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

IN RE: PERFORMANCE METRIC TARGETS FOR LUMA ENERGY SERVCO, LLC	**CASE NO:** NEPR-AP-2020-0025 **SUBJECT:** Reconsideration of Final Order.

RESOLUTION AND ORDER

I. Relevant Procedural Background

On January 26, 2024, the Energy Bureau of the Puerto Rico Public Service Regulatory Board ("Energy Bureau") issued a Final Resolution and Order on Performance Targets for LUMA[1] ("Final Resolution"). Through this Final Resolution, the Energy Bureau approved LUMA's proposed performance metrics with modifications and clarifications. The Energy Bureau found that "the modifications and clarifications in this Final Resolution 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".[2]

On February 15, 2024, LUMA filed a motion titled *LUMA's Motion for Reconsideration of Final Resolution and Order* ("LUMA's Reconsideration"). In the motion LUMA requested the Energy Bureau reconsider several determinations it made in the Final Resolution, including: (1) the modification of the tier structure for non-binary metrics the decision to substitute LUMA's initial structure with tiers corresponding to 25%, 50%, 100%, 125% and 150% with three tiers corresponding to 75%, 100% and 125%, and the deadband set effectively at the 75% tier); (2) the decision to change the tiers for the MOE Metrics to include two tiers of 50% and 100% instead of LUMA's proposed tiers of 25%, 50%, 100%, 125% and 150%; (3) the adoption of an annual process to determine LUMA's performance including the explanation that the Energy Bureau will issue a final determination that shall be used by the Puerto Rico Electric Power Authority ("PREPA") to pay the incentive fee; (4) the modifications to the approach to measure performance of certain metrics; (5) the modification of the allocation of base points to certain; (6) the modification of the performance baseline for certain metrics; (7) the modification of the Annual Performance Targets; and (8) the determination to approve Performance Metrics for interconnections, energy efficiency/demand response, and vegetation management. Second, LUMA noted discrepancies between certain values between the body of the Final Resolution and the appendix and requested clarification. Third, LUMA requests the approval of the baselines, incentive tiers, and targets presented by LUMA in its Proposed Performance Metrics Targets and the Revised Annex IX submitted on October 28, 2022.

On February 15, 2024, a group of Local Environmental and Civil Organizations ("LECO")[3] filed a motion titled *Motion for Reconsideration of The Final Resolution and Order on Performance Targets for Luma Energy, LLC and Luma Energy Servco, LLC* ("LECO's Reconsideration"). LECO requested the Energy Bureau reconsider several determinations in the Final Resolution, including: (1)the omission of penalties, (2) the calculation of the modified budget performance metrics, (3) the approval of LUMA's proposed vegetation

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[1] LUMA Energy LLC and LUMA Energy ServCo LLC (jointly referred as, "LUMA").

[2] *See* Final Resolution, Section I.

[3] 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").

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maintenance targets, (4) the approval of the J.D. power performance metric and the decision to exclude informal complaints from the customer complaint metric, (5) several aspects related to incentives for actions during major outages, (6) aspects of the labor, energy efficiency and demand response metrics.

On February 22, 2024, LUMA filed a document titled *LUMA's Notice of Intent to Respond to the Local Environmental and Civic Organizations' Motion for Reconsideration of Final Resolution and Order on Performance Targets for Luma Energy LLC and Energy Servco, LLC* ("February 22 Motion") in which LUMA stated it intended to respond to and oppose LECO's Reconsideration.

On February 26, 2024, the Energy Bureau issued a Resolution and Order ("February 26 Resolution") related to the LUMA's and LECO's Reconsiderations in which it took notice of LUMA's Reconsideration, LECO's Reconsideration and of the February 22 Motion, and determined that the Energy Bureau accepted and would evaluate the merits of LUMA's Reconsideration and LECO's Reconsideration. The Energy Bureau granted LUMA and LECO twenty (20) days to file their respective responses to the motions for reconsideration.

On March 15, 2024, LECO filed a document titled *Local Environmental and Civic Organizations Response in Opposition to LUMA's Motion for Reconsideration* ("LECO March 15 Response"). LECO argued that LUMA's arguments do not meet the high bar for arbitrary and capricious conduct and that the Energy Bureau has not violated LUMA'S due process protections.

On March 18, 2024, LUMA filed a document titled *LUMA's Response in Opposition to LECO's Motion for Reconsideration of Final Resolution and Order* ("LUMA March 18 Response"). In LUMA March 18 Response, it argued LECO's motion for reconsideration fails to meet the requisite legal standard for review and that the Energy Bureau should Reject LECO's request to adopt penalties and sustain the adopted Performance Metrics Targets challenged by LECO

II. Summary of Motions for Reconsideration

A. LECO's Reconsideration

1. No inclusion of penalties

LECO requests that the Energy Bureau reconsider its determination to not include penalties in LUMA's incentive mechanism scheme.[4] LECO contends that it is the duty of the Energy Bureau to establish performance-based mechanisms with both penalties and incentives, and argues not including a penalty mechanism in the Final Resolution is contrary to law.[5]

2. Reconsideration of modified budget performance metrics

LECO requests the Energy Bureau reconsider its determination to modify the budget performance metrics, which measure actual operating expenses as a percentage of the approved operating budget <u>as amended</u>. LECO requests that the Energy Bureau modify all budget metrics to measure actual operating expenses as a percentage of the <u>original</u> approved operating budget so that LUMA cannot submit an amended budget close to the end of the fiscal year to receive an incentive.[6]

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[4] LECO's Reconsideration, pages 3-4

[5] *Id.* at page 4.

[6] *Id.* at page 5.

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3. Approval of vegetation maintenance metric

LECO contends that the target levels for vegetation maintenance miles completed will allow LUMA to "have only economic rewards for doing what is expected for them to do."[7] LECO highlights the federal funding for vegetation management that LUMA is expected to receive for Fiscal Years 2025-2027 as further evidence that the target performance levels adopted by the Energy Bureau are "easy targets".[8] LECO requests the Energy Bureau either adopt LECO's proposal as stated in their legal brief or eliminate the 75% target and impose penalties failure to achieve the100% target for each year.

4. Eliminate JD Power metric and exclude informal complaints

LECO requests the Energy Bureau eliminate the JD Power metric on the ground 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".[9]

LECO requests that the Energy Bureau include informal complaints in the customer complaint rate definition in addition to the RV and QR complaints.

5. Approval of incentives for actions during major outages

LECO requests the Energy Bureau "reconsider its reward of incentives to LUMA for achievement of fifty percent of available points on the MOE scorecard and argues that this falls short of the Energy Bureau's mandate that targets for which incentive is available must go above and beyond and does not result in a clear benefit for the public interest and ratepayers. LECO argues that the fifty percent threshold is not consistent with the Energy Bureau's other determination regarding the fifty percent threshold for non-MOE performance metrics and that LUMA could earn incentive for completing "otherwise required or plainly easy tasks". LECO also highlights that LUMA could earn incentive without addressing downed wires during an MOE.

6. Reconsideration of labor, energy efficiency, and demand response metrics

LECO requests the Energy Bureau reconsider its decision to provide an incentive for all labor safety metrics and requests the Energy Bureau impose penalties for failure to meet minimum standards. LECO also requests the Energy Bureau reconsider its decision to defer the implementation of energy efficiency and demand response metrics.

