that Mr. Curtis Clark, Functional Lead, Emergency Preparedness for LUMA ServCo, LLC, had been designated as the witness to testify in support of, and in connection with, safety metrics. LUMA stated that Mr. Clark had adopted the testimonies offered by Mr. Meléndez on September 9, 2021, and February 1, 2022, and had not altered the substance of the original testimonies. LUMA requested that the Energy Bureau receive and accept the Pre-Filed

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Testimonies of Mr. Clark in substitution of the testimonies filed on September 9, 2021, and February 1, 2022, by Mr. Meléndez.

Second, LUMA informed that due to changes in the internal and management structure of LUMA's Vegetation Management Program, the person authorized to offer testimony on vegetation management was Diane Watkins, Vice President of Vegetation and Work Management. Thus, LUMA requested authorization to substitute its past witness, Mr. Brent Bolzenius, for Mrs. Watkins. Specifically, LUMA requested authorization to substitute the testimonies by Mr. Bolzenius of February 1, 2022; April 27, 2022; and October 28, 2022, for the testimonies executed by Mrs. Watkins. As per stated by LUMA, Mrs. Watkins adopted the testimonies submitted by Mr. Bolzenius and incorporated non-substantive revisions.

On January 27, 2023, LECO filed before the Energy Bureau a document titled *Motion Requesting that PREB Address Outstanding Issues* ("January 27 Motion"). Through the January 27 Motion, LECO indicated there was a pending motion to be resolved by the Energy Bureau, that is, the May 26, 2022, *Motion Requesting the Imposition of Penalties in LUMA's Performance-Based Mechanisms* ("May 26 Motion"). In the May 26 Motion, LECO requested the Energy Bureau to affirm its authority to impose penalties under the Puerto Rico energy statutory framework, as part of the performance-based mechanism to be determined in this proceeding.

Also, in its January 27 Motion, LECO requested that the Evidentiary Hearing be held in Spanish with simultaneous translation available. Further, LECO asserted that if the Energy Bureau conducted the hearing in English, then it should guarantee simultaneous translation and be flexible for participants, including attorneys and witnesses, to speak in the language of their choice. LECO also requested that the Energy Bureau provide more information pertaining the Public Hearings, among others: the time of the hearing, whether they will be held virtually or in person, instructions for the public to participate, and important information in the Spanish language for the public. LECO requested that the Public Hearings be rescheduled and that the public be granted at least thirty (30) days to prepare and participate from the day the notice is published. Last, LECO asked that the Energy Bureau not only administered virtual public hearings, but also in-person public hearings.

On January 27, 2023, ICPO and LECO filed jointly before the Energy Bureau a document titled *Moción en Oposición a Solicitud de Sustitución de Testimonios Radicada por LUMA* ("January 27 Joint Motion"). Through the January 27 Joint Motion, ICPO and LECO filed their opposition to the January 26 Motion. ICPO and LECO argued that LUMA's request pertaining to the substitution of testimonies only a few days before the Evidentiary Hearing was untimely. ICPO and LECO further asserted that given the lack of explanation or justification surrounding the proposed substitutions LUMA's January 26 Motion should be denied.

On January 27, 2023, the Energy Bureau modified the format of the Evidentiary Hearing and set forth that the hearing would be conducted using a hybrid model; thus, participants outside of Puerto Rico could attend the hearing remotely. All other participants had to attend the hearing in person.

On January 28, 2023, ICPO filed a document titled *Moción Uniéndonos a Solicitud de LECO* ("January 28 Motion"). Through the January 28 Motion, ICPO stated that it coincided with LECO's request that the Evidentiary Hearing be held in Spanish in benefit of the public's interest and due to the technical nature of the case. ICPO also noted that if the Energy Bureau conducted the hearing in English, its participation would be in Spanish.

On January 30, 2023, the Energy Bureau held the Pre-Hearing Conference to address case management matters.

On January 30, 2023, the Energy Bureau issued the Hybrid Evidentiary Hearing Protocol.

On January 31, 2023, LUMA requested clarification and of the Evidentiary Hearing Protocol and authorization to use an Official Court Reporter during the Evidentiary Hearing. On January 31, 2023, LUMA also filed before the Energy Bureau a document titled *Response to LECO's Motion Requesting that PREB Address Outstanding Issues* ("LUMA January 31 Motion"). Through the January 31 Motion, LUMA requested that LECO's petition that the Energy Bureau issue a ruling on its May 26 Motion be denied. LUMA argued that for the Energy Bureau to make a ruling on whether to adopt penalties as part of the performance-based mechanism applicable to LUMA before the evidentiary hearing was premature because the testimony on which LECO bases its request has not been subject to cross-examination. According to LUMA, any order adopting LECO's proposal would be premature, null, void, and contrary to LUMA's due process rights.

