

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

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IN RE: PERFORMANCE TARGETS FOR
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

SUBJECT: FINAL RESOLUTION AND
ORDER

**LOCAL ENVIRONMENTAL AND CIVIC ORGANIZATIONS' MOTION FOR
RECONSIDERATION OF THE FINAL RESOLUTION AND ORDER ON PERFORMANCE
TARGETS FOR LUMA ENERGY, LLC AND LUMA ENERGY SERVCO, LLC**

TO THE PUERTO RICO ENERGY BUREAU:

COME NOW, Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc. - Enlace Latino de Acción Climática, Inc., Alianza Comunitaria Ambientalista del Sureste, Inc., Coalición de Organizaciones Anti-Incineración, Inc., Amigos del Río Guaynabo, Inc., CAMBIO, and Sierra Club and its Puerto Rico chapter, and Unión de Trabajadores de la Industria Eléctrica y Riego (collectively, "LECO"), to respectfully request that the Puerto Rico Energy Bureau reconsider certain parts of the Final Resolution and Order notified on January 26, 2024, as detailed below.

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I. THE ENERGY BUREAU SHOULD RECONSIDER THE OMISSION OF PENALTIES FROM THE PERFORMANCE METRICS SCHEME.

We seek reconsideration of PREB's conclusion, starting on page 27 and repeated throughout, that LUMA's omission of penalties from the “first ever performance incentive scheme in Puerto Rico” was “reasonable.”

PREB has recognized the need for imposing a penalty-reward scheme that takes a balanced approach.¹ This is aligned with the scheme that the Legislature envisioned. As detailed below, the statutes that govern the penalty-reward scheme direct PREB to impose penalties as part of a balanced approach. Imposing penalties for deficient performance is among PREB's duties according to law.

Section 1.5 (3)(d) of Act 17-2019 designates PREB as the entity in charge of regulating, supervising, and enforcing the public energy policy of the Government of Puerto Rico, and explicitly requires PREB to establish a balanced performance-based mechanism with both penalties and incentives:

(d) When deemed appropriate, during ratemaking processes, the Bureau shall establish performance-based incentives **and** penalty mechanisms for electric power service companies as well as mechanisms that ensure strict compliance with the orders of the Bureau. (*emphasis added*).

Act No. 57- 2014's Section 1.2 further highlights the need for balance between penalties and incentives: “The regulatory entity shall thoroughly scrutinize the power grid's maintenance and establish performance-based incentive **and** penalty mechanisms.”² (*emphasis added*).

¹ PREB, *Final Resolution and Order* at 20, Dkt. No. NEPR-AP-2020-0025 (Jan. 26, 2024) [hereinafter *Final Resolution and Order*] PREB's Baseline Order included, as a design principle, the need to "balance costs and benefits." May 21, 2021, Baseline Order.

² Puerto Rico Energy Transformation and Relief Act, Act 57-2014, 22 LPRA §1051 (2014). (*emphasis added*).

Mr. Larry Seilhamer-Rodríguez, one of the authors of Act 17-2019 that amended Act 57-2014 to incorporate the performance mechanism section, while presenting the piece of legislation in the Senate floor, expressed the need of the implementation of a performance-based incentive and penalty mechanisms:

Mecanismos de incentivos y penalidades por desempeño. Se va a establecer claramente una serie de incentivos por cumplimiento, **penalidades por pobre desempeño y por incumplimiento**.³ (*emphasis added*).

In the Positive Report on P.S. 1121 it is indicated that the incorporation of performance standards was addressed with the amendment to Art. 6.3 of Act 57-2014:

La sugerencia fue atendida mediante la enmienda al Artículo 6.3 de la Ley 57-2014 para incluir entre los **deberes** del Negociado el instaurar mecanismos de incentivos **y penalidades** basados en desempeño. Además, la medida añade un Artículo 6.25B a la Ley 57-2014 conforme al cual el Negociado establecerá mediante reglamento aquellos mecanismos de incentivos **y penalidades** que consideren el desempeño de las compañías de servicio eléctrico, y se añaden los criterios que deberá considerar y mecanismos a utilizar.⁴ (*emphasis added*).

