

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

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

**CASE NO. NEPR-AP-2020-0025**

**SUBJECT:**

**LUMA's Reply to ICPO's Legal Brief**

**LUMA'S REPLY TO ICPO'S LEGAL BRIEF**

**TO THE HONORABLE PUERTO RICO ENERGY BUREAU:**

COME now **LUMA Energy, LLC** ("ManagementCo"), and **LUMA Energy ServCo, LLC** ("ServCo"), (jointly referred to as the "Operator" or "LUMA"), and respectfully states and requests the following:

**I. Introduction**

As set forth in the procedural calendar set by this honorable Puerto Rico Energy Bureau ("Energy Bureau") in a Resolution dated May 23, 2023 ("May 23rd Resolution"), LUMA hereby addresses the legal brief filed by the Independent Consumer Protection Office ("ICPO") on May 11, 2023, in this proceeding ("ICPO's Brief").

As a threshold matter, ICPO's brief does not comply with the procedural order issued by this Energy Bureau regarding citations to the record, as it lacks references to evidence that was admitted to the record of this proceeding. To wit, the ICPO did not include citations to the exhibits marked and admitted as evidence nor the witnesses' live testimonies during the Evidentiary Hearing. In several instances, the ICPO merely refers to alleged statements made by some of the witnesses, without referencing the specific exhibit or the timestamp of the audio recording of the

Evidentiary Hearing. This contravenes the directives of the Energy Bureau, which clearly ordered the parties in this proceeding to cite the Microsoft Teams recording in their remaining filings in this proceeding, where applicable. *See* Resolution and Order dated March 9, 2023, p. 2 (“March 9<sup>th</sup> Order”). Therefore, the Energy Bureau should strike from ICPO’s legal brief, all unsupported references to the witnesses’ testimonies or evidence.

Secondly, the ICPO proposes that LUMA update the data used for LUMA’s Revised Performance Metrics Targets and Revised Annex IX to the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement (“T&D OMA”) filed on October 28, 2022 (“Revised Annex IX”). The ICPO, however, did not rely on any evidence on the record to support said request. In these circumstances, this Energy Bureau should reject the proposal as unsupported by the record. Moreover, this Energy Bureau should adopt LUMA’s proposal for this Energy Bureau to approve an initial set of Performance Metrics and that further proceedings be pursued to review —once set— the Minimum Performance Levels and Targets (25%-150%) for the appropriate metrics with the benefit of new data and while considering changes in circumstances and the state of the T&D System. *See LUMA’s Brief in Support of the Request for Approval of the Proposed Annex IX to the T&D OMA, LUMA’s Performance Metrics Targets* (“LUMA’s Opening Brief”), Section III. B.

Thirdly, without waving the threshold objection to ICPO’s Brief because it lacks citations to the record and does not follow the requirements set forth by this Energy Bureau in the March 9<sup>th</sup> Order, LUMA will address in this Reply, ICPO’s comments on several of the Performance Metrics Targets included in the Revised Annex IX: System Average Interruption Frequency Index

(“SAIFI”); System Average Interruption Duration Index (“SAIDI”); Distribution Line Inspections and Targeted Corrections; Transmission Line Inspections and Targeted Corrections; T&D Substation Inspections & Targeted Corrections; Net Energy Metering Project Activation Duration; Energy Savings as Percent of Total Energy Sales; Peak Demand Savings as a Percent of Total Peak Demand; Vegetation Maintenance Miles Completed; J.D. Customer Satisfaction Survey (Residential and Business); Average Speed of Answer; Customer Complaint Rate; and Major Outage Events Metrics.

Because the ICPO omitted to discuss several of LUMA’s Performance Metrics Targets, to wit, Abandonment Rate; OSHA Recordable Incident Rate; OSHA Fatalities; OSHA Severity Rate; and OSHA Days Away, Restricted, and Transfer Rate; Day Sales Outstanding: General Customers; Day Sales Outstanding: Government Customers; Operating Budget; Capital Budget: Federally Funded; Capital Budget: Non-Federally Funded; and Overtime, this Energy Bureau should deem that the ICPO has no objection to those Performance Metrics Targets as proposed by LUMA.

The ICPO’s arguments to oppose some aspects of LUMA’s Performance Metrics Targets are meritless. The testimonies of LUMA’s twelve (12) witnesses, two (2) expert witnesses, and the exhibits admitted during the Evidentiary Hearing remain uncontested and were not substantively challenged by the ICPO, nor did any evidence admitted for the record as will be discussed in detail below was able to rebut LUMA’s position. Thus, LUMA respectfully renews its request that the Energy Bureau approve LUMA’s Revised Annex IX and the Performance Metrics Targets included therewith.

## II. Discussion

### A. The Underlying Data Considered for the Development of the Baselines and the Targets

The ICPO opens its discussion by recognizing that LUMA has been very vocal about the lack of trustworthiness of the information available on the Puerto Rico Electric Power Authority's ("PREPA's") historical performance. *See Alegato de la OIPC Como Parte Interventora* (hereinafter, "ICPO's Brief") ¶24. However, the ICPO argues that the updated and correct information on the performance of the electric utility, which is vital for the Energy Bureau to implement adequate performance metrics, has been under LUMA's control during the totality of the proceedings. *Id.*, ¶26. Thus, according to the ICPO, LUMA should have updated the information originally submitted in LUMA's Performance Metrics Targets. *Id.*, ¶27.