B. LUMA's Reconsideration

LUMA requests the Energy Bureau reconsider eight determinations from the Final Resolution, clarify the portion of the Final Resolution that refers to the modified Annual Performance Targets, and approve the baselines, incentive tiers, and targets presented by LUMA in the Revised Annex IX submitted on October 28, 2022.[10]

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[7] *Id.* at page 5.

[8] *Id.* at pages 5-6.

[9] *Id. at* page 9.

[10] LUMA's Reconsideration, pages 112-113.

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1. *Modification of performance incentive metric tier structure*

LUMA requests the Energy Bureau reconsider the determination to modify the tier structure for non-binary metrics and implement a deadband between the minimum performance level and the 75% tier.

LUMA asserts the 25%, 50%, 100%, 125%, and 150% incentive tiers, originally introduced by the Government of Puerto Rico and approved by the parties to the T&D OMA, are a core element of the incentive mechanism. LUMA states that "These contractually mandated tiers were not subject to review or amendment in the iterative process conducted during the Front-End-Transition Period to revise Annex IX of the T&D OMA."[11]

2. *Modification of Major Outage Event (MOE) tiers*

LUMA requests that the Bureau reconsider the determination in the Final Resolution to modify the MOE tier structure. The Final Resolution modified the MOE tier structure from the multiple tiers in LUMA's proposal (25%, 50%, 100%, 125%, and 150%) to a simplified structure between 50% and 100%. LUMA's request asks the Energy Bureau to restore the tier structure in LUMA's Annex IX proposal from October 2022.[12]

3. *Review and determination of annual incentive fee*

LUMA seeks reconsideration of the determination to require LUMA to file an annual Incentive Fee Report with the Energy Bureau and that PREPA shall pay LUMA the amount determined by the Energy Bureau's review. LUMA states that the T&D OMA places this authority with the P3 Authority[13] and the Energy Bureau does not have the delegated authority to determine the Incentive Fee to be paid to LUMA.[14]

4. *Modification of approach to measure performance for certain metrics*

LUMA requests reconsideration of the Energy Bureau's modifications to the approach of performance measurements for certain metrics. LUMA states that the Final Resolution used two approaches to update performance targets.[15] The first approach made updates based on the year-on-year improvement rates implicit in LUMA's proposed Annual Performance Targets. The second approach determined a Long-Term Performance Target to set intermediate-year performance targets.

5. *Modification of allocation of base points*

LUMA seeks reconsideration of the Energy Bureau's determination to modify the allocation of base points. The Final Resolution modified the base points allocated to performance metrics within the Customer Service and Technical, Safety, and Regulatory categories. LUMA asserts these modifications constitute a material modification to LUMA's Revised Annex IX.[16]

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[11] LUMA's Reconsideration, page 26.

[12] *Id.* at page 2.

[13] Puerto Rico Public-Private Partnership Authority ("P3 Authority").

[14] LUMA's Reconsideration, page 31.

[15] *Id.* at page 41.

[16] *Id.*

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6. Modification of performance baselines

LUMA requests reconsideration of the modification to the baselines of certain metrics and, in some cases, the use of performance data from Fiscal Years 2022 and 2023 to determine new baselines.

The Final Resolution modified the baselines for the following metrics:

a. Average Speed of Answer
b. Abandonment Rate
c. Customer Complaint Rate
d. OSHA-related Performance Metrics
e. SAIFI and SAIDI
f. NEM Project Activation Duration

LUMA contends that their recent performance data should not be used in setting their performance targets because it was not presented for the record before the close of the Evidentiary Hearing.[17]

7. Modification of annual performance targets

LUMA opposes the Energy Bureau's determination to modify and adopt annual performance targets different from what LUMA proposed. LUMA asserts that the determination placed LUMA "at an unreasonable procedural and substantive disadvantage without timely and meaningful opportunities to file evidence in connection with the revised targets". LUMA further argues that the modifications are arbitrary and unsupported by the administrative record.[18]

8. Approval of additional performance metrics

LUMA seeks reversal of the Energy Bureau's determination to include three performance metrics in the list of performance metrics: (a) Interconnection; (b) Energy Efficiency/Demand Response; and (c) Vegetation Management.[19]

9. Clarification of discrepancies between tables

LUMA requests clarification on the Annual Performance Target numbers, which differ in the body of the Final Resolution from the values in Appendix B.

10. Approval of baselines, incentive tiers, and targets as presented in LUMA's October 28, 2022 Annex IX submission.

LUMA's Reconsideration seeks approval from the Energy Bureau of "the baselines, incentive tiers, and targets presented by LUMA in its Proposed Performance Metrics Targets and the Revised Annex IX submitted on October 28, 2022."[20]

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[17] *Id.* at page 44.

[18] *Id.* at pages 76, 78, 80, 82-83, 85, 90 and 93.

[19] *Id.* at page 3.

[20] *Id.* at page 113.

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III. Analysis and Conclusions

Regulation 8543[21] states that any party dissatisfied with a final decision may move for reconsideration and establishes that such a motion must "state in detail the grounds supporting the petition and the remedy that, according to the petitioner, the Commission should have granted."[22]Upon receiving a motion for reconsideration of a final determination, the Energy Bureau's standard of review shall generally encompass an assessment of whether there were errors in the application of the law, misinterpretations of fact, or the emergence of new evidence that was not available at the time of the original decision. The Energy Bureau shall make sure its decision is reasonable, supported by substantial evidence, and in compliance with applicable legal standards. When a motion for reconsideration does not introduce any new matters or issues that have not already been addressed by the Energy Bureau, there is no further action required from the Energy Bureau. The motion will be denied because it fails to present any new evidence or arguments warranting reconsideration.

A. LECO'S Reconsideration

The Energy Bureau carefully considered the evidence and arguments on the matters identified in LECO's Reconsideration and finds that LECO has not sufficiently supported its requests nor presented new evidence that was not available at the time of the original decision to cause the Energy Bureau to reconsider its final decision. LECO does not show that the Energy Bureau acted beyond its regulatory powers nor acted unlawfully, unreasonably, or arbitrarily. Therefore, as discussed below, the Energy Bureau **DENIES** LECO's Reconsideration.

1. *No inclusion of penalties*

Upon consideration of the evidence presented by LECO and its arguments for the imposition of penalties, the Energy Bureau determined that LECO's arguments do not merit the reconsideration of the Energy Bureau's final decision to not include penalties in the LUMA's incentive mechanism scheme. LECO does not provide sufficient evidence to support the adoption of a penalty scheme, nor does LECO demonstrate that the Energy Bureau's determinations were unlawful. LECO previously requested[23] the Energy Bureau to impose penalties, and the Energy Bureau considered that request, and similar arguments previously made by LECO in the administrative record, in making its determinations.[24]

2. *Reconsideration of modified budget performance metrics.*

The Energy Bureau carefully considered the evidence and is not reconsidering its determinations on the budget performance metrics. LECO references arguments made previously in this proceeding that the Energy Bureau considered when making its determination. LECO does not submit new arguments nor sufficiently support its request for modifications to the budget performance metrics.

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[21] *See* Regulation No. 8543, *Regulation on Adjudicative, Notice of Noncompliance, Rate Review, and Investigations Proceedings*, December 18, 2014.

[22] *Id.* At Section 11.01.

[23] LECO, *Motion Requesting the Imposition of Penalties in LUMA's Performance-based Mechanism,* May 26, 2022.