Effectively, Act 57-2014 as amended in its Art. 6.3 (j) clearly provides PREB's duty to establish incentive and penalty mechanism based on performance.⁵ Art. 6.25B's title is "Performance-Based Incentive **and** Penalty Mechanisms", and in that article it is clearly stated that the dual mechanism "is necessary to promote energy companies to invest cost-effectively in infrastructure, technology, incorporation of distributed generation, renewable energy sources and services that result in better benefits for the electrical system and consumers."⁶ (*emphasis added*). It does not only say incentive mechanism based on performance, nor penalty mechanism based on performance. Every time the legislature

³ *Diario de Sesiones del Senado de Puerto Rico*, November, 6, 2018, Volume LXVI, No. 20, at 8777, available at https://senado.pr.gov/document_vault/session_diary/241/document/110618.pdf (last visited Feb. 15, 2024).

⁴ *1er Informe Comisión Especial de Asuntos de Energía*, Informe Positivo sobre el P. del S. 1121, November 6, 2018 at 62, available at <https://sutra.oslpr.org/osl/esutra/medidareg.aspx?rid=128536> (last visited Feb. 15, 2024).

⁵ Article 6.3(o) Puerto Rico Energy Transformation and Relief Act 22 LPRA § 1054b.

⁶ *Id.* 22 LPRA §1054x-1.

mentions performance-based mechanisms, the legislature ties incentives with penalties. It is not one or the other, but rather both.

The scheme created in PREB's Order does not require penalties. Indeed, the scheme is unbalanced without them. To start with: PREB correctly added deadbands to the scheme.⁷ The deadbands allow PREB to differentiate between substandard performance, "merely acceptable" performance, and "exceptional (above and beyond) performance."⁸ PREB recognizes deadbands' utility to "ensure that LUMA will not earn incentives for substandard performance."⁹ That is a step in the right direction, but it does not take full advantage of deadbands as a design feature. In other jurisdictions, as PREB notes, regulators use deadbands to actually penalize substandard performance,¹⁰ as the legislature directed PREB to do here.

The scheme PREB developed makes it easy to identify substandard performance that warrants penalties. In adopting deadbands, PREB created Approach 1 and 2 to keep the midpoint of those deadbands (the baselines) and one endpoint of those deadbands (the targets) in line with current data and performance.¹¹ Approach 1 and 2 therefore are ready-made tools to set a point at the other end of the deadband – the point that defines substandard performance and therefore warrants penalties.

In sum, the Legislature envisioned a balanced scheme that includes both penalties and rewards. The scheme set up by PREB unlawfully fails to include both elements. It could easily include penalties – and is unbalanced without them. Creating a mechanism based solely on incentives is buying LUMA's argument that its contract governs. This decision

⁷ Final Resolution and Order at 28.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 27, n.37.

¹¹ *Id.* at 24-27.

completely ignores the law and regulations. Therefore, it represents an act contrary to law and an abuse of discretion. We ask PREB to reconsider the ruling that LUMA's omission of penalties was "reasonable" and comply with the law by establishing penalties as well.

II. THE ENERGY BUREAU SHOULD RECONSIDER ITS MODIFIED BUDGET PERFORMANCE METRICS.

We request that PREB reconsider its modified budget performance metrics, which would allow LUMA to earn an incentive for having actual expenses meet amended budgets submitted near the end of the fiscal year, rather than the original budget submitted at the beginning of the year.¹²

As PREB notes, LUMA's budgets already include a pre-approved cost overrun of 2%, and LUMA may seek approval of cost overruns beyond 5%.¹³ PREB noted LECO's concern that LUMA should only receive an incentive for meeting the budget target based on its original budget, not an amended budget.¹⁴ Finally, PREB agreed that the budget performance metrics should be "consistent with the positions of all parties in the legal briefs."¹⁵

However - PREB's modified budget performance metrics do not address the problem that LECO highlighted. LUMA could submit a budget at the beginning a fiscal year, exceed it by more than 5%, submit an amended budget under T&D OMA Section 7.3(e), and then claim an incentive based on actual operating expenses for the fiscal year meeting the AMENDED budget, rather than the original budget. Section 7.3(e) does not limit the timing for amendment of the budget - so LUMA could submit an amended budget very close to the

¹² Final Resolution and Order at 87-97.

¹³ *Id.* at 88.

¹⁴ *Id.*

¹⁵ *Id.* at 91.

end of the fiscal year (and in fact did so during this proceeding). Having operating expenses meet an amended budget is not a “difficult task”¹⁶ - in fact, under PREB’s scheme, it seems impossible for LUMA to NOT obtain this incentive.

We request that PREB reconsider its modified metric to account for this problem.