On January 31, 2023, LECO filed a document titled *Supplemental Motion to Motion Requesting that PREB Address Outstanding Issues* ("LECO January 31 Motion"). Through the January 31 Motion, LECO requested that Prof. Agustín Alexi Irizarry-Rivera be listed as a witness for cross-examination on metrics for major outages, on Friday, February 10, 2023, as well as regarding customer satisfaction on Wednesday, February 8, 2023. LECO further requested that each witness be given the opportunity for a short summary of their pre-filed testimonies and that the parties be given at least five minutes each for a closing statement. Additionally, LECO proposed a breakdown of the hearing sessions by sub-topics and recommended that parties assign one attorney to question each witness, per session. LECO also reiterated various requests made through earlier motions, such as that the Evidentiary Hearing be held in Spanish; that LUMA's request to substitute witnesses be denied; the imposition of a penalty scheme within LUMA's performance-based mechanism; and multiple requests pertaining the Public Hearings.

On January 31, 2023, ICPO filed a document titled *Moción Solicitando Modificación de Agenda de Vista Evidenciaria para Incluir Testigo de la OIPC Omitido en la Cuarta Sesión y Otros Asuntos* ("ICPO January 31 Motion"). Through the January 31 Motion, ICPO requested that Eng. Gerardo Cosme Núñez be listed a witness for cross-examination on metrics for major outages, on Friday, February 10, 2023. The ICPO also reiterated that it coincided with LECO's January 31 Motion, including its request that the Evidentiary Hearing be held in Spanish in benefit of the public's interest and due to the technical nature of the case.

On February 1, 2023, ICPO filed a document titled *Moción en Solicitud para que Se Declare Inadmisible en Evidencia la Encuesta de J.D. Power Sometida por LUMA y a los Fines de Que Se Elimine de Manera Parcial el Testimonio de Jessica Laird* ("February 1 Motion"). Through the February 1 Motion, the ICPO requested that the Energy Bureau deny the admissibility of J.D. Power Survey, which was attached as an Exhibit to Jessica Laird's Pre-filed Testimony. ICPO argued that Jessica Laird did not participate in preparing the referenced survey and her testimony was insufficient to authenticate said document under our Rules of Evidence. ICPO further requested that Jessica Laird's testimony on the method, data, and analysis, among others, pertaining the J.D. Power Survey be considered inadmissible on the grounds that she has not been qualified to testify as an expert witness nor has she personal knowledge on matters related to said survey.

After a review of the January 26 Motion, based on the redline submitted by LUMA, and considering the modifications did not alter the substance of the original testimonies on February 1, 2023, the Energy Bureau accepted the Pre-Filed Testimonies of Mr. Clark and Mrs. Watkins submitted as Exhibits to the January 26 Motion.

On February 1, 2023, the Energy Bureau informed that the Evidentiary Hearing would be conducted from 9:00 a.m. to 5:00 p.m. with a lunch break from 12:00 p.m. to 1:00 p.m. Despite the foregoing, the Energy Bureau reserved the right to continue the hearing after 5:00 p.m. if it deemed it convenient to avoid having to schedule additional hearing dates. On February 1, 2023, the Energy Bureau also issued the Evidentiary Hearing Agenda and authorized LUMA to utilize an official court reporter during the Evidentiary Hearing. The order of witnesses for the Evidentiary Hearing was established in the Agenda.

Upon review of the January 27 and January 28 Motions, on February 1, 2023, the Energy Bureau determined that the Evidentiary Hearing would be conducted in English with simultaneous translation in Spanish. The Energy Bureau also reaffirmed the Public Hearings would be held on February 16-17, 2023, as per established in the revised procedural calendar issued on October 14, 2023, from 9:00 a.m. to 4:00 p.m. The Energy Bureau modified the format of the Public Hearings and set forth they would be conducted using a hybrid model; participants could attend the hearing in person or remotely. Finally, the Energy Bureau informed that the May 26 Motion would be addressed through a separate Resolution.

Upon review of LECO's January 31 Motion, on February 1, 2023, the Energy Bureau granted its request that Prof. Agustín Alexi Irizarry-Rivera be listed as a witness for cross-examination on metrics for major outages, on Friday, February 10, 2023, as well as regarding customer satisfaction on Wednesday, February 8, 2023. The Energy Bureau noted it would issue an amended Evidentiary Hearing Agenda in accordance.