[24] The Energy Bureau clarifies that the decision not to include penalties in this process does not preclude their imposition under appropriate circumstances and following the applicable procedures. The Energy Bureau retains the authority to impose penalties for non-compliance with established performance metrics and targets. As stated elsewhere, nothing in the T&D OMA regarding the Performance Incentive Mechanisms shall be considered contrary to the Energy Bureau's authority over the matter, nor will it limit this authority in any way.

3. Approval of vegetation maintenance metric

LECO fails to provide evidence as to why LUMA should not be able to earn incentive for achieving the approved vegetation maintenance targets, beyond highlighting the expected increase in federal funding for vegetation maintenance that the Energy Bureau has already noted. The Energy Bureau clarifies that the target update process incorporates new information regarding the status of federal funding and other federal support programs for vegetation maintenance. LECO does not introduce new arguments that the Energy Bureau has not already considered, nor does it sufficiently support its request to modify the vegetation management targets.

4. Elimination JD Power metric and exclusion of informal complaints

LECO reiterates arguments it has made previously in the proceeding and that the Energy Bureau has considered and made determination upon and fails to support its position that the residential and business targets of 714 and 760, respectively, are "below industry standards". The Energy Bureau has considered the evidence and is not reconsidering its determination on the J.D. Power metrics.

LECO does not present new arguments in support of the inclusion of informal complaints in the customer complain metric. The Energy Bureau has considered the evidence and is not reconsidering its determination on the customer complaint metric.

5. Approval of incentives for actions during major outages

The Energy Bureau considered the arguments made by LECO as to the sufficiency of the MOE scorecard in requiring LUMA to perform actions during an MOE essential to the public interest and determines to maintain the structure for MOE metrics. LECO fails to support its assertion that the Energy Bureau acted "arbitrarily and contrary to law" and does not provide sufficient evidence to merit a reconsideration of the Energy Bureau's determinations on MOE metrics.

6. Reconsideration of labor, energy efficiency, and demand response metrics

LECO repeats arguments for the imposition of a penalty-only structure for labor safety metrics it has made previously in this preceding, and that the Energy Bureau has already thoroughly considered and decided upon. In addition, LECO fails to sufficiently support its request for the Energy Bureau to reconsider its decision to defer targets for energy efficiency and demand response. Having considered the evidence and arguments, the Energy Bureau is not reconsidering its decisions on labor metrics or energy efficiency and demand response metrics.

B. LUMA's Reconsideration

LUMA requests the Energy Bureau to reconsider eight determinations from the Final Resolution. The Energy Bureau will address the specific requests on these determinations below but first reviews LUMA's broad assertion that the Energy Bureau exceeded the bounds of its legal and regulatory authority in several of its determinations by unduly interfering with the T&D OMA. It is essential to clarify why the Energy Bureau does not have to adhere to LUMA's illustrative metrics in the T&D OMA. It is essential to clarify why the Energy Bureau does not have to adhere to LUMA's illustrative metrics in the T&D OMA. In the Resolution issuing the Certificate of Energy Compliance for the T&D OMA ("June 17 Resolution"), the Energy Bureau explicitly stated, "The Energy Bureau is not a party to the

Preliminary Contract [now the T&D OMA]. Thus, no obligation and/or duty may be imposed to the Energy Bureau under the Preliminary Contract (as modified).[25]

The Energy Bureau further emphasized that the Preliminary Contract:

1. *Shall not be construed, in any way whatsoever, as to impair, restrict, relinquish, or abridge the scope of the Energy Bureau's: (1) administrative powers; (2) statutory and regulatory jurisdiction and/or authority; (3) statutory and regulatory oversight and enforcement powers; (4) rights; (5) duties; and (6) obligations, all in accordance with the applicable laws and regulations.,,Shall not be construed, in any way whatsoever, as a waiver and/or release of any applicable statutory or regulatory requirement nor any related regulatory action applicable to the T&D System, the Operator, PREPA (or the successor owner of the T&D System).,,Anything in the Preliminary Contract (as modified) contrary to the provisions of Section IV[(B)](1) and IV[(B)(2)] above, or otherwise contrary to the law, shall be deemed unenforceable.*[26],Consistent with the foregoing, Section 20.17 of the T&D OMA also recognizes that the T&D OMA does not limit or restrict the rights, responsibilities, or authority granted to Energy Bureau regarding regulatory matters under its jurisdiction. Specifically, Section 20.17 of the T&D OMA states that:,*Notwithstanding anything to the contrary herein, no provision of this Agreement shall be interpreted, construed, or deemed to limit, restrict, supersede, supplant, or otherwise affect, in each case in any way, the rights, responsibilities or authority granted to PREB under Applicable Law with respect to the T&D System, Owner or Operator.*

Section 5(f) of *Act 120-2018 states that any contract related to a PREPA Transaction shall include a clause enforcing full compliance with the energy policy and the regulatory framework, except for those excluded by this Act* [Act 120-2018] or those expressly authorized by the Legislative Assembly. Thus, adding Section 20.17 to the T&D OMA was mandatory. It is worth nothing, however, that Section 20.17 was included in the Preliminary Contract in response to specific concerns raised by the Energy Bureau during its evaluation, as initially the law-mandated language was missing from the Preliminary Contract.[27]

Based on the foregoing provisions the Energy Bureau reiterates why it does not have to adhere to LUMA's illustrative metrics in the T&D OMA. First, the T&D OMA itself specifies that the metrics provided are illustrative. This designation implies these metrics serve as examples or guidelines rather than definitive, binding standards. The term *illustrative* indicates that the metrics are subject to further review, discussion, and modification as necessary to align with the regulatory framework and the specific needs of the energy sector in Puerto Rico. According to the determination by the Energy Bureau, the T&D OMA shall not be construed in any way that impairs, restricts, relinquishes, or abridges the scope of the Energy Bureau's administrative powers, statutory and regulatory jurisdiction and/or authority, statutory and regulatory oversight and enforcement powers, rights, duties, and obligations, all in accordance with applicable laws and regulations. This provision makes

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[25] NEPR-AP-2020-0002: In Re: Certificate of Compliance: June 17 Resolution, page 9.

[26] *Id.* at pages 9-10.

[27] *See* document titled *Puerto Rico Public-Private Partnerships Authority's Motion Submitting Documents and Requesting Confidential Treatment* dated June 17, 2020, *In re Certificate of Energy Compliance*, Case No.: NEPR-AP-2020-0002.

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sure the Energy Bureau retains its full authority to oversee and regulate all aspects of the energy sector within its jurisdiction.

Additionally, the T&D OMA shall not be interpreted as a waiver or release of any applicable statutory or regulatory requirement nor any related regulatory action applicable to the T&D System, LUMA, PREPA, or the successor owner of the T&D System. This further underscores the Energy Bureau's commitment to uphold all statutory and regulatory mandates without exception. Any aspect of the T&D OMA that contradicts the Energy Bureau's authority or is otherwise contrary to the law shall be deemed unenforceable. This legal safeguard makes sure the Energy Bureau is not bound by any terms in the T&D OMA that might undermine its regulatory authority or statutory responsibilities. The evaluation and approval of performance metrics will be conducted independently by the Energy Bureau, ensuring that all metrics meet the required legal and regulatory standards, are reasonable, and are in the best interest of the public and the energy sector.