Using the Operating Budget modification as an example:

Original from PREB’s Order p. 91, Table 29: 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 and 100 percent.

LECO’s Requested Modification: The metric will be reformulated, so the target is met if the actual operating expenses for a given fiscal year divided by the original approved T&D Operating Budget for the same fiscal year as incurred is between 95 percent and 100 percent. (*emphasis added*).

This would not interfere with LUMA's ability to amend the budget if necessary. It does align the metrics with PREB's principle that incentives should only go to difficult tasks.

III. THE ENERGY BUREAU SHOULD RECONSIDER ITS ORDER APPROVING LUMA’S VEGETATION MAINTENANCE METRIC.

PREB basically adopted LUMA’s Vegetation maintenance proposal and concluded that LUMA’s proposed target levels for the first 3 years are “hard-to-reach” because it requires continued improvement to its practices. PREB’s justification is that their priority is to reduce vegetation related outages that would increase reliability. At the same time, PREB acknowledges that LUMA will be receiving millions of federal dollars in Fiscal Year 2024 (\$125M), Fiscal Year 2025 (\$350M), and in Fiscal Year 2026 (\$375M) for vegetation management. These funds are additional to LUMA’s allocated budget of \$50M, which is the assumption used for this metric.

¹⁶ Final Resolution and Order at 11.

This is highly problematic. By accepting LUMA's proposed metric of vegetation maintenance miles completed without establishing levels of difficulty where an incentive could be awarded for clearly difficult tasks, and by setting easy targets, PREB is allowing LUMA to have only economic rewards for doing what is expected for them to do and freeing them from any penalty in the event that, despite the advantages LUMA already have, they fail to meet the targets. And this is on top of the astronomical amounts of money that LUMA is receiving and will receive for the next 3 years for vegetation management. The message PREB is sending to LUMA, and the people of Puerto Rico is that this for-profit company can perform poorly without consequences for them, but those consequences are definitely paid and suffered by Puerto Ricans.

Therefore, LECO requests PREB to reconsider its decision and adopt LECO's proposal on this metric as argued in the Legal Brief. In the alternative, LECO requests eliminating the 75% target and imposing penalties for noncompliance of the 100% target for each year.

IV. THE ENERGY BUREAU SHOULD ELIMINATE THE J.D. POWER PERFORMANCE METRIC AND RECONSIDER ITS DECISION TO EXCLUDE INFORMAL COMPLAINTS FORM THE CUSTOMER COMPLAINT METRIC.

A. Customer Service

Throughout this process we have consistently argued that the metrics LUMA has proposed under the customer service section are not coherent with the Commencement of Proceedings Order¹⁷ because they fail to go above and beyond. More specifically the Customer Complaint Metric does not adequately measure customer satisfaction, but rather is designed with the sole purpose of measuring LUMA's own satisfaction with how it handles internal

¹⁷ See Final Resolution and Order at 33, "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."

procedures that are already required of them by law. Moreover, we had underscored the need to reject the JD Power Survey because it too does not align with the Commencement of Proceeding Order. The Energy Bureau should reconsider adoption of the JD Power Service Metric and eliminate this metric. It should also reconsider its decision to exclude informal complaints from the Customer Complaint Rate Metric to ensure that all performance metrics approved are consistent with the Commencement of Procedure Order and the legal framework that requires LUMA to provide [j]ust and reasonable rules or practices that assess the service provided”¹⁸ as well as “customer services terms and conditions.”¹⁹

1. J.D. Power Survey

Our Legal Brief sustained that the JD Power Survey should not be used to establish benchmarks because (1) PREB had already rejected it in another docket; (2) it fails to avoid selection bias; (3) is not an accurate representation of Puerto Rico’s electric system; and (4) provides LUMA with a reward for a service that is not above and beyond, as required by the Commencement of Proceeding Order.

Now, we respectively petition PREB to reconsider their decision to approve the J.D. Power Survey metric. Allowing LUMA to receive incentives under this metric while recognizing the surveys inappropriateness for Puerto Rico along with its faulty sampling methodology is inconsistent and against the public interest. PREB itself recognized that regarding survey methodology concerns “LUMA did not address concerns compellingly.”²⁰

This metric should not persist.

Despite concerns, PREB has ordered LUMA “to develop and report back to the Energy Bureau on an alternative survey instrument and sampling methodology, which should be

¹⁸ Section 6.28 (b) (2) Act 17-2019.