The Energy Bureau also informed that case management issues, such as a potential breakdown of the hearing sessions by sub-topics would be addressed during the Evidentiary Hearing. The Energy Bureau clarified that the parties could use only one attorney per topic. The Energy Bureau denied the request for a short summary of pre-filed testimonies and closing statements. Also, after a review of ICPO's January 31 Motion, the Energy Bureau granted its request that Eng. Gerardo Cosme Núñez be listed a witness for cross-examination on metrics for major outages, on Friday, February 10, 2023.

On February 2, 2023, LUMA filed a document titled *Motion Requesting Witness Jessica Laird To Be Included as Witness for the Major Outage Events Category* ("LUMA February 2 Motion"). Through the February 2 Motion, LUMA requested that Jessica Laird be included as a witness for the Major Outage Events category set for discussion on Friday, February 10, 2023, as she offered direct testimony on the referenced topic on August 18, 2021.

On February 2, 2023, LUMA filed a document titled *Motion for Reconsideration of the Resolution of February 1, 2023* ("LUMA Second February 2 Motion"). In its Second February 2 Motion, LUMA requested that the Energy Bureau reconsider its determination to grant LECO's request for Mr. Agustín Irizarry Rivera to be called as a witness for cross-examination on metrics for Major Outages on Friday, February 10, 2023. According to LUMA, Mr. Irizarry's only expression related to the Major Outage Events performance metric is to mention that LUMA included such a metric and a high-level description of what it comprises. LUMA argued that such statement is not purporting to offer an opinion, objection, or a counterproposal on LUMA's proposed performance metric. LUMA requested that the Energy Bureau reconsider its February 1, 2023, Resolution and deny LECO's request to call Mr. Irizarry as witness in cross-examination for the Major Outage Events performance metrics.

On February 2, 2023, LUMA filed a document titled *Notice of Intent to Oppose ICPO's Motion to Strike Evidence from the Record* ("LUMA Third February 2 Motion"). Through its Third February 2 Motion, LUMA informed its intent to oppose the ICPO's Motion to Strike filed on February 1, 2023. According to LUMA, ICPO's request was based on an incorrect interpretation of the objected testimony and the purpose served by the J.D. Power Study in this administrative proceeding.

On February 2, 2023, LECO filed a document titled *Motion for Reconsideration of PREB's Order Allowing Only One Attorney Per Topic* ("LECO February 2 Motion"). Through the February 2 Motion, LECO requested that the Energy Bureau reconsider its determination to allow only a single attorney to question all the witnesses about an entire topic, and instead limit questioning to one attorney, per witness, per topic —or, at a minimum, allow at least two attorneys to question witnesses addressing each topic.

On February 2, 2023, the Energy Bureau denied the February 1 Motion filed by ICPO. The Energy Bureau clarified that, as a matter of law, the Rules of Evidence do not apply to administrative agency proceedings and that their application lies within the broad discretion of the administrative agency. The Energy Bureau indicated that it would further judge the probatory value of the J.D. Power Survey and Jessica Laird's testimony.

Upon review of the LUMA February 2 Motion, on February 3, 2023, the Energy Bureau granted LUMA's request that Mrs. Laird be included as a witness for the Major Outage Events category set for discussion on Friday, February 10, 2023, and modified the agenda. The Energy Bureau denied LUMA's Second February 2 Motion and determined that Mr. Irizarry would be allowed as a witness for the Major Outage Events category on Friday, February 10, 2023. The Energy Bureau noted that the issue raised by LUMA in its Third February 2 Motion was discussed through a Resolution issued on February 2, 2023. Specifically, the Energy Bureau denied ICPO's motion to strike parts of Jessica Laird's testimony and the J.D. Power Survey. Finally, the Energy Bureau denied LECO's February 2 Motion and reiterated that the parties could use only one attorney per topic.

The Hybrid Evidentiary Hearing was held from February 7 to February 10, 2023.

On February 14, 2023, LUMA filed a document titled *Motion Requesting Audio Recording of Evidentiary Hearing*. ("February 14 Motion"). Through the February 14 Motion, LUMA requested the official audio recording of the Evidentiary Hearing. Also, LUMA informed that it intended to obtain a certified transcript using the official audio of the proceeding. Said request was granted on February 22, 2023.

On February 16 and 17, 2023, the Hybrid Public Hearing was held. The Public Hearing was intended to allow the general public to have the opportunity to present its comments and suggestions about the performance incentive mechanisms to apply to LUMA. Fifteen (15) participants presented comments during the hearing.