Considering the aforementioned, and contrary to LUMA's suggestion, the Energy Bureau **DETERMINES** that is not bound by the Illustrative Performance Metrics in Annex IX of the T&D OMA. The scope of its authority on this matter remains intact by virtue of the applicable law, the June 17 Resolution, and the T&D OMA.

The Energy Bureau now analyzes each of LUMA's requests for reconsideration.

1. Modification of performance incentive metric tier structure

LUMA requests that the Energy Bureau reconsider the determination to modify the incentive tiers put forward in LUMA's final filed Annex IX. In LUMA's final filed Annex IX the incentive structure included five tiers for non-binary metrics, at the following incentive levels: 25%, 50%, 100%, 125%, and 150%. In the Final Resolution, the Energy Bureau determined to modify this structure for non-binary metrics so that there would be just three tiers, corresponding to 75%, 100%, and 125% of the allocated incentive. The Energy Bureau's modifications also introduced an effective deadband between the minimum performance level and the 75% tier by redefining the incentive tiers so the associated performance targets represent the *minimum* performance required to earn the associated incentive, rather than representing performance *maxima* for a given incentive level.

LUMA asserts that the Energy Bureau acted outside of its authority in modifying the structure of the incentive tiers in the Final Resolution.

The Energy Bureau reaffirms its right to modify LUMA's final revised Annex IX as part of its general authority to establish the performance incentive framework for LUMA. This authority extends to making modifications to the incentive structure in general and to modifying the incentive tiers specifically. The Energy Bureau acted within its authority in making modifications to the tiers through the Final Resolution.

In the Final Resolution, the Energy Bureau cited concerns about complexity, transparency, and the risk of adverse outcomes in explaining its determination to modify the incentive tier structure. Upon further review, the Energy Bureau determines these concerns can be obviated through a standardized linear approach to determining the performance targets for the incentive tiers without the need for changing the incentive tier structure to include only 75%, 100%, and 125% tiers. This standardized linear approach is discussed in Section III.B.7, below. Therefore, the Energy Bureau **GRANTS** LUMA's request for incentive tiers at the 25%, 50%, 100%, 125%, and 150% incentive levels for non-binary metrics. Retaining the opportunity to earn incentives ranging from 25 percent to 150% of the allocated incentive, as proposed in LUMA's final filed Annex IX, will facilitate the transformation of Puerto Rico's energy system, as outlined in Act 120-2018, by increasing the range of performance for given outcomes over which LUMA has an incentive to seek performance improvement. All else equal, restricting the incentive range to between 75% and 125% of the allocated incentive for each non-binary metric means that LUMA may have less of an incentive to improve performance where baseline performance is comparatively poor, whereas providing earnings opportunities at 25% and 50% of the allocated incentive for each non-binary metric should make achieving *some* incentive earnings possible even at this comparatively poor starting performance level. Similarly, providing earnings opportunities at 150% provides incentive for continued improvement even beyond a relatively good starting performance level.

The Energy Bureau **DETERMINES** that formulating the incentive structure on a continuous basis, wherein LUMA may earn anywhere from 0% to 150% of the allocated incentive for each non-binary metric, will further incentivize the performance improvements intended under Act 120-2018 by giving LUMA some financial incentive to continue to improve performance that is relatively despite LUMA's beginning performance for the given year. If LUMA has not already exceeded the performance target associated with the 150% incentive tier for the given year, LUMA should have some incentive to pursue performance improvements. Without a continuous approach to incentives, LUMA may not be as motivated to pursue performance improvements if the gap between existing performance and the performance level associated with the next incentive tier seems too large to be overcome. The continuous approach to incentives improves transparency and makes sure LUMA is compensated in proportion to the actual performance improvements achieved. For example, if LUMA achieves 63 % of the target improvement from the minimum performance level to the 100% target, LUMA will receive 63% of the base points for that metric.

The Energy Bureau is not persuaded by LUMA's request to change the incentive tiers to represent the performance maximums for the given earnings levels rather than performance minimums. This request, if granted, would result in an incentive framework that is neither transparent nor in the public interest; therefore, the Energy Bureau does not grant this request.

In light of the foregoing discussion, the Energy Bureau **DETERMINES** that LUMA's request to restore the original incentive tiers proposed in the T&D OMA for non-binary metrics, at 25%, 50%, 100%, 125%, and 150% of the allocated incentive is appropriate. The Energy Bureau further **DETERMINES** that LUMA should have the opportunity to earn anywhere from 0% to 150% of the allocated incentive for non-binary metrics depending on performance, and the Energy Bureau therefore **ESTABLISHES** a continuous approach to incentives for non-binary metrics.

2. *Modification of major outage event ("MOE") tiers*

LUMA's second request seeks reconsideration of the Energy Bureau's determination on the MOE tiers. The Final Resolution approved a modified structure that provided LUMA an opportunity to earn an incentive under the MOE metrics for performance in the 50%-100% range on the MOE scorecard. LUMA argues that the Energy Bureau exceeded the bounds of its authority and infringed on LUMA's due process rights by departing from the structure that was proposed.

LUMA's request and legal arguments ignore testimony from LUMA witness Mario Hurtado during the evidentiary hearing, which directly informed the Energy Bureau's determination on this issue in the Final Resolution. During the evidentiary hearing, LUMA testified that its intent was an opportunity to earn up to 100% of incentive available under the MOE metrics but not beyond this level. Despite this intent and testimony, LUMA's October 2022 Annex IX would allow earning up to 150% of the incentive available. The Energy Bureau's determination clarified the structure of the MOE incentive tiers to be consistent with LUMA's testimony and intent.

Based on this review and analysis, the Energy Bureau **DENIES** LUMA's second request for reconsideration.

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3. *Review and determination of annual incentive fee.*

LUMA's third request seeks reconsideration of the Energy Bureau's annual process for review and approval of the incentive fee report. LUMA's motion cites the relevant sections of the T&D OMA that direct LUMA to file their report with the P3 Authority. It essentially argues that the Energy Bureau does not have the authority to approve the payment of the Incentive Fee under the T&D OMA. Section 8(c) of Act No. 120-2018 establishes that the Energy Bureau shall provide technical, expert, financial, and human resources assistance as the P3 Authority requests to make sure each PREPA transaction succeeds. Section 8(d) of Act 120-2018 states that upon consummating any PREPA Transaction, the Energy Bureau shall assist the P3 Authority in supervising the performance and compliance of the Contractor with the Partnership or Sales Contract, in accordance with Section 10(d) of Act 29-2009.[28] It also states that the P3 Authority, PREPA, and the Energy Bureau shall jointly devise a work plan to oversee each Partnership Contract to comply with the provisions of Section 10(d) of Act 29-2009 and guarantee the optimum use of the resources of each entity.

In accordance with Act 120-2018, and without limiting the Energy Bureau's broad authority over the Electric System in Puerto Rico, the Energy Bureau and the P3 Authority have collaborated on specific occasions to oversee LUMA's performance and compliance with the T&D OMA. Considering the foregoing, and to enable the P3 Authority to fulfill its obligations under the T&D OMA, it is **DETERMINED** that LUMA shall submit the Incentive Fee Report to the P3 Authority for its evaluation in accordance with the procedure established in Section 7.1(c)(ii) of the T&D OMA.[29] To the extent applicable, the Energy Bureau will assist the P3 Authority in evaluating the Incentive Fee Report based on the applicable work plan and/or any other mechanism developed by the P3 Authority and the Energy Bureau under Act 120-2018.