¹⁹ Section 6.28 (b) (6) Act 17-2019.

²⁰ Final Resolution and Order at 34.

responsive to the concerns raised by intervenors to this proceeding.”²¹ But PREB does not provide a time frame for this instruction. PREB should instead eliminate this metric until LUMA is able to comply with the petition to develop an alternative sampling methodology. This would result in a decision coherent with PREB’s previous expressions regarding the J.D. Power Survey. Alternatively, PREB should specify a deadline for submission of LUMA’s report on alternative survey instruments and sampling methodology.

As previously stated, in Re: The Performance of the Puerto Rico Electric Power Authority, Dkt. No. NEPR-MI-2019-0007, LUMA proposed using J.D. Power's Customer Satisfaction Survey to establish performance baselines for residential and business customers.²² However, the Energy Bureau dismissed this proposal, stating that LUMA failed to demonstrate the survey's relevance and did not address concerns regarding its process and outcomes. LUMA filed a Motion for Partial Reconsideration, but PREB once again rejected the survey because they believed LUMA had failed to conduct a “thorough analysis”.²³ The facts of the present case are no different. Upon questions from LECO, Ms. Laird failed to provide a satisfactory answer to the reason behind the chosen methodology. In fact, upon being cross examined she admitted to not having looked at the cost behind other survey choices, despite consistently arguing that email surveys were most cost effective. PREB’s consultants also underscored the lack of a representative sample in their sampling methodology.²⁴

²¹ Final Resolution and Order at 33.

²² See LECO, *Legal Brief* at 65-70, Dkt. No. NEPR-AP-2020-0025 (May 11, 2023) [hereinafter *LECO's Brief*].

²³ LECO Brief at 66.

²⁴ Consultant Ben Havumaki also highlighted that “[j]ust because there is a random draw doesn’t mean that the resulting sample will be representative.” AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 1 [02: 17: 00].

PREB's decision recognizes that the sampling methodology behind the J.D. Power Survey might not be the best for Puerto Rico.²⁵ In doing so they validate LECO's argument that the power survey was (1) not designed with Puerto Rico's infrastructure in mind and (2) fails to avoid selection bias because it only uses online surveying techniques. However, despite their concerns, PREB approved the survey for the initial three years and have directed LUMA to provide additional information in order for PREB to determine whether the metric should be maintained or eventually replaced. Furthermore, LECO argued that the performance targets were well below the industry standards of 731 for residential and 774 for business. PREB increased the targets to 714 and 760 respectively. While the increase is a significant one, they are still below industry standards allowing LUMA to receive incentives for mediocre performance.

Given that the survey is (1) not an accurate representation of Puerto Rico's current demographic, (2) rewards mediocre performance and (3) was already denied by PREB, we respectfully petition PREB to eliminate this metric.

B. Customer Complaint Rate

We kindly petition PREB to reconsider its decision not to include informal complaints as part of the customer complaint rate metric's definition. While we agree with PREB that the metric should include both RV and QR complaints, not including informal complaints creates a metric that falls short of effectively measuring whether customers are satisfied. Failing to do so only serves to provide a metric that can only measure LUMA's ability to comply with internal processes. As highlighted by PREB's consultant, Mr. Havumaki, there is no space within the customer complaint metric to account for customers who are

²⁵ Final Resolution and Order at 35.

unsatisfied with the outcome of a QR and an RV process.²⁶ During the hearings, Ms. Jeppesen herself mentioned that LUMA does receive a wide array of informal complaints, and it is public knowledge that many customers are unsatisfied with voltage fluctuations, unforeseen power outages, among other things.²⁷

LUMA should not be rewarded for following basic customer complaint protocol, but rather for going above and beyond to ensure that it is the customer who is satisfied regardless of the type of complaint. However, PREB has argued in their final decision that despite understanding intervenor's concern there needs to be a complaint tracking metric tabulated by PREB rather than based on complaints received and tracked by LUMA or another party. It is unclear if this decision is due to PREB not trusting LUMA's ability to handle and accurately track a customer complaint metric. PREB itself acknowledged concerns with LUMA's approach to formulating targets because it "contravenes the purpose of the incentive framework- to drive performance improvements and reward exceptional, not status quo (or worse) performance."²⁸ If such is the case, PREB should rethink the very incentives it is awarding them along with the lack of penalties.