On February 21, 2023, LUMA filed a document titled *Motion in Compliance with Bench Orders Issued During the Evidentiary Hearing* ("February 21 Motion"). Through the February 21 Motion, LUMA submitted its responses to its findings on the existing low-income subsidies and/or other assistance available to customers of the electric utilities in Louisiana, Arkansas, and Mississippi. LUMA also provided supporting information on its proposal for relief from the "Day Sales Outstanding" performance metrics for 3-6 months after a moratorium period has been lifted.

On February 24, 2023, LECO requested the Energy Bureau's official evidentiary hearing transcript.

On February 28, 2023, ICPO filed a document titled *Comentarios a Moción en Cumplimiento de Orden Radicada por LUMA el 21 de febrero de 2023* ("February 28 Motion"). In its February 28 Motion, ICPO indicated that LUMA did not comply with certain bench orders issued by the Energy Bureau during the Evidentiary Hearing. ICPO argued that LUMA did not provide the information requested on the totality of subsidies in Louisiana, Arkansas, and Mississippi. Pertaining to the second bench order, ICPO stated that LUMA only addressed the "Day Sales Outstanding" metrics and did not identify other instances in which relief of compliance is sought, such as the "Major Outage Event" metrics. Further, ICPO maintained that LUMA did not explain how the "Day Sales Outstanding" metrics would be calculated. Thus, ICPO requested that the Energy Bureau order LUMA to provide the requested information and comply with the bench orders issued during the Evidentiary Hearing.

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On March 3, 2023, LUMA filed a document titled *Motion Requesting the Energy Bureau to Amend Procedural Calendar* ("March 3 Motion"). In its March 3 Motion, LUMA requested that the Energy Bureau take notice of the fact that at least one (1) month is required for LUMA to complete the transcript of the proceeding. Therefore, LUMA requested an amendment to the procedural calendar to extend the March 10, 2023, deadline to submit the final substantive and legal briefs until at least two (2) weeks after the official transcript is provided to the parties and the Energy Bureau has considered that LUMA complied with its bench orders. In addressing ICPO's February 28 Motion, LUMA stated it had provided all the information publicly available regarding the existing low-income subsidies and LUMA also presented the explanation requested on the "Day Sales Outstanding." LUMA indicated that it would address ICPO's allegations in further detail through a separate motion. On March 7, 2023, ICPO filed a document titled *Moción en Unión a Solicitud de LUMA de Enmienda al Calendario Procesal*, through which it stated that it coincided with LUMA's March 3 Motion requesting an amendment to the procedural calendar.

Upon review of the February 21 Motion, the February 28 Motion, and the March 3 Motion, on March 9, 2023, the Energy Bureau determined that LUMA had complied with the Bench Orders issued during the Evidentiary Hearing and denied ICPO's request as stated in the February 28 Motion. Pertaining the official transcript, the Energy Bureau determined that the Microsoft Teams recording would serve as the official record of the Evidentiary Hearing and all parties should cite to the recording in their remaining filings in this proceeding, where applicable. The Energy Bureau clarified it would not produce an official transcript of the Evidentiary Hearing to avoid further delays. The Energy Bureau also amended the procedural calendar to allow the parties more time to submit their final substantive and legal briefs.

Specifically, the Energy Bureau granted the parties until March 30, 2023, to file the final substantive and legal briefs and until April 20, 2023, to file replies to final briefs by the parties. The Energy Bureau also granted until April 27, 2023, for filing the *amicus curiae* final briefs and for filing comments by the general public.

As part of the general public comments process, the Energy Bureau received various written comments. During the Public Hearings and the written comments process, the public offered recommendations to the Energy Bureau in its process of moving forward to integrating PIMs into our regulatory framework. The public identified certain areas of underperformance by LUMA; desired outcomes; areas to track and/or areas of performance that justify PIMs; and they also highlighted the importance of establishing both penalties and rewards as well as the need for the PIMs to reflect and further Puerto Rico's energy policy goals.

On March 17, 2023, LUMA filed before the Energy Bureau a document titled *Motion to Further Amend Procedural Calendar* ("March 17 Motion"). Through the March 17 Motion, LUMA argued that an amendment to the remaining dates in the procedural calendar of this proceeding was justified. LUMA alleged that it was working on obtaining a certified transcript of the Evidentiary Hearing, which will be delivered no earlier than March 30, 2023. LUMA indicated that, following the completion and stipulation of the transcript, it will need at least two (2) weeks to finalize its final substantive and legal brief. LUMA requested that the deadline to submit the final substantive and legal briefs be extended until at least two (2) weeks after the parties stipulate the official transcript and that the remaining deadlines in the procedural calendar be rescheduled accordingly.