The ICPO's reasoning is mistaken and would serve to contravene the applicable provisions of the T&D OMA that give rise to this proceeding and to LUMA's request for this Energy Bureau to approve the Revised Annex IX and adopt an initial set of Performance Metrics Targets. To wit, Section 4.2 of the T&D OMA provides that during the Front-End Transition Period, LUMA was required to establish a planning team with the PREPA and the Puerto Rico Public-Private Partnerships Authority ("P3 Authority") to prepare, with the input of said planning team "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." *See* Exhibit 1 of the Evidentiary Hearing (Direct Testimony, M. Hurtado, August 18, 2021), lines 82-88. Accordingly, LUMA concluded an iterative review process with the P3

Authority during the months of December 2020 and January 2021 before submitting the Performance Metrics to the P3 Authority on February 5, 2021, for their final review and comments, as required in the T&D OMA. *See* Exhibit 1 of the Evidentiary Hearing (Direct Testimony, M. Hurtado, August 18, 2021), lines 90-93. After reviewing and addressing the comments and suggestions of the P3 Authority, LUMA filed the Revised Annex IX on February 25, 2021, for approval by this Energy Bureau. *Id.*, lines 93-98. The ICPO fails to bear in mind that this proceeding dates back to February 2021. At that time, LUMA proposed its Performance Metrics Targets based on the best available historical data pertaining to PREPA’s performance.<sup>1</sup>

Pursuant to the Revised Annex IX, and the supporting testimonies offered by LUMA’s representatives, the information that was available for many of the Performance Metrics Targets was inaccurate or insufficient when LUMA prepared and submitted the Revised Annex IX to the T&D OMA. “A lot of the data that our team found from...PREPA had issues in terms of accuracy, precision, quality of the data in general terms, and then the method of recording that data. So over time, we were able to basically continue our work to try to provide the best data we could on those specific metrics.” *See* Evidentiary Hearing, Vol. 1, February 7, 2023, p. 31, lines 9-16 (M. Hurtado English); AP-2020-0025 Evidentiary Hearing-20230207\_Meeting Recording 1 [1:07:00].

LUMA subsequently re-filed Annex IX of the T&D OMA and submitted revisions to this Energy Bureau on August 18, 2021, to consider the determinations in Case Number NEPR-MI-2019-0007, setting performance benchmarks and baselines for PREPA. *See* Exhibit 1 of the

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<sup>1</sup> In a Resolution and Order dated December 23, 2020, the Energy Bureau stated that the data for baselines in this instant proceeding should be derived from that established in *In Re: The Performance of the Puerto Rico Electric Power Authority*, Case No. NEPR-MI-2019-0007.

Evidentiary Hearing (Direct Testimony, M. Hurtado, August 18, 2021), lines 105-108. The revisions included data, and observations gathered by LUMA during the end of the Front-End Transition Period and the period of two months after assuming operations of the T&D System on June 1, 2021. *Id.*, lines 108-112.

Thereafter, ICPO and the Local Environmental Civil Organizations (“LECO”) submitted the pre-filed testimonies of their proposed witnesses, which included proposals to add additional Performance Metrics as part of the revised Annex IX. Moreover, discovery processes were conducted in this proceeding between November 18, 2021, and December 28, 2021. Throughout that period, LUMA answered eight Requirements for Information issued by the Energy Bureau, four notified by LECO, and one served by ICPO. Meanwhile, LECO answered three Requests for Information issued by LUMA. The ICPO responded to four Requests for Information served by LUMA.

Then, as required by this Energy Bureau in orders issued on December 21, 2021, and August 1, 2022, on October 28, 2023, and to comply with those orders, LUMA submitted a Revised Annex IX to include additional Performance Metrics on Vegetation Management, Energy Efficiency and Demand Response, and Interconnections of DG Systems in order to comply with the Energy Bureau’s orders on additional metrics. In none of these orders, the Energy Bureau required LUMA to update the information originally submitted in the Performance Metrics Targets, other than the information pertaining to the additional metrics, considering that an extensive discovery was conducted in this proceeding based on the proposal submitted for the record.

Contrary to the ICPO’s arguments, LUMA has proposed that this Energy Bureau approve an initial set of Performance Metrics, and further proceedings are pursued to review —once set— the Minimum Performance Levels and Targets (25%-150%) for the appropriate metrics with the benefit of new data and while considering changes in circumstances and the state of the T&D System. It is in the public interest to have attainable metrics that drive the necessary performance to meet contractual, legal, and public policy requirements.