This determination, however, shall not be construed as a waiver of the Energy Bureau's authority to determine, in accordance with applicable law and using the proper legal procedures, that the incentive requested by LUMA does not comply with the provisions of the law and the Energy Bureau's determinations regarding LUMA's performance metrics. Neither will it be interpreted in any way that impairs, restricts, relinquishes, or abridges the Energy Bureau's authority to examine LUMA's performance based on the Performance Metrics adopted in this proceeding or any other performance metrics that may apply to LUMA under the applicable laws, regulations and the T&D OMA Contract Standards.

4. *Modification of approach to measure performance for certain metrics*

LUMA's fourth request seeks reconsideration of the modifications to performance measurements on certain metrics in the Final Resolution. LUMA states that the Energy Bureau used two distinct approaches to update performance targets and that for most metrics, "the Energy Bureau made updates based on the year-on-year improvement rates implicit in LUMA's proposed Annual Performance Targets..., thus preserving LUMA's general approach to setting performance targets." LUMA appears to object to a second method for determining a Long-Term Performance Target that plots a trajectory from the baseline to the long-term target to interpolate intermediate-year performance targets.

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[28] Article 10(d) of Act 29-2009 states that the P3 Authority, with the assistance of the Participating Government Entity and the Fiscal Agency and Financial Advisory Authority (AAFAF), will supervise the performance and compliance of the Contractor under the Partnership Contract. Act 120-2018 broadens the scope of this provision to include the Energy Bureau as an additional entity in charge of the supervision of the performance and compliance of the Contractor under the Partnership Contract involving a PREPA Transaction.

[29] Note that according to Section 7.1(c)(ii) of the T&D OMA, for each Contract Year, LUMA shall submit to the Energy Bureau a copy of the Incentive Fee Report with (a) supporting performance data, information, and reports evidencing its achievement of one or more of the Performance Metrics and (b) based thereon, its good faith calculation of the proposed Incentive Fee. This requirement remains unaltered.

LUMA's objections to the Energy Bureau's determinations ignore that the primary support for these two methods was provided by LUMA and the T&D OMA. For the metrics where LUMA's expert witnesses provided improvement trajectories, the Energy Bureau used this approach to update performance targets when possible. The second method was established in the T&D OMA. The need to update performance targets is subject to a separate request below but fundamentally results from improvements in performance from LUMA's initial proposal for performance targets dating back to 2021.

LUMA argued in the evidentiary hearing and post-hearing briefs that performance targets should be updated based on recent performance. However, on reconsideration, they essentially seek to be held to performance targets from several years ago.

The Energy Bureau's modifications in the Final Resolution used reasoned judgement from the available evidence to update performance targets using methodologies and analysis from LUMA and the T&D OMA. The Final Resolution also provides an opportunity to further update these targets as PREPA nears exit of Title III bankruptcy. The Energy Bureau **DENIES** LUMA's request on this determination.

5. *Modification of allocation of base points*

LUMA's fifth request for reconsideration objects to the Energy Bureau's modification of the base points allocated to performance metrics. LUMA states, "The Energy Bureau also determined that modifications to the base points are warranted in the interest of several considerations to ensure that the overall portfolio of performance metrics is in the public interest. However, the Energy Bureau did not provide an explanation on how or to what extent those several considerations and the public interest were to be protected."[30]

First, the Energy Bureau maintained the same relative weighting across the three major categories of performance metrics: customer service (25%), technical, scientific, and regulatory (50%), and finance (25%). Therefore, any reallocation in base points is limited to the performance metrics in the same category. Next, the Final Resolution does not modify the base point allocation for the financial metrics, which account for 25% of the total.

In the remaining categories, the Final Resolution explains the reallocation of base points to reflect high priority outcomes of improving reliability, meeting public policy goals, and improving customer service. The largest shift in base points is to increase the weighting on SAIDI and SAIFI, which requires shifting base points from metrics within the same category. As the Final Resolution explains, the Energy Bureau generally shifted base points from metrics that had been heavily criticized by stakeholders (JD Power scores) or actions that contribute to other outcomes (vegetation management and T&D infrastructure inspections). The descriptions on each metric discuss the factors involved in the Energy Bureau's judgement on the evidence on the performance metric.

Finally, LUMA's objection that the reallocation of base points contributes to a material modification to LUMA's Annex IX[31] appears to stem from a grave misunderstanding of the Energy Bureau's authority and the T&D OMA.[32] LUMA has been on notice since granting the

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[30] *See* LUMA's Reconsideration, page 42.

[31] *Id.*

[32] Section 20.17 of the T&D OMA provides that:

> *Notwithstanding anything to the contrary herein, no provision of this Agreement shall be interpreted, construed, or deemed to limit, restrict, supersede, supplant, or otherwise affect, in each case in any way, the rights, responsibilities or authority granted to PREB under Applicable Law with respect to the T&D System, Owner or Operator.*

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Energy Compliance Certificate that LUMA's Annex IX proposal(s) are illustrative and not binding of the Energy Bureau. The Energy Bureau **DENIES** LUMA's request on this determination.

6. *Modification of performance baselines*

LUMA's sixth request seeks reconsideration of the modification to performance baselines considering more recent performance data. Before addressing several of LUMA's arguments on this request, the Final Resolution updated this information generally in areas where LUMA's performance has improved and surpassed earlier expectations. Therefore, if the Energy Bureau did not update this information, LUMA could earn incentive payments for the initial term with stagnant or even declining performance each year, which is not in the public interest.

Next, LUMA's testimony during the Evidentiary Hearing recommended that an update process would be necessary before starting the 1st Contract Year. LUMA recommended that this update should occur near PREPA's exit from Title III Bankruptcy. The timing of the Bankruptcy Court's decision was uncertain when the Final Resolution was issued and remains unknown. The modifications in the Final Resolution to update performance baselines were prudent actions to assure that any performance incentive framework that goes into effect will improve on the stale information that supports the October 2022 Annex IX proposals and protect the public interest. Because the timing of the first contract year could extend further, the Final Resolution also included an option for an update process closer to the exit of the Title III process.

Third, the Energy Bureau has broad authority on defining metrics, setting targets and the evaluation mechanisms of LUMA's performance metrics.

Section 4.2 (f) of the T&D OMA *Performance Metrics* states that the Energy Bureau's has the authority to review and propose modifications to Annex IX:

> "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." (Emphasis added)

For all the reasons discussed above, the Energy Bureau **DENIES** LUMA's request for reconsider this determination.

7. Modification of annual performance targets

First, the Energy Bureau reaffirms its right to make modifications to LUMA's final revised Annex IX as part of its general authority to establish the performance incentive framework for LUMA. This authority extends to making modifications to the incentive structure in general and to modifying the annual performance targets specifically. The Energy Bureau also observes that while LUMA has raised objections to the Energy Bureau's modifications of the annual performance targets for the various metrics, LUMA, too, made modifications to the performance targets that were part of the signed T&D OMA dated June 22, 2020, in the course of its several filed revised versions of Annex IX.

In the Final Resolution and in Section III.B.1, the Energy Bureau cited concerns about complexity, transparency, and the risk of adverse outcomes associated with LUMA's final filed Annex IX. As for specifically the proposed performance targets, LUMA could not satisfactorily explain its approach to setting these targets; this approach was not standardized and, in many instances, appeared to rely on exercising judgement rather than a clear method. In the Final Resolution, the Energy Bureau thus determined it necessary to modify the approach to setting performance targets and to establish new performance targets for many of the metrics. Given the foregoing discussion, the Energy Bureau **DENIES** LUMA's request on this determination.