On March 24, 2023, LUMA, LECO, OIPC, and PREPA jointly filed a document titled *Informative Motion on Parties' Agreement on the Evidentiary Hearing Transcript and Renewed Request to Amend the Procedural Calendar* ("March 24 Motion"), wherein the parties provided an update on their discussion about achieving a stipulation of the certified Evidentiary Hearing transcript ("LUMA Transcript") that LUMA had earlier commissioned. LUMA reported that counsel for the parties had agreed "to examine the different volumes of the transcript commissioned by LUMA and compare them against the audio recording, in order to stipulate the transcript that all parties will be referring to in the instant proceeding." The March 24 Motion said the LUMA Transcript would be available not before March 30, 2023, and requested that the March 30, 2023, deadline for final substantive and legal briefs be extended at least two (2) weeks beyond the date at which the parties would stipulate the transcript.

On March 29, 2023, the Energy Bureau granted the request to amend the procedural calendar. The Energy Bureau further amended the procedural calendar many times, upon request by the parties.

On May 25, 2023, the Energy Bureau issued a Resolution ("May 25 Resolution") informing it had taken official notice of certain adjudicative facts as per identified in Part III of the May 25 Resolution. The Energy Bureau granted all parties fifteen (15) days to file their respective positions on taking official notice of the referenced facts.

On June 9, 2023, LUMA filed a document titled *LUMA's Response and Opposition to the Resolution and Order of May 25, 2023, on Taking of Administrative Notice*, whereby it objected to the Energy Bureau's decision on various grounds.

On June 9, LECO filed a document titled *Local Environmental and Civic Organization's Response to Resolution for Official Notice and Request to Take Official Notice on Additional Information*. LECO expressed that it had no objection to the Energy Bureau taking official knowledge of the information described in its May 25 Resolution. It further requested that the Energy Bureau also take official notice of additional facts from documents referenced in its Legal Brief.

On June 9, 2023, OIPC filed a document titled *Motion in Compliance with the May 25, 2023 Order*. In the referenced motion, OIPC stated it had no objection to the May 25 Resolution.

On June 15, 2023, LUMA filed a document titled *Urgent Request to Stay the Deadline to Submit Reply Briefs* ("June 15 Motion"). In its June 15 Motion, LUMA argued that because the Energy Bureau had not yet issued a ruling on its June 9 Motion, it was reasonable and equitable to stay the pending deadlines on reply briefs until the matter was settled and provide LUMA the final opportunity to address the evidence in the administrative record. LUMA also stated that the need to stay the deadline for final briefs was heightened by the LECO June 9 request that the Energy Bureau take official knowledge of at least thirty (30) documents. LUMA advanced that it would file an opposition to such petition and requested that it be granted until June 29, 2022, to present it.

In light of the above, LUMA indicated that it was not in a position to file a rebuttal brief by the current deadline of June 22, 2023. LUMA further argued that before submitting its final brief it was crucial for it to receive a ruling from the Energy Bureau on its opposition to the May 25 Resolution and in connection with LECO's June 9 Motion. According to LUMA, before submitting a final substantive brief, it must know which evidence is admitted for the record. Therefore, LUMA requested that the Energy Bureau stay the deadline to file final briefs until at least twenty (20) days after a ruling was issued on what information and documents would be admitted in the administrative record through the mechanism of taking official notice.

After a review of the June 15 Motion, on June 16, 2023, the Energy Bureau granted LUMA until Thursday, June 29, 2023, to file its response to LECO's June 9 Motion, as requested. The Energy Bureau also stayed the deadline to submit the replies to the final briefs until further notice. The Energy Bureau stated it would issue a ruling on the June 9 pending motions and set a new deadline to submit reply briefs in a separate Resolution.

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On June 29, 2023, LUMA filed a document titled *LUMA's Response and Opposition to LECO's Request on Taking of Administrative Notice* ("June 29 Motion"). Through the June 29 Motion, LUMA opposed LECO's June 9 Motion alleging that LECO's request infringes on LUMA's rights to a due process, non-compliance with the discovery process, and non-compliance with the requirements for taking administrative notice under Puerto Rico Rules of Evidence and its interpretative case law.

On August 9, 2023, LECO filed a document titled *Local Environmental and Civic Organization's Reply to LUMA'S Response to Administrative Notice Order* ("August 9 Motion"). Through its August 9 Motion, LECO purports to reply to the LUMA June 29 Motion. LECO reiterated its request to the Energy Bureau to take official notice of the facts mentioned in the LECO June 9 Motion and requested the Energy Bureau to confirm that it will take official notice of the facts mentioned in the May 25 Resolution.