As Mr. Mario Hurtado, Chief Regulatory Officer for LUMA (“Mr. Hurtado”) explained during the Evidentiary Hearing, LUMA’s proposal is that the Energy Bureau should determine which metrics should be used to measure LUMA’s performance, and then give LUMA an opportunity to re-evaluate the Minimum Performance Levels and Targets. *See* Evidentiary Hearing, Vol. 1, February 7, 2023, p. 50, lines 15-20 (M. Hurtado English Portion); AP-2020-0025 Evidentiary Hearing-20230207\_Meeting Recording 1 [1:33:05]. LUMA is not proposing that the Energy Bureau re-open a process to consider which metrics to include in Annex IX to the T&D OMA. *See* Evidentiary Hearing, Vol. 1, February 7, 2023, p. 53, lines 4-11 (M. Hurtado English Portion); AP-2020-0025 Evidentiary Hearing-20230207\_Meeting Recording 1 [1:36:16]. The proposal is to recognize that some time has passed and that it is beneficial to consider data that was not available at the time prior to LUMA’s taking over the operation of the T&D System and now is available. This review would avoid having a potentially large gap between the targets and LUMA’s actual performance and the current state of the system. *See* Evidentiary Hearing, Vol. 1, February 7, 2023, pp. 99-100 and 101, lines 1-17 (M. Hurtado English portion), AP-2020-0025 Evidentiary Hearing-20230207\_Meeting Recording 1 [2:38:28].

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

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

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

LUMA proposes that a key moment in time when Minimum Performance Levels and Targets should be revised is close to when PREPA exits Title III. Currently, that exit is expected to take place in 2024. At present, an entire revision of the Minimum Performance Levels and Targets to consider and incorporate new data, as the ICPO suggests, is not feasible and would serve to upend the processes followed in this case and deprive LUMA of procedural due process protections to have the decision be issued on the basis of the administrative record and receive



adequate prior notice of the information that the Energy Bureau will consider and require to issue its determination.<sup>2</sup>

LUMA respectfully submits that the ICPO did not rely on any evidence on the record to support a request for the Energy Bureau to consider data beyond that used to submit the Revised Annex IX for consideration. The ICPO's request cannot serve to deny or modify LUMA's Revised Annex IX. LUMA respectfully submits that the only proposal supported by the record is LUMA's Revised Annex IX, as filed on October 28, 2022, and that it should be approved as filed, along with LUMA's proposal for future revisions.

**B. LUMA's Performance Metrics Targets**

**1. Technical, Safety, and Regulatory Performance Metrics**

**a. SAIFI and SAIDI**

Lacking support on the evidence admitted during the evidentiary hearing, the ICPO proposes a revision of the baseline and targets for the SAIFI and SAIDI Performance Metrics. *See* ICPO's Brief ¶¶38 and 45. Regarding SAIFI, the ICPO alleges that LUMA's current performance exceeds the proposed targets and that it does not identify any incentive to improve performance.

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<sup>2</sup> *See White Tel. Co. V. Fed. Comm'n's Comm'n*, 991 F.3d 1097, 1116 (10<sup>th</sup> Cir 2021) (citation omitted) (Due process guarantees include that individuals have adequate notice of actions that the state prohibits or requires); *Hernández v. Secretario*, 164 DPR 390, 394-95 (2005)(*recognizing* that the State is prevented from affecting through its actions the property or freedom interests of an individual in an unreasonable, arbitrary or capricious manner.); *Otero Mercado v. Toyota de Puerto Rico*, 163 DPR 716, 728 (2005) (*outlining* the standard of substantial evidence in the administrative record and that the agencies' determinations must be consistent with the totality of the evidence before the judge) (*citing Rebollo v. Yiyi Motors*, 161 DPR 69 (2004)); *Lopez v. Junta de Planificación*, 80 DPR 646, 670 (1958) (“[t]he right to a public hearing would be meaningless if [the administrative body] were allowed to base its decision on evidence received without the knowledge of the parties, outside the hearing, without giving the interested parties an opportunity to rebut or explain it by cross-examining or presenting other evidence to the contrary.”).

*Id.*, ¶39. As for SAIDI, the ICPO claims that although the situation is not similar to that under SAIFI, the proposed targets should be revised pursuant to LUMA's current performance. *Id.*, ¶45.

In setting forth the aforementioned proposal, ICPO fails to consider that LUMA's proposed Targets for both SAIFI and SAIDI, as supported and explained by Mr. Don Cortez as Vice President of Utility Transformation for LUMA, **are uncontested**. Regarding the Targets for SAIFI, Mr. Cortez testified that since no reliable historical data exists that indicates what degree of T&D reliability improvement can generally be expected from a specific level of funds invested in Puerto Rico, LUMA relied upon my many years of experience in T&D at various utilities and current and forecasted annual budgets to estimate an aggressive but attainable annual percent improvement from the baselines to establish future annual Targets for LUMA's first three years of operation. *See* Exhibit 10 of the Evidentiary Hearing, lines 342-347. Regarding SAIFI, the resulting values are the Target thresholds (100% goal) with an improvement of 7.5% by the end of Year 1, a cumulative annual improvement of 20% by the end of Year 2, and a cumulative annual improvement of 30% by the end of Year 3. *See Id.*, lines 347-350. The estimated expected annual percent improvement is then reasonably varied to establish values for the minimum, 150%, 125%, 50%, and 25% performance goals. *Id.*, lines 350-352,

Similarly, regarding SAIDI, Mr. Cortez testified that since no reliable historical data exists that indicates what degree of T&D reliability improvement can generally be expected from a specific level of funds invested in Puerto Rico, LUMA relied upon my many years of experience in T&D at various utilities and the LUMA current and forecasted annual budgets to estimate an aggressive but attainable annual percent improvement from the baselines to establish future annual

Targets for LUMA's first three years of operation. *Id.*, lines 358-363. The resulting values are the Target thresholds (100% goal) for this Performance Metric with an improvement of 10% by the end of Year 1, a cumulative annual improvement of 25% by the end of Year 2, and a cumulative annual improvement of 40% by the end of Year 3. *Id.*, lines 363-366. The estimated expected annual percent improvement is then reasonably varied to establish values for the minimum, 150%, 125%, 50%, and 25% performance goals. *Id.*, lines 366-368.