The Energy Bureau **AFFIRMS** the determination in the Final Resolution to set the performance targets at the 100% incentive tier according to a trajectory of improvement that results in the achievement of the Long-Term Performance Target in five years. The Energy Bureau further **AFFIRMS** the use of the two approaches discussed in the Final Resolution for establishing Long-Term Performance Targets for the metrics.

As discussed in Section III.B.1, the Energy Bureau determined that it could resolve concerns about complexity, transparency, and the risk of adverse outcomes by adopting a standardized linear approach to determining the performance targets for the different incentive tiers for each given year. This approach is described further below. The Energy Bureau has opted for this standardized approach in responding to LUMA's Feb 15 Motion for Reconsideration because it resolves the above-cited concerns while also allowing for the reincorporation of all incentive tiers. Formulating incentives on a continuous basis further enhances transparency and fairness.

The Energy Bureau **CLARIFIES** the need to establish new performance minimums for non-binary metrics as a result of the imposition of the standardized linear approach to setting targets, the reincorporation of the incentive earnings tiers from LUMA's final filed Annex IX, and the introduction of a continuous approach to incentives. Whereas in the Final Resolution, LUMA could earn incentive starting at the 75% performance level, under a continuous structure, LUMA can begin earning incentive after exceeding the *minimum performance level*

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for incentives[33]. If the minimum performance levels were not changed, LUMA could conceivably earn incentives on certain metrics for no performance improvement at all from their current performance or even for worsening performance.

A basic example will demonstrate the importance of updating *minimum performance level for incentives*. LUMA's FY2023 (baseline) SAIFI performance, which measures the average number of interruptions a customer experiences in a year, was 7.0 interruptions. The year 1 minimum performance level from LUMA's proposed October 2022 Annex IX, which was adopted in the Final Resolution, was 10.4 interruptions per year. To prevent backsliding and the ability to earn incentive for deteriorating performance, the minimum performance level must be updated. For this reason, in granting LUMA's request to restore the incentive tiers proposed in LUMA's October 2022 Annex IX submission and changing to a continuous incentive structure, the Energy Bureau modifies minimum performance levels to reflect LUMA's current performance. The updated *minimum performance levels for incentive* and targets are available in **Attachment A** of this Resolution and Order. The Energy Bureau **CLARIFIES** it is not modifying the Minimum Performance Threshold for KPIs[34], and **MAINTAINS** its decision to accept these levels as proposed in LUMA's Revised Annex IX.

The standardized linear approach to determining the performance targets for the different incentive tiers for each given year, which also addresses the approach to setting the minimum performance level to earn an incentive for non-binary metrics, is presented below.

a. General approach to establishing performance targets at other incentive levels for non-binary metrics

For most non-binary metrics, except for those metrics specifically noted, the Energy Bureau's approach to establishing performance targets at incentive levels aside from the 100-percent level is as follows:

i. For the first year, the *minimum performance level for incentive* is equal to the performance baseline established by the Energy Bureau in the Final Resolution.

ii. For each subsequent year, the *minimum performance level for incentive* is increased or decreased according to the change in the 100% target. For example, the year two, the *minimum performance level for incentive* is equal to the year one *minimum performance level for incentive* plus the change from the year one 100% target to the year two 100% target. Similarly, the year three *minimum performance level for incentives* is equal to the year two *minimum performance level for incentives* plus the change from year two to year three 100% target.

iii. For each year, the 25%, 50%, 125% and 150% targets are determined by linear interpolation along the straight line that is plotted from the *minimum performance level for incentives* through the 100% target. The performance targets at the 25% and 50% incentive levels are determined on a proportionate basis, such that the 25% target is located at one-quarter of the distance between the *minimum performance level for incentives* and 100% targets, and the 50% target

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[33] *See* Attachment A for details for each incentive metric.

[34] The Energy Bureau refers to the Minimum Performance Threshold as it relates to a Minimum Performance Threshold Default, as discussed in the T&D OMA. Article 14 Section 14.1 (k) of the T&D OMA defines a Minimum Performance Default as "Operator shall fail to meet the Minimum Performance Threshold for any three (3) Key Performance Metrics during three (3) or more consecutive Contract Years and no such failure shall have been excused by a Force Majeure Event, an Outage Event or Owner.

is located halfway between the *minimum performance level for incentives* and the 100% target. Similarly, the 125% target is equidistant from the 100% target as is the 25% target from the *minimum performance level for incentives*, and the 150% target is equidistant from the 100% performance target as the 50% target is from the 100% target.

b. Approach to establishing performance targets at other incentive levels for non-binary metrics without baselines

For those non-binary metrics for which baseline data was not available for setting the first-year minimum performance target, the Energy Bureau employed one of two approaches to establishing first-year performance targets. Where possible, the Energy Bureau adopted the minimum performance level proposed by LUMA for the first year as the year one *minimum performance level for incentive*. The Energy Bureau followed the steps outlined above to, establish year two and year three minimum performance levels for incentive and the 25%, 50%, 125% and 150% targets for all years. The Energy Bureau accepted the year one minimum performance level proposed by LUMA as the year one *minimum performance level for incentives* for the following metrics: Distribution Line Inspections & Targeted Corrections, Transmission Line Inspections & Targeted Corrections, and T&D Substation Inspections & Targeted Corrections.

Neither baselines nor proposed minimum performance levels were available or Energy Savings as % of Total Energy Sales and Peak Demand Savings as % of Total Peak Demand. For both of these metrics, performance targets were not established for the first year, as explained in the Final Resolution. For the second year, the Energy Bureau established the *minimum performance level for incentive* as zero, and established the subsequent year *minimum performance level for incentive* and the targets for the other incentive tiers consistent with the process described above.

The Energy Bureau made no changes to the performance targets for binary performance metrics.

A revised version of Appendix B of the Final Resolution, with the *minimum performance levels for incentive*, updated targets, and baselines for each metric is included in Attachment A of this Resolution.

8. *Approval of additional performance metrics*

LUMA's last request for reconsideration has already been the subject of a motion for reconsideration after the Energy Bureau directed LUMA to establish performance targets for interconnection, demand response/energy efficiency, and vegetation management in the December 22 Resolution and Order[35]. In the December 22 Resolution and Order, the Energy Bureau stated that "It is indispensable that the Energy Bureau has authority to establish incentives and penalties based on electric power companies' performance and their

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[35] On December 22, 2021 in this instant case, the Energy Bureau issued a Resolution and Order concluding that additional performance-based incentive metrics would be evaluated as part of this procedure. Particularly, the Energy Bureau identified three additional categories of Performance Metrics: (i) Interconnection of Distributed Energy Resources; (ii) Energy Efficiency and Demand Response; and (iii) Vegetation Management and ordered LUMA to file a revised Annex IX to the T&D OMA, including Targets and supporting information for these metrics. The Energy Bureau also ordered LUMA to provide supplemental or revised direct pre-filed testimonies for the new metrics and allowed additional discovery by the intervenors and LUMA.

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compliance with the metrics set forth by the Energy Bureau. Since LUMA is an electric power company, it is bound by the Energy Bureau's determination in these matters".[36]

LUMA then objected to this requirement, which the Energy Bureau ruled on in a Resolution from August 1, 2022 ("August 1 Resolution")[37]. In this August 1 Resolution, the Energy Bureau denied LUMA's request in part because no adjudication in this proceeding had occurred yet. After nearly two years of further review and an evidentiary hearing, the Final Resolution included these metrics in the final portfolio.