V. THE ENERGY BUREAU SHOULD RECONSIDER ITS DECISION TO APPROVE INCENTIVES FOR ACTIONS DURING MAJOR OUTAGES.

A. The Board Acted Arbitrarily and Contrary to Law in Awarding Incentives for Satisfaction of only 50% of the "Scorecard" during Major Outage Events.

We respectfully urge PREB to reconsider its reward of incentives to LUMA for actions at "a 50-percent range of performance" under its Major Outage Events' [MOE] "scorecard."²⁹

²⁶ AP-2020-0025 Evidentiary Hearing-20230209_Meeting Recording 1[00: 36: 36]. *See also* LECO Brief at 71.

²⁷ LECO's Brief at 72.

²⁸ Final Resolution and Order at 42.

²⁹ Final Resolution and Order at 110.

First, PREB’s order regarding incentives available during MOEs is inconsistent with its determination that LUMA should not earn incentives if it achieves less than a 75% performance level.³⁰ Concluding that 50-percent performance is “substandard,”³¹ PREB found that “[r]eplacing 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.”³² Accordingly, it declined to award PREB incentives for 50-percent performance, limiting the “tiers” in which LUMA may earn incentives to 75 percent, 100 percent, and 125 percent.”³³

Yet for MOE “scorecard” points, PREB wrote, “[t]he 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.*”³⁴ For the same reasons PREB found a 50-percent performance level to be inadequate for other metrics, and because 50-percent performance is not consistent with incentives awarded for other metrics, the Board should reconsider its decision to allow LUMA to earn incentives if it obtains only 50 percent of available points during MOEs.

PREB should also reconsider its grant of incentive fees to LUMA for earning 50 percent of available MOE points because, as PREB noted, 50 percent performance is decidedly “substandard.”³⁵ PREB correctly found that “[m]ajor event response is a priority function for

³⁰ Final Resolution and Order at 28; *Id.* at 112, n.12.

³¹ Final Resolution and Order at 28 (observing that “the existence of... 50-percent incentive levels within LUMA’s Final Revised Annex IX would suggest that LUMA might stand to earn some incentive for substandard performance.”) (*emphasis added*).

³² Final Resolution and Order at 112, n. 12.

³³ Final Resolution and Order at 28.

³⁴ Final Resolution and Order at 110 (*emphasis added*).

³⁵ *See* Final Resolution and Order at 28 (observing that “the existence of... 50-percent incentive levels within LUMA’s Final Revised Annex IX would suggest that LUMA might stand to earn some incentive for substandard performance.”) (*emphasis added*).

LUMA as the T&D operator of Puerto Rico’s electricity grid,”³⁶ yet the Order allows LUMA to be rewarded for performance that, in any school, would result in a failing grade. The Order falls far short of PREB’s mandate that targets for which incentives may be available must “go above and beyond.”³⁷ Puerto Ricans deserve to have their health and welfare prioritized in the event of a MOE; before any additional funding flows to LUMA, the company should have to demonstrate far better than 50-percent performance.

B. The Order Fails to Require LUMA to Satisfactorily Perform Emergency Response Measures Critical to the Public Interest.

PREB should reconsider its Order because it would allow LUMA to receive incentive payments even if it fails to perform actions, such as repairing downed wires, that are essential to the public interest. Accordingly, the Order does not satisfy PREB’s own mandate that, in order for the metrics to warrant an incentive, they “shall result in a clear benefit for the public interest and ratepayers.”³⁸

PREB made the right decision in increasing (albeit inadequately) the number of points on the MOE “scorecard” that LUMA must obtain in order to receive incentives, and PREB is correct that LUMA would not be able to obtain incentives if it completed solely the “preparation phase” of MOE scorecard actions. What PREB requires, however, remains well short of ensuring the public interest is satisfied. For example, for the other performance metrics, PREB imposed a “cap” to ensure that LUMA completes at least some of the performance metrics for multiple categories of activities before receiving financial reward.³⁹ Here, not so. With a floor of just 500 points to receive incentives, LUMA could perform only

³⁶ Final Resolution and Order at 115, n. 78.

³⁷ PREB, *Resolution and Order - Commencement of Proceeding for the Establishment of a Performance-Based Incentive Mechanism Targets* at 5-6, Dkt. No. NEPR-AP-2020-0025 (Dec. 23, 2020) [hereinafter *PREB Commencement of Proceeding Order*].