In setting the 25% Target, LUMA examined, pursuant to its experience, what would be the worst-case scenario for its ability to improve; that is, if LUMA had more problems on the grid than anticipated, what would be the minimum performance and the minimum achievable Target. *See* Evidentiary Hearing, Vol. 2, February 8, 2023 (English Portion), p. 315, lines 3-25, p. 316, lines 1-2; AP-2020-0025 Evidentiary Hearing-20230208\_Meeting Recording 1 [1:54:16-1:55:42].

During the Evidentiary Hearing, Mr. Cortez explained that to set the Targets, LUMA considered the unknowns, the fact that the health of the T&D System was not documented by PREPA, which led LUMA to do some visual assessments to then use its judgment to determine that the rest of the T&D System was in similar or worse condition. *See* Evidentiary Hearing, Vol. 2, February 8, 2023 (English Portion) p. 304, lines 24-25, p. 305, lines 1-8; AP-2020-0025 Evidentiary Hearing-20230208\_Meeting Recording 1 [1:35:14-1:35:55]. LUMA also looked at the budget constraints and, using its experience and reliability improvement and systems, determined that it could achieve a 30 percent improvement by year 3 in SAIFI, and a 40 percent improvement in SAIDI by year 3 and then LUMA used its experience to adjust how much improvement could be achieved per year. *See* Evidentiary Hearing, Vol. 2, February 8, 2023

(English Portion), p. 305, lines 9-17; AP-2020-0025 Evidentiary Hearing-20230208\_Meeting Recording 1 [1:35:55-1:36:24].

As Mr. Cortez explained, an examination of the SAIFI and SAIDI FY2019, FY2020, and FY2021 results clearly shows that the performance of the T&D System was not stable but had been and continued to degrade year after year. *See* Exhibit 10 of the Evidentiary Hearing, lines 374-375. The testimony of Mr. Cortez during the Evidentiary Hearing illustrates that the electromechanical grid was deteriorating at an accelerated rate, not a linear rate. That is, things were failing on an exponential curve because of a lack of maintenance work over a decade. The system was no longer failing linearly or flat, but it was failing exponentially. *See* Evidentiary Hearing, Vol. 2, February 8, 2023 (English Portion), p. 307, lines 17-25, p. 308, line 1; AP-2020-0025 Evidentiary Hearing-20230208\_Meeting Recording 1 [1:38:29-1:34:41].

In proposing different targets for SAIFI and SAIDI, the ICPO does not provide a coherent proposal. Thus, its suggestion is unsupported and must be rejected. More importantly, the ICPO ignores the evidence on the record on relevant considerations and circumstances that affect LUMA's performance. To wit, the evidence establishes that to meet the proposed performance Targets, LUMA must make performance improvements on top of reversing this continually degrading performance. This will require aggressive action and stretch capabilities and budgets. *See* Exhibit 10 of the Evidentiary Hearing, lines 377-380. The record also establishes the significant challenges faced by LUMA in meeting the proposed Targets. For example, a number of T&D assets were out of service and did not work prior to June 1, 2021. Work was done to place them back in service. *See* Exhibit 10 of the Evidentiary Hearing, lines 382-384. The number of

T&D assets that were out of service and the fact that no work was performed prior to June 1<sup>st</sup>, 2020, causes further constraints to the electrical system, thus contributing to an accelerated rate of degradation to the metrics. *Id.*, lines 384-385. In some cases, the placement of assets back into service will require the procurement of long-lead high-voltage equipment items that can take up to a year to receive, followed by an additional year for the installation and commissioning of this equipment. *Id.*, lines 385-388. Another challenge that LUMA took into consideration is the lengthy process and work associated with documentation for [Federal Emergency Management Agency] reimbursement eligibility. *Id.*, lines 389-390. Asset reliability will improve after the completion of the larger projects. It is then that reliability will start to improve significantly. *Id.*, lines 390-395. It will take months to complete the larger project. *Id.*, lines 394-395.

As the testimony of Mr. Cortez during the Evidentiary Hearing shows, the current conditions of the T&D System are such that it is increasingly difficult to improve SAIFI. Also, SAIDI continues to be a challenge as there are many more aspects of the grid that fail, such as, for example, an underground cable, and that affects SAIDI. *See* Evidentiary Hearing, Vol. 2, February 8, 2023 (English Portion), p. 311, lines 21-25, p. 312, lines 1-2; AP-2020-0025 Evidentiary Hearing-20230208\_Meeting Recording 1 [1:45:30]. Thus, contrary to the ICPO's unsupported contention, the proposed Targets for these metrics remain aggressive in light of the condition of the T&D System and should be adopted by this Energy Bureau at this time.