On August 17, 2023, the Energy Bureau issued a Resolution ("August 17 Resolution"), whereby it denied LECO's June 9 Motion; determined that it was appropriate to take official notice of the facts in Section (II)(B) of the August 17 Resolution, consistent with the May 25 Resolution; and ordered the parties to file reply briefs within twenty-one (21) days.

On August 25, 2023, LUMA filed a document titled *Motion Requesting Further Extension of Time to File Replies to Final briefs by the Parties*, to request that the Energy Bureau grant an extension of time until September 21, 2023, to submit the replies to the final briefs by the parties.

On September 1, 2023, the Energy Bureau granted LUMA's request to extend the deadline to submit the replies to the final briefs in this proceeding no later than September 21, 2023 ("September 1 Resolution").

On September 6, 2023, the Colegio de Ingenieros de Puerto Rico ("CIAPR") filed a document titled *Motion Requesting Extension of Time to File Amicus Brief* ("September 6 Motion"). In the September 6 Motion, the CIAPR requested an extension to the deadline to submit the amicus final brief until September 28, 2023.

On September 6, 2023, LUMA filed a document titled *LUMA's Motion for Partial Reconsideration of the Resolution of August 17, 2023* ("LUMA's Reconsideration Request"). In its Reconsideration Request LUMA reiterated that the Energy Bureau did not comply with the requirements for taking administrative notice under Puerto Rico law and case law. According to LUMA, the August 17 Resolution infringes its right to a due process as it introduces new evidence to the record after discovery process concluded, an evidentiary hearing was held, and the parties filed legal briefs, and without having allowed the parties to express their respective positions regarding that evidence, putting LUMA and other parties at a disadvantage.

On September 7, 2023, LECO filed a document titled *Local Environmental and Civic Organizations Urgent Motion for Clarification of Reply Brief Deadline* (September 7 Motion). In its September 7 Motion, LECO requested clarification of the September 1 Resolution, regarding if all the parties have until September 21, 2023, to submit their reply to the final briefs.

Upon review of the September 7 Motion, on September 8, 2023, the Energy Bureau clarified that all the parties in this proceeding have until no later than September 21, 2023, to submit their reply to the final briefs. Also, the Energy Bureau granted CIAPR's request of extension of time to submit the amicus final brief until September 28, 2023.

On September 21, 2023, the parties submitted their respective replies to final briefs, in compliance with the September 1 Resolution.

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Further, on September 21, 2023, LUMA filed the Final Evidentiary Hearing Transcripts. LUMA also filed a document titled *Motion to Reiterate LUMA's Motion for Partial Reconsideration of the Resolution of August 17, 2023, and Reservation of Rights*.

On September 28, 2023, CIAPR filed its amicus curiae final brief.

Appendix B. Performance Metric Annual Targets and Minimum Performance Levels

	Minimum Performance Level	75%	100%	125%
Customer Service				
J.D. Power Customer Satisfaction Survey (Residential Customers)				
Baseline	398			
Year 1	398	443	461	503
Year 2	427	488	524	609
Year 3	455	533	588	714
J.D. Power Customer Satisfaction Survey (Business Customers)				
Baseline	345			
Year 1	345	404	428	483
Year 2	380	464	511	622
Year 3	414	523	594	760
Average Speed of Answer (minutes)				
Baseline	1.70			
Year 1	9.70	1.60	1.56	1.47
Year 2	7.10	1.50	1.42	1.23
Year 3	6.40	1.40	1.28	1.00
Customer Complaint Rate				
Baseline	17.1			
Year 1	17.1	16.7	16.6	16.2
Year 2	17.1	16.4	16.1	15.4
Year 3	17.1	16.0	15.6	14.5
First Call Resolution				
Baseline	TBD			
Year 1	TBD	TBD	TBD	TBD
Year 2	TBD	TBD	TBD	TBD
Year 3	TBD	TBD	TBD	TBD
Abandonment Rate				
Baseline	8.7%			
Year 1	45.0%	8.0%	7.7%	7.1%
Year 2	35.0%	7.3%	6.7%	5.4%
Year 3	34.0%	7.0%	5.8%	3.8%
Technical, Safety, and Regulatory				
OSHA Recordable Incident Rate				
Baseline	2.19			
Year 1	7.88	N/A	2.30	N/A
Year 2	7.25	N/A	2.30	N/A
Year 3	6.67	N/A	2.30	N/A
OSHA Fatalities				
Baseline	0.08			
Year 1	0.00	N/A	0.00	N/A
Year 2	0.00	N/A	0.00	N/A
Year 3	0.00	N/A	0.00	N/A
OSHA Severity Rate				
Baseline	17.90			
Year 1	53.38	16.55	16.01	14.75
Year 2	49.12	15.20	14.12	11.60
Year 3	45.19	13.85	12.23	8.46
OSHA DART Rate				
Baseline	1.32			
Year 1	6.17	1.21	1.10	N/A
Year 2	5.67	N/A	1.10	N/A
Year 3	5.22	N/A	1.10	N/A