As noted earlier in this August 1 Resolution, the Energy Bureau has broad authority to approve, reject, or modify LUMA's performance metric proposals. LUMA's own proposals to remove/defer metrics from the original Annex IX with new metrics further underscores the updating of the performance metrics during this process. LUMA's proposed changes in performance metrics were approved in the Final Resolution.

Given the Energy Bureau's broad authority to modify performance metrics and the due process afforded through the entire adjudicative process, the Energy Bureau **DENIES** LUMA's request to reconsider the addition of performance metrics for interconnection, demand response/energy efficiency, and vegetation management.

9. Clarification of discrepancies between tables

LUMA identified discrepancies in the baselines and/or annual performance target values in the body and Appendix B of the Final Resolution for the JD Power Customer Satisfaction Survey (Residential Customers), Average Speed of Answer, Abandonment Rate, OSHA DART rate, SAIFI, and SAIDI metrics. The Energy Bureau appreciates LUMA's thoughtfulness and **CLARIFIES** the correct values below. The Energy Bureau notes that clarifications for the minimum performance levels and annual targets are moot, as the Energy Bureau has provided updated values in Attachment A that reflect the Energy Bureau's determinations in this Resolution. After careful evaluation of LUMA's argument, the Energy Bureau **CLARIFIES** the correct values:

a. *J.D. Power*: the minimum performance levels in Appendix B of the Final Resolution;
b. *Average Speed of Answer*: the baseline and annual targets shown in Table 11 on page 39 of the Final Resolution;
c. *Abandonment Rate*: the year 3 annual targets in Table 13 on page 46 of the Final Resolution;
d. *OSHA DART Rate*: the targets in Appendix B of the Final Resolution. There is no 125% target for Year 1, as the 100% year 1 target equals the long-term target;
e. *SAIFI*: the baseline and annual targets in Table 18 on page 56 of the Final Resolution; and
f. *SAIDI*: the baseline and annual targets in Table 19 on page 60 of the Final Resolution.

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[36] December 22 Resolution and Order, page 2.

[37] On August 1, 2022, the Energy Bureau denied LUMA's Objection ("August 1 Resolution") and ordered LUMA to file a revised Annex IX with Targets and supporting information for the new metrics. LUMA's motion for Reconsideration raises objections again on including these performance metrics.

10. LUMA request for approval of baselines, incentive tiers, and targets presented by LUMA October 28, 2022 Annex IX submission.

The Energy Bureau 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[38] (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 ("ROIs") to LUMA, which included both questions and data requests. Intervenors also issued ROIs to LUMA, and both LUMA and the Energy Bureau issued ROIs to intervenors.[39] The Energy Bureau held evidentiary hearings from February 7, 2023-February 10, 2023, with LUMA, LECO, and the Independent Office of Consumer Protection ("OIPC" by its Spanish acronym) 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.[40] The process included the full participation of several intervenors along with members of the general public, and the Final Resolution reflects careful analysis and investigation into the substance of LUMA's proposals and deference to the laws and regulations of Puerto Rico.

First, after the Energy Bureau's comprehensive review, the Final Resolution approved performance metrics for LUMA and made 15 determinations. In determinations 1, 2, 6, 9, and 12, the Energy Bureau approved major elements of LUMA's October 2022 Annex IX proposal, including accepting each of LUMA's proposed metrics, Key Performance Metrics, and MOE scorecard. The remaining determinations address shortcomings in LUMA's October 2022 Annex IX proposal and were explained in the Final Resolution.[41] LUMA has requested reconsideration of eight of these determinations, which have been discussed above as part of this Resolution.[42] The Energy Bureau is granting LUMA's first request to restore the incentive tier structure with modifications.

The main flaw in LUMA's final request to approve baseline, incentive tiers, and targets in the October 2022 Annex IX is that granting it would establish LUMA's new, prospective performance metrics for the next three years using LUMA's performance from over two years ago. On many metrics, LUMA's performance has improved. Thus, LUMA's request allows the possibility of earning significant rewards for maintaining the same performance over the next three years or even backsliding. The Energy Bureau **DENIES** LUMA's request to approve the baselines, incentive tiers, and targets presented by LUMA in its Proposed Performance Metrics Targets and the Revised Annex IX submitted on October 28, 2022

IV. Conclusion

The Energy Bureau has carefully reviewed and evaluated the motions for reconsideration presented by LUMA and LECO. The Energy Bureau considered the full record, including but not limited to written testimonies, evidentiary hearing testimonies, motions, responses to comprehensive ROIs, and follow up responses. As a result of its review and evaluation, the

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

[39] The Energy Bureau granted intervenor status the following entities: the Puerto Rico Public Power Authority ("PREPA"); OIPC; the Puerto Rico Institute of Competitiveness and Sustainability ("ICSE" by its Spanish acronym) and LECO.

[40] Virtual Public Hearings were held February 16, 2023 - February 17, 2023.

[41] *See* Final Resolution, Section I.B.A.

[42] *See* LUMA's Reconsideration, pages 112-113.

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Energy Bureau exercised its expert judgement in consideration of the full record and determined the resolution of the reconsiderations in the public interest. Therefore, the Energy Bureau **DENIES** LECO's Reconsideration. The Energy Bureau **GRANTS IN PART** LUMA's Reconsideration, as summarized below. The Energy Bureau **GRANTS** LUMA's request to reconsider the determination to modify the tier structure for non-binary metrics and restore the original incentive tiers to 25%, 50%, 100%, 125%, and 150% of the allocated incentive. The Energy Bureau further **DETERMINES** that LUMA should have the opportunity to earn anywhere from 0% to 150% of the allocated incentive for non-binary metrics depending on performance and **ESTABLISHES** a continuous approach to incentives for non-binary metrics, wherein LUMA may earn anywhere from 0% to 150% of the allocated incentive for each non-binary metric.

The Energy Bureau **FINDS WITHOUT MERIT** LUMA's request to restore the tier structure of the MOE metrics to the tier structure in LUMA's Annex IX proposal from October 2022.

The Energy Bureau **DETERMINES** that LUMA shall submit the Incentive Fee Report to the P3 Authority for its evaluation in accordance with the procedure established in Section 7.1(c)(ii) of the T&D OMA.

The Energy Bureau **FINDS WITHOUT MERIT** LUMA's request to reconsider the approach to determine performance targets for certain metrics.

The Energy Bureau **FINDS WITOUT MERIT** LUMA's request to reconsider the determination to modify the allocation of base points.

The Energy Bureau **FINDS WITOUT MERIT** LUMA's request to reconsider the modification of baselines for certain metrics and the use of LUMA's recent performance data to determine new baselines.

The Energy Bureau **FINDS WITHOUT MERIT** LUMA's request to reconsider the adoption of annual performance targets different from what LUMA proposed. Additionally, the Energy Bureau **CLARIFIES** that the updated revised performance metric targets are in Attachment A.

The Energy Bureau **FINDS WITHOUT MERIT** LUMA's request to reconsider the approval of the interconnection, energy efficiency/demand response and vegetation management metrics.

The Energy Bureau **FINDS WITHOUT MERIT** LUMA's request to approve the baselines, incentive tiers, and targets presented by LUMA in its Proposed Performance Metrics Targets and the Revised Annex IX submitted on October 28, 2022.