It is respectfully submitted that the weight of the administrative record supports LUMA's proposed Performance Metrics Targets for SAIFI and SAIDI, as well as LUMA's efforts and proposed actions to improve reliability performance, which is a difficult and complex task. This

Energy Bureau should reject the ICPO's suggestion that more aggressive targets should be set for SAIDI. The ICPO simply did not support that suggestion during the proceeding, nor does that contention find support in the administrative record now. More importantly, as explained, the suggestion is contrary to the weight of the evidence submitted in the administrative record. Finally, this Energy Bureau should not countenance the ICPO's proposal to expand the record to include additional data on current performance. As explained above and in LUMA's Opening Brief, at this juncture, the Energy Bureau should adopt an initial set of Performance Metrics Targets, filed in the Revised Annex IX, and conduct future processes to consider updated data on current performance, as needed.

**b. Distribution Line Inspections and Targeted Corrections, Transmission Line Inspections and Targeted Corrections, and T&D Substation Inspections & Targeted Corrections**

The ICPO agrees with LUMA that the Customer Average Interruption Duration Index ("CAIDI") performance metric should be eliminated and that the Customers Experiencing Multiple Interruptions ("CEMI") and Momentary Average Interruption Frequency Index ("MAIFI") performance metrics should be deferred. *See* ICPO's Brief ¶51. However, the ICPO objects to the inclusion of the Distribution Line Inspections and Targeted Corrections, Transmission Line Inspections and Targeted Corrections, and T&D Substation Inspections & Targeted Corrections Performance Metrics. *Id.* The ICPO alleges that inspections are intrinsic to LUMA's functions and should not be attached to performance metrics. *Id.*, ¶52. As forewarned in the introduction of this Reply Brief, the ICPO did not support its contention with citations to the

administrative record. Moreover, the ICPO improperly ignores the weight of the evidence submitted by LUMA, which amply supports the adoption of these metrics.

The record of the proceeding and the testimony of Mr. Cortez, witness for LUMA, establishes that the Inspections Metrics will lead to measurable and important outcomes, such as having the outcome of inspections serve as a mechanism to identify equipment that is damaged and can be replaced and to correct and update the T&D System model used by OMS, which has a direct impact on data used in calculating SAIDI and SAIFI. *See* Exhibit 24 of the Evidentiary Hearing, p. 39, lines 828-833, and p. 40, lines 834-837.

Mr. Gerardo Cosme, witness and technical advisor for the ICPO, himself agreed that the Distribution Line Inspections and Targeted Corrections, Transmission Line Inspections and Targeted Corrections, and T&D Substation Inspections & Targeted Corrections Performance Metrics “will indeed help at the end of the process,” *See* Exhibit 31 of the Evidentiary Hearing, line 147. Thus, the ICPO’s witness testimony supports these metrics contrary to the ICPO’s own position on the matter expounded in its Brief.

The record further establishes that the Inspection Metrics are accompanied by a plan pursuant to which LUMA will track its performance and measurable outcomes. As the afore-cited testimony of Mr. Cortez and the explanations of the proposed Inspections Metrics show, LUMA will be able to not only track the progress of its assessments but also prepare an inventory of the health of the grid that, in turn, will help track LUMA’s efforts to prioritize repairs of the assets.

Inspecting the primary lines will enable LUMA to find those situations that may be a danger to the public and better equip LUMA to fix them and are fundamental for the utility to

perform more effectively, including identifying and fixing outages. *See* Evidentiary Hearing, Vol. 2, February 8, 2023 (English Portion), p. 320, lines 11-25, p. 321, lines 1-19, AP-2020-0025 Evidentiary Hearing-20230208\_Meeting Recording 1 [2:01:21-2:03:15:00]. This, in furtherance of public policy requirements in Act 17-2019, Article 1.5(9)(c) to “plan the Electrical System while addressing the interdependency between the electric power system and other essential service facilities to counteract the effects of power outages,” and Article 1.5(9)(d), to “conduct the appropriate planning studies on the operating voltages of the transmission and distribution system in order to ensure the reliable operation thereof; specify and keep an inventory of the Electrical System components that meet the standards in effect of the continental United States electric power industry. . . .” 22 LPRA § 1141(d).

In conclusion, this Energy Bureau should approve the Inspection Metrics as part of the Performance Metrics Targets to apply to LUMA’s ability to earn the Incentive Fee set forth in the T&D OMA. They align with public policy in as much as LUMA will be better equipped to provide reliable, safe, stable, and excellent electric power service, *see* Act 17-2019, Art. 1.5(10)(a), 22 LPRA § 1141d (2022), transform the Electric Power System into one that satisfies the current energy needs of Puerto Rico and to guarantee the availability and supply thereof at an affordable, just, and reasonable cost. *See id.*, Act 17-2019, Art. 1.5(2)(a) and (b).

**c. Net Energy Metering Project Activation Duration**

The ICPO manifested agreement with the calculation of the Net Energy Metering (“NEM”) Project Activation Duration metric that LUMA submitted for consideration as ordered by this Energy Bureau. *See* ICPO’s Brief ¶60. However, the ICPO suggests that a Target threshold of



fifteen (15) days should be established, instead of twenty-eight (28) days, to reflect the net metering in the customers' bills. *Id.*, ¶¶62 and 64. In addition, the ICPO reiterated its proposal for the Energy Bureau to establish a metric that measures the duration for LUMA to complete and close an interconnection project. *Id.*, ¶66. These proposals are not supported by the record. LUMA opposes both proposals.