	Minimum Performance Level	75%	100%	125%
System Average Interruption Frequency Index (SAIFI)				
Baseline	6.9			
Year 1	10.4	6.5	6.3	5.9
Year 2	10.1	6.1	5.7	4.9
Year 3	9.8	5.6	5.1	3.9
System Average Interruption Duration Index (SAIDI)				
Baseline	1223			
Year 1	1,212	1,128	1,090	1,002
Year 2	1,155	1,033	958	781
Year 3	1,118	939	825	559
Customers Experiencing Multiple Interruptions (CEMI)				
Baseline	TBD			
Year 1	TBD	TBD	TBD	TBD
Year 2	TBD	TBD	TBD	TBD
Year 3	TBD	TBD	TBD	TBD
Momentary Average Interruption Frequency Index (MAIFI)				
Baseline	TBD			
Year 1	TBD	TBD	TBD	TBD
Year 2	TBD	TBD	TBD	TBD
Year 3	TBD	TBD	TBD	TBD
Distribution Line Inspections & Targeted Corrections				
Baseline	N/A			
Year 1	16	80	106	133
Year 2	56	278	370	463
Year 3	103	516	687	859
Transmission Line Inspections & Targeted Corrections				
Baseline	N/A			
Year 1	4	20	26	33
Year 2	14	69	91	114
Year 3	25	128	169	211
T&D Substation Inspections & Targeted Corrections				
Baseline	N/A			
Year 1	6	30	39	49
Year 2	21	104	137	171
Year 3	38	192	255	319
NEM Project Activation Duration				
Baseline	20.3			
Year 1	30.0	19.5	19.2	18.5
Year 2	30.0	18.8	18.2	16.8
Year 3	30.0	18.0	17.1	15.0
Energy Savings as % of Total Energy Sales				
Baseline	N/A			
Year 1	N/A	N/A	N/A	N/A
Year 2	TBD	0.19%	0.25%	0.31%
Year 3	TBD	0.30%	0.40%	0.50%
Peak Demand Savings as % of Total Peak Demand				
Baseline	N/A			
Year 1	N/A	N/A	N/A	N/A
Year 2	TBD	0.08%	0.10%	0.13%
Year 3	TBD	0.15%	0.20%	0.25%
22. Vegetation Maintenance Miles Completed				
Baseline	909			
Year 1	160	1,200	1,600	1,800
Year 2	180	1,350	1,800	2,000
Year 3	200	1,500	2,000	2,200

	Minimum Performance Level	75%	100%	125%
Financial Performance				
Operating Budget				
Baseline	100%			
Year 1	100%	N/A	95–100%	N/A
Year 2	100%	N/A	95–100%	N/A
Year 3	100%	N/A	95–100%	N/A
Capital Budget: Federally Funded				
Baseline	100%			
Year 1	100%	N/A	95–100%	N/A
Year 2	100%	N/A	95–100%	N/A
Year 3	100%	N/A	95–100%	N/A
Capital Budget: Non-Federally Funded				
Baseline	100%			
Year 1	100%	N/A	95–100%	N/A
Year 2	100%	N/A	95–100%	N/A
Year 3	100%	N/A	95–100%	N/A
Days Sales Outstanding: General Customers				
Baseline	131			
Year 1	148	122	119	111
Year 2	145	113	106	90
Year 3	142	105	94	70
Days Sales Outstanding: Government Customers				
Baseline	754			
Year 1	850	704	683	636
Year 2	833	653	613	518
Year 3	815	603	542	401
Reduction in Network Line Losses				
Baseline	TBD			
Year 1	TBD	TBD	TBD	TBD
Year 2	TBD	TBD	TBD	TBD
Year 3	TBD	TBD	TBD	TBD
Overtime				
Baseline	23%			
Year 1	23%	21%	20%	19%
Year 2	22%	20%	19%	18%
Year 3	21%	19%	18%	17%

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Appendix C. Summary of Public Comments

In the interest of ensuring public participation and insight into the process, the Energy Bureau held two days of public hearings as part of the proceeding. Both hearings were held in Spanish and were live-streamed and recorded. During the first hearing, held on February 16, 2023 participants commented before the Energy Bureau; and during the second public hearing, held on February 17, 2023 participants provided comments.