³⁸ *Id.*

³⁹ *See* Final Resolution and Order at 29.

the “preparation phase” and a portion of the communications phase of the MOE scorecard—without any performance whatsoever of the “operations” phase of metrics, which includes such critical metrics as repairing downed wires, estimated time of restoration (ETR), and ETR accuracy⁴⁰—and still be rewarded incentives.⁴¹

Requiring reporting of how LUMA addresses downed wires⁴² does not cure this problem. While reporting is a welcome addition, LUMA may report “0” or it may report significant numbers of downed wires addressed; it makes no difference for the purposes of the incentives established in the Order. Nor does PREB’s explanation that the MOE metrics “are not part of the Performance Metrics that form the basis for the Incentive Compensation Pool”⁴³ cure the problem. The fact of the matter is that, under PREB’s Order, LUMA may receive lucrative incentives for its actions during MOE even if it wholly fails to address downed wires, the only activity covered by the “scorecard” that directly involves physical reparation of the system⁴⁴ and which addresses a grave risk to public safety.⁴⁵ Because PREB’s Order allows LUMA to receive incentives without ensuring that “operations” phase actions fundamental to public health and welfare are performed, PREB’s Order does not “result in a clear benefit for the public interest and ratepayers.”⁴⁶

⁴⁰ See LUMA, Submission of Revised Annex IX to the T&D OMA - Performance Metrics Targets: In Compliance with the PREB Resolution and Order of August 1, 2022, at Table 2-26, PREB Dkt. NEPR-AP-2020-0025 (Oct. 28, 2022). [hereinafter LUMA’s proposal]. (Adm. Exh. 11).

⁴¹ See Final Resolution and Order at 106 (explaining that the “preparation phase” would count for 250 points, the “operational response metrics are worth 450 points and the communications total 350 points”). Notably, these total 1,050 points, not 1,000 points.

⁴² See Final Resolution and Order at 109-110.

⁴³ Final Resolution and Order at 110, n. 536.

⁴⁴ AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 2 [01: 39: 55 – 01: 40: 48].

⁴⁵ AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [00: 42: 25 – 00: 42: 56].

⁴⁶ PREB Commencement of Proceeding Order at 5-6.

C. The Board Acted Unlawfully in Awarding Incentives for Complying with Existing Regulatory Obligations and Other Basic Obligations of Utilities.

The Order likewise fails to satisfy regulatory and PREB's own directives for the metrics because it allows LUMA to receive incentive payments for otherwise required or plainly easy tasks. PREB explained at the outset of this docket that targets for which an incentive may be awarded must be "beyond the minimum required compliance level."⁴⁷ "Rewarding entities with incentives for achieving required compliance," PREB clarified, "is the antithesis of the performance incentives concept and contrary to the public interest."⁴⁸ Reporting injuries is, by any definition, not "above and beyond;" it is already required by OSHA. The record also makes clear that notifying critical facilities and customers about forecasted events that will likely create major outages does not go "above and beyond" – rather, LUMA witnesses admit that it is "what all utilities do" for major outages.⁴⁹ In short, PREB did exactly what it said it must not do: reward LUMA for achieving required compliance. PREB should reconsider its Order.

VI. THE ENERGY BUREAU SHOULD ALSO RECONSIDER LABOR, ENERGY EFFICIENCY AND DEMAND RESPONSE METRICS.

The Energy Bureau should also reconsider its decision to provide an incentive for all labor safety metrics and instead should impose penalties if minimum standards are not met, according to LECO's arguments in its Legal Brief. Additionally, PREB's order does not comply with its own mandate to "further the earlier compliance with public policy" on establishing targets for "accelerated implementation of...demand response, energy

⁴⁷ PREB Commencement of Proceeding Order at 5.

⁴⁸ *Id.* at 3; *See also* Reg. 9137, Section 7.1 ("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.") (*emphasis added*).

⁴⁹ AP-2020-0025 Evidentiary Hearing-20230210_Meeting Recording 1 [00: 54: 05 – 00: 54: 31].

efficiency...”,⁵⁰ by deferring energy efficiency and demand response metrics implementation. Therefore, LECO request reconsideration of this decision, according to LECO’s arguments in its Legal Brief.

WHEREFORE, LECO respectfully requests that the Energy Bureau reconsider its Final Resolution and Order.

Respectfully submitted. In San Juan Puerto Rico, February 15, 2024.

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⁵⁰ *PREB Commencement of Proceeding Order.*

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CERTIFICATION OF SERVICE

I hereby certify that on February 15, 2024, I served this brief to the following parties:

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