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

Mr. Wood further stated that over the past several years, there had been a steadily increasing number of new NEM applications submitted to the utility each month, which makes it difficult to predict and control program performance. *See* Exhibit 23 of the Evidentiary Hearing, p. 8, lines 195-197. Also, the expedited project application process is still very manual and labor-intensive. *Id.*, line 216. Additionally, in a rebuttal testimony, Mr. Cortez, a witness for LUMA, explained that LUMA's proposed Target threshold is considered aggressive, considering that circumstances beyond LUMA's control influence the average number of days to activate NEM

projects. For example, the number of NEM cases is increasing on a monthly basis, and that increase is dictated by the customers and other reasons that LUMA does not control. *See* Exhibit 26 of the Evidentiary Hearing, Direct Testimony of Don Cortez (January 23, 2023), p. 5, lines 89-92, and p. 6, line 93. This was supported by Mr. Wood, who testified at the Evidentiary Hearing that, based on the review of the numbers, more applications came in, which was an explanation for the increase in the average time for activation. *See* Evidentiary Hearing Transcript Vol. 2, February, 8 2023 (English Portion), p. 370, lines 4-11; AP-2020-0025 Evidentiary-20230209\_Meeting Recording 2 [0:41:13]. In some cases, those circumstances account for a considerable amount of time that renders it unfeasible to track in days completion.

The aforementioned evidence in support of LUMA's proposal is uncontested. In its Brief, other than voicing its opposition and cautioning against affording an incentive if LUMA does not meet legal requirements for NEM projects, the ICPO did not submit a proposal supported by evidence or data. Thus, this Energy Bureau, should reject the ICPO's preference to set at 15 days the time to activate NEM projects.

Moreover, the ICPO's proposal to set the Target at 15 days is not feasible, as the evidence admitted for the record shows. NEM cases that arrived and were completed in Fiscal Year 2022 had an average of 12 days for the validation of the customer's NEM application due to information still being required by the client. *See* Exhibit 26 of the Evidentiary Hearing, Direct Testimony of Don Cortez (January 23, 2023), p. 6, lines 106-108.

Furthermore, the "regular" (i.e., non-expedited) projects with generating capacity greater than 25 kW should not be added to LUMA's proposed Performance Metrics Targets. These types

of DG Interconnection Projects are more technically complex and individualized. Therefore, these projects require a more iterative process with greater input from customers and developers, which is more challenging to measure and track. There is no penalty for developers' delayed responses to LUMA's inquiries, so projects mostly depend on the developer's interest in completing the case. Additionally, these non-expedited cases comprise less than 1% of the overall NEM project application volume. *See* Exhibit 26 of the Evidentiary Hearing, p. 7, lines 122-130. The evidence on the record shows that setting any target for the completion of the process for interconnections projects, whether it is 60 days or some other Target time, is not feasible. *Id.*, p. 9, lines 166-169.

Considering the above, LUMA contends that its proposal for a NEM Project Activation Duration Performance Metric remains unchallenged. The ICPO's counterproposal does not consider circumstances beyond LUMA's control, which are stated in the rebuttal testimony of Mr. Cortez. *See* Exhibit 26 of the Evidentiary Hearing, Direct Testimony of Don Cortez (January 23, 2023), p. 5, lines 89-92, and p. 6, line 93. Thus, if the Energy Bureau determines to approve a performance metric involving activation of NEM projects, it should approve the NEM Project Activation Duration Performance Metric as proposed by LUMA.

**d. Energy Savings as Percent of Total Energy Sales and Peak Demand Savings as a Percent of Total Peak Demand**

As to the Energy Savings as Percent of Total Energy Sales Performance Metric and the Peak Demand Savings as a Percent of Total Peak Demand Performance Metric ("EE&DR"), the ICPO is in agreement with LUMA's proposed metric, which was submitted in compliance with an order of this Energy Bureau. *See* ICPO's Brief ¶78. Notwithstanding, the ICPO believes it would

be useful that the EE&DR metrics should be segmented by each consumer class impacted by both EE&DR programs. *Id.*

LUMA disagrees with the ICPO's recommendation that the EE&DR metrics should be subdivided by customer class. Mr. Cortez, a witness for LUMA, expounded in a pre-filed rebuttal testimony that since PREPA has never implemented EE&DR programs, a baseline metric by customer class does not exist. As a result, there is a high degree of uncertainty about the market readiness for these types of programs. LUMA has no data on how the customers from Puerto Rico as a whole or in the different consumer classes will react to energy efficiency offers, rebate price points, or the price of energy-efficient goods. The [Transition Period Program ("TPP")] for Energy Efficiency and Demand Side Response programs is meant to understand market readiness. *See* Exhibit 26 of the Evidentiary Hearing, p. 10, lines 183-189. The TPP quick-start programs will provide a greater understanding of the Puerto Rico market, customer needs, and preferences, and how best to address barriers to adoption across LUMA's customer classes. *Id.*, lines 193-195. Thus, as the record shows, at this time, it is not feasible to subdivide these metrics per customer class.