It is hereby resolved that any arguments in the motions for reconsideration that are not expressly addressed in this Resolution shall be deemed **DENIED**.

Be it notified and published.

Edison Avilés Deliz Chairman	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 June 14, 2024. Associate Commissioner Lillian Mateo Santos did not intervene. I also certify that on June 14, 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 June 14, 2024.

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Sonia Seda Gaztambide
Clerk

ATTACHMENT A
Revised Performance Metric Annual Targets and Minimum Performance Levels for Incentive

	Minimum Performance Level for Incentive	25%	50%	100%	125%	150%
CUSTOMER SERVICE						
J.D. Power Customer Satisfaction Survey (Residential Customers)						
Baseline	398					
Year 1	398	414	430	461	477	493
Year 2	461	477	493	524	540	556
Year 3	524	540	556	588	604	620
J.D. Power Customer Satisfaction Survey (Business Customers)						
Baseline	345					
Year 1	345	366	387	428	449	470
Year 2	428	449	470	511	532	553
Year 3	511	532	553	594	615	636
Average Speed of Answer (minutes)						
Baseline	1.69					
Year 1	1.69	1.66	1.62	1.55	1.52	1.48
Year 2	1.55	1.52	1.48	1.41	1.38	1.34
Year 3	1.41	1.38	1.35	1.28	1.25	1.22
Customer Complaint Rate						
Baseline	17.1					
Year 1	17.1	17.0	16.9	16.6	16.5	16.4
Year 2	16.6	16.5	16.4	16.1	16.0	15.9
Year 3	16.1	16.0	15.9	15.6	15.5	15.4
Abandonment Rate						
Baseline	8.7%					
Year 1	8.7%	8.5%	8.2%	7.7%	7.5%	7.2%
Year 2	7.7%	7.5%	7.2%	6.7%	6.5%	6.2%
Year 3	6.7%	6.5%	6.3%	5.8%	5.6%	5.4%
Technical, Safety, and Regulatory						
OSHA Recordable Incident Rate						
Baseline	2.19					
Year 1	2.19	N/A	N/A	2.30	N/A	N/A
Year 2	2.19	N/A	N/A	2.30	N/A	N/A
Year 3	2.19	N/A	N/A	2.30	N/A	N/A
OSHA Fatalities						
Baseline	0.08					
Year 1	0.00	N/A	N/A	0.00	N/A	N/A
Year 2	0.00	N/A	N/A	0.00	N/A	N/A
Year 3	0.00	N/A	N/A	0.00	N/A	N/A
OSHA Severity Rate						
Baseline	17.90					
Year 1	17.90	17.43	16.96	16.01	15.54	15.07
Year 2	16.01	15.54	15.07	14.12	13.65	13.18
Year 3	14.12	13.65	13.18	12.23	11.76	11.29
OSHA DART Rate						
Baseline	1.32					
Year 1	1.32	1.27	1.21	1.10	N/A	N/A
Year 2	1.10	N/A	N/A	1.10	N/A	N/A
Year 3	1.10	N/A	N/A	1.10	N/A	N/A
System Average Interruption Frequency Index (SAIFI)						
Baseline	7.0					
Year 1	7.0	6.9	6.7	6.4	6.3	6.1
Year 2	6.4	6.3	6.1	5.8	5.7	5.5
Year 3	5.8	5.7	5.5	5.2	5.1	4.9

	Minimum Performance Level for Incentive	25%	50%	100%	125%	150%
System Average Interruption Duration Index (SAIDI)						
Baseline	1,218					
Year 1	1,218	1,185	1,152	1,086	1,053	1,020
Year 2	1,086	1,053	1,020	954	921	888
Year 3	954	921	888	821	788	755
Distribution Line Inspections & Targeted Corrections						
Baseline	N/A					
Year 1	16	39	61	106	129	151
Year 2	106	172	238	370	436	502
Year 3	370	449	529	687	766	846
Transmission Line Inspections & Targeted Corrections						
Baseline	N/A					
Year 1	4	10	15	26	32	37
Year 2	26	42	59	91	107	124
Year 3	91	111	130	169	189	208
T&D Substation Inspections & Targeted Corrections						
Baseline	N/A					
Year 1	6	14	23	39	47	56
Year 2	39	64	88	137	162	186
Year 3	137	167	196	255	285	314
NEM Project Activation Duration						
Baseline	20.3					
Year 1	20.3	20.0	19.8	19.2	18.9	18.7
Year 2	19.2	19.0	18.7	18.2	18.0	17.7
Year 3	18.2	17.9	17.7	17.1	16.8	16.6
Energy Savings as % of Total Energy Sales						
Baseline	N/A					
Year 1	N/A	N/A	N/A	N/A	N/A	N/A
Year 2	0.00%	0.06%	0.13%	0.25%	0.31%	0.38%
Year 3	0.25%	0.29%	0.33%	0.40%	0.44%	0.48%
Peak Demand Savings as % of Total Peak Demand						
Baseline	N/A					
Year 1	N/A	N/A	N/A	N/A	N/A	N/A
Year 2	0.00%	0.03%	0.05%	0.10%	0.13%	0.15%
Year 3	0.10%	0.13%	0.15%	0.20%	0.23%	0.25%
Vegetation Maintenance Miles Completed						
Baseline	909					
Year 1	909	1,082	1,255	1,600	1,773	1,946
Year 2	1600	1,650	1,700	1,800	1,850	1,900
Year 3	1800	1,850	1,900	2,000	2,050	2,100
Financial Performance						
Operating Budget						
Baseline	80%					
Year 1	100%	N/A	N/A	95-100%	N/A	N/A
Year 2	100%	N/A	N/A	95-100%	N/A	N/A
Year 3	100%	N/A	N/A	95-100%	N/A	N/A
Capital Budget: Federally Funded						
Baseline	N/A					
Year 1	100%	N/A	N/A	95-100%	N/A	N/A
Year 2	100%	N/A	N/A	95-100%	N/A	N/A
Year 3	100%	N/A	N/A	95-100%	N/A	N/A
Capital Budget: Non-Federally Funded						
Baseline	N/A					
Year 1	100%	N/A	N/A	95-100%	N/A	N/A
Year 2	100%	N/A	N/A	95-100%	N/A	N/A
Year 3	100%	N/A	N/A	95-100%	N/A	N/A

	Minimum Performance Level for Incentive	25%	50%	100%	125%	150%
Days Sales Outstanding: General Customers						
Baseline	131					
Year 1	131	128	125	119	116	113
Year 2	119	116	113	106	103	100
Year 3	106	103	100	94	91	88
Days Sales Outstanding: Government Customers						
Baseline	754					
Year 1	754	736	719	683	666	648
Year 2	683	666	648	613	595	577
Year 3	613	595	577	542	524	507
Overtime						
Baseline	23.0%					
Year 1	23.0%	22.3%	21.5%	20.0%	19.3%	18.5%
Year 2	20.0%	19.8%	19.5%	19.0%	18.8%	18.5%
Year 3	19.0%	18.8%	18.5%	18.0%	17.8%	17.5%

Note: For First Call Resolution, Multiple Average Interruption Frequency Index (MAIFI), Customers Experiencing Multiple Interruptions (CEMI), and Reduction in Network Line Losses metrics; the Energy Bureau maintains the Final Resolutions' determinations.