During the hearings, the Energy Bureau heard comments from the public regarding concerns about the following issues:

- Numerous commenters with experience in PREPA, and/or certified electrician in Puerto Rico expressed that there is imbedded issue with regards to bureaucracy in the system and lack of transparency. Indicators related to time to bring client services should be included. There are over 6,000 certified electricians in Puerto Rico. The certified electricians can work and do certifications of work done within specifications, help in doing direct service to clients, and also vegetation management in the system helping improve system uptime.

- Numerous commenters expressed that there is no follow-up on presented complaints with LUMA. They mentioned that there should be complaint follow-up indicators/metrics and the time it takes to resolve them.

- A commenter expressed issues with public lighting and there should be metrics that measure LUMA's public lighting uptime.

- A commenter expressed the need to also have penalties on items that are related to safety.

A commenter expressed the need to have an outside entity to audit the metric results to make certain the metrics results are correct and that they are edited. The Energy Bureau received three sets of written public comments. Common themes throughout comments included: dissatisfaction with the current state of the Puerto Rico electrical system, renewable energy implementation and incentives, lack of satisfactory customer service and communication, and delays to system repairs and outage remediation.

Carissa Cabán Alemán, a resident of Naguabo, community psychologist, university professor, and representative of Climate Actions, commented on the linkage between power outages and severe weather events due to climate change and mental health. She recommends PREB establish performance metrics in accordance with a 21st century electrical system and that the metrics incentivize a balance between providing improved service with reasonable costs. She states the metrics proposed by LUMA do not serve to modernize the system or improve resiliency and provides several recommendations for the evaluation and adoption of performance metrics originally made by Augustin Irizarry and Dr. Jose Alameda. Ms. Cabán also expressed her suggestions in the Public Hearing of February 16, 2023.

Raymon Rassi Maldonado, a retired resident of Arecibo, provided several anecdotes about his personal experience with slow response and action by LUMA regarding streetlighting and vegetation maintenance close to his home. He discussed the lack of responsiveness from LUMA on questions surrounding solar assistance programs, electric vehicles, energy efficiency programs, and the implementation of variable tariffs. He also provided several recommendations around the incentivization of electric vehicles, solar, and energy efficiency, and he stated that LUMA should use modern technology to effectively communicate with customers and respond to their claims. Mr. Rossi also expressed his sentiments in the Public Hearing of February 16, 2023.

Lisa Spickers, an electrical contractor, discussed problems that impact electricians, electrical engineers, and other industry professionals. She provided anecdotes about long delays

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(weeks or months) for LUMA to complete actions before the meter that are needed to make areas safe for electricians to make repairs. She expressed various concerns surrounding procedures and processes, such as concern for when a client does not have service due to issues with the meter or feeder lines and wait times caused by failures by LUMA personnel to react in a reasonable time span. She provided several recommendations around improving information availability for electrical contractors and other industry professionals, and improvements to communication with LUMA's technical personnel. Ms. Spickers also expressed her suggestions in the Public Hearing of February 16, 2023.

After the public hearings celebrated February 16 and 17, 2023, numerous public comments were submitted to the Energy Bureau by email. The comments were reviewed and summarized below:

- A large number of comments stated that the Energy Bureau must consider metrics to encourage transformation towards a "modern, sustainable, reliable, efficient, cost effective and resilient system" as required by Act 17, Act 120 and the Operation and Maintenance Agreement of the Transmission and Distribution System. In addition, these commenters encouraged the Energy Bureau to enforce the goals of the approved Integrated Resource Plan. In closing, the commenters expressed support for establishing fair performance metrics by the Energy Bureau and that the revised metrics to measure LUMA's operational performance.
- Numerous commenters expressed dissatisfaction with LUMA's service and raised additional concerns with the slow pace of utilizing federal funding, potential rate increase to pay legacy debt, slow response to complaints, and problems with power quality and outages.
- Several commenters shared experiences of poor customer service with unresolved or slow response to complaints and claims filed for damages from electrical failures.
- One commenter expressed that LUMA should be evaluated by industry standard metrics and not metrics proposed by LUMA.
- One commenter shared positive experience working with LUMA on permitting solar systems for residential customers but negative experiences on commercial projects.
- One commenter supported installation of smart meters to reduce energy theft.

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