However, LUMA agrees with the ICPO that the EE&DR metrics, as incentive Performance Metrics, should be deferred during the transition period and not be effective until after the TPP program ends. *See* Exhibit 26 of the Evidentiary Hearing, p. 10, lines 203-204, and p. 11, line 205. Therefore, LUMA requests that if the Energy Bureau decides to approve EE&DR metrics in this proceeding, it approves these proposed Performance Metrics as presented but defers their implementation until the TPP program concludes.

**e. Vegetation Maintenance Miles Completed**

In its Brief, the ICPO stated agreement with the Vegetation Maintenance Miles Completed Performance Metric proposed by LUMA in compliance with an order of this Energy Bureau. *See* ICPO's Brief ¶83. The ICPO proposes it would be helpful to establish a ratio between reactive and corrective vs. preventive work. *Id.* The ICPO believes that such a number will provide a better idea of LUMA's progress on the vegetation management backlog. *Id.*, ¶84. The ICPO understands that the majority of work performed is reactive/corrective and not preventive. *Id.*

LUMA respectfully requests that this Energy Bureau reject the ICPO's proposal that the ratio between reactive and corrective vs. preventative work should be included in the vegetation management metric to measure progress on the reduction of related Vegetation Management backlog. The record shows that while LUMA expects the amount of reactive and corrective work compared to preventive work to decrease, the ratio of reactive and corrective work to preventive work is not an accurate measure of Vegetation Maintenance Miles Completed, and tracking this ratio will not result in the completion of more vegetation maintenance work. *See* Exhibit 30 of the Evidentiary Hearing (Rebuttal Testimony, Diane Watkins, January 24, 2023), p. 4, lines 67-70, p. 5, line 70. A ratio measures the relationship between two things. *Id.*, lines 70-71. In this case, the ratio suggested by the ICPO would measure the relationship between the sum of the reactive and corrective work compared to the preventive work. *Id.*, lines 71-73. Such a ratio would not provide any information about the total amount of work actually completed. *Id.*, lines 73-74.

As an example, if LUMA completes 800 miles of reactive/corrective work and 800 miles of preventive work, the ratio would be one ( $800/800=1$ ). *Id.*, lines 74-76. If LUMA completes 200

miles of reactive/corrective work and 200 miles of Preventive work, the ratio would also be one (200/200=1). *Id.*, lines 76-77. Thus, the ratio does not provide any indication of the amount of Vegetation Maintenance Miles Completed and will not drive the completion of more vegetation maintenance miles. *Id.*, lines 77-79. The metric proposed by LUMA measures all Vegetation Maintenance Miles Completed and therefore tracks the total amount of work completed regardless of the specific category of the work. Tracking all the work completed is a better measure of overall work completion than tracking the ratio of specific classifications of the work. *Id.*, lines 79-83.

Second, LUMA has not proposed the tracking of a backlog as part of the metric of Vegetation Maintenance Miles Completed. *Id.*, lines 87-88. If the ICPO's intent is to use the word "backlog" to refer to vegetation maintenance work that has been planned, but not yet completed, the proposed ratio will not measure such work. *Id.*, lines 88-92. Reactive and corrective work is work that cannot be easily planned for, while preventive work can be planned, prioritized, and scheduled. *Id.*, lines 91-92.

As an example, assume LUMA plans to complete 1200 miles of preventive work over a 12-month period. *Id.*, lines 92- 93. Half-way through this example year, assume LUMA has completed 700 miles of Preventive work and 100 miles of reactive/corrective work. *Id.*, lines 93-97. In this example, the ratio of Reactive/Corrective work to Preventive work would be 100/700 or 1/7. *Id.*, lines 97-98. This number provides no indication of the total Vegetation Maintenance Miles Completed and no insight into the remaining "backlog" of planned Preventive work. *Id.*, lines 98-100. LUMA may track the percentage of total work that is reactive, corrective, and preventive, but using the ratio of these classifications as a Performance Metric is not reasonable

for the purposes of setting Targets, and doing so will not result in the completion of more vegetation maintenance miles. *Id.*, lines 101-104.

LUMA's proposed metric on vegetation maintenance will allow LUMA to track progress on the VMP and incentivize improved system safety and reliability by promoting vegetation maintenance along transmission and distribution lines. This metric is uncontested on the record, and no other comprehensive proposal mature for adoption and implementation was filed for the record nor considered in this proceeding. Thus, if a vegetation maintenance Performance Metric is adopted, LUMA requests that the Energy Bureau adopt LUMA's proposed Performance Metrics and Targets included in the Revised Annex IX.

## **2. Customer Service Performance Metrics**

### **a. J.D. Customer Satisfaction Survey (Residential and Business)**

Regarding the J.D. Customer Satisfaction Survey (Residential and Business) Performance Metrics, the ICPO recognizes that such surveys are a contractual requirement under the T&D OMA. *See* ICPO's Brief ¶90. However, the ICPO expresses concerns about using email as the only mechanism to conduct the surveys among customers. *Id.*, ¶92. Per the ICPO, using e-mail as the exclusive contact method to perform the survey excludes a significant number of customers who do not use electronic means of communication. *Id.*, ¶93. The ICPO claims that due to not being able to evaluate the methodology utilized by J.D. Power, it does not know why it was decided to conduct the surveys via email, instead of personal surveys at the commercial offices or a combination of methods. *Id.*, ¶94.

The ICPO claims that 41,389 customers visited LUMA's commercial offices during August 2021 and that such number represents ten times the number of customers surveyed by J.D. Power. *See* ICPO's Brief ¶¶95-96. Per ICPO, 41,389 customers are more statistically representative of the universe of customers in comparison with the 4,171 residential customers and 163 commercial customers surveyed. *Id.*, ¶98. Finally, the ICPO argues that the questions included in the J.D. Power Surveys should be adapted to the population surveyed. *Id.*, ¶103.

Ms. Jessica Laird, Vice-President of Customer Experience for LUMA, submitted a pre-filed rebuttal testimony that addressed and refuted the arguments posed by the ICPO. Ms. Laird has been involved in the development of surveys for over ten years. *See* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (English Portion), p. 640, lines 23-24; AP-2020-0025 Evidentiary-20230209\_Meeting Recording 1 [0:6:18]. First, Ms. Laird noted that the ICPO's statement was not supported by any data that had been offered in the proceedings. E-mail is the survey method that J.D. Power uses for its Electric Utility Syndicated Studies across North America. According to Ms. Laird's experience, digital channels (mobile device, laptop, P.C.) are the most widely used and cost-effective means to conduct these studies. *See* Exhibit 42 of the Evidentiary Hearing, Rebuttal Testimony of Jessica Laird (February 17, 2022), p. 14, lines 273-277.

Ms. Laird indicated that as of December 31, 2021, 609,982 customers had registered an electronic MiLUMA account, and the MiLUMA app has been downloaded 451,127 times. *See* Exhibit 42 of the Evidentiary Hearing, p. 15, lines 295-297. At that time, LUMA had almost half of the customer base signed up on MiLUMA – which means that almost half of the customer base



had active e-mail. That is sufficient data to represent a customer base. *Id.*, p. 21, lines 419-421. LUMA shares information from its customer database for those customers that have authorized LUMA and PREPA to share their e-mail addresses. *Id.*, p. 12, lines 255-256. For the surveys conducted from the fourth quarter of 2020 until the fourth quarter of 2021, LUMA shared 543,682 email addresses with J.D. Power. J.D. Power then runs the email addresses through a set of queries to achieve a unique sample size. *Id.*, lines 232-234.

The record also establishes without rebuke, that customers are dynamic in how they interact with their utility company, and the demographics of the customers should not be assumed based on the method and media they use to communicate with LUMA. *Id.*, p. 21, lines 419-421. J.D. Power conducts e-mail surveys due to the high response rates received through this type of survey.

The record also shows that in-person surveys (in which potential respondents are intercepted, screened, and interviewed in person) can be both time-consuming and expensive. *See* Exhibit 42 of the Evidentiary Hearing, p. 17, lines 332-333. Additionally, another concern is that the in-person interviewers may influence the responses. *Id.*, lines 333-334. Further, they can potentially suffer from geographic and demographic limitations on who can be interviewed. *Id.*, lines 334-336. In Ms. Laird's experience, surveying in person can be challenging due to the time it takes to complete the survey and people's limited time when visiting a commercial office. *Id.*, p. 18, lines 346-348. Also, an in-person survey would require a pre-screening selection process to be conducted on-site before a customer is selected to respond to an in-person survey in a LUMA commercial office. *Id.*, p. 18, lines 348-350.

Ms. Laird further explained that statistically, customers sampled via e-mail are standard across all utilities. *Id.*, p. 21, lines 416-417. Usability for the survey is higher via e-mail because customers can complete the survey at their convenience. *Id.*, lines 417-418. Further, the survey itself asks customers about all aspects of LUMA's customer interactions, therefore, pulling in data regarding online, in-person, and telephone customer service. *Id.*, lines 421-423.

The ICPO also failed to consider the uncontested evidence that there is no technology gap issue with LUMA's customers. *See* Exhibit 42 of the Evidentiary Hearing, p. 21, lines 416-419.

During the Evidentiary Hearing, Ms. Laird testified that the majority of customers have emails, and the survey is used to get a sample representation of all customers. Additionally, there are within the survey responses for customers that do receive customer service within the customer service center. *See* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (English Portion), p. 580, lines 19-24; AP-2020-0025 Evidentiary-20230209\_Meeting Recording 1 [1:22:28]. LUMA sends over to J.D. Power all the email addresses of customers that are registered with LUMA. Currently, there are over 750,000 customers signed with LUMA. However, this number changes daily. *Id.*, p. 622, lines 9-15; AP-2020-0025 Evidentiary-20230209\_Meeting Recording 1 [2:31:58].

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

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

Moreover, the ICPO ignores in its Brief, that the testimonial evidence that it put forth in the evidentiary hearing was rebutted. To wit, the record shows that the ICPO's proposal is not based on reliable methods or proven experience in customer service. To the contrary, the ICPO's proposal lacks a sound or reasonable basis and should be rejected.

On cross-examination at the Evidentiary Hearing, Attorney Beatriz González, witness for the ICPO who ICPO presented to address, among others, the J.D. Customer Satisfaction Survey Performance Metrics, stated that she was not an expert in the subject matter, admitting to not having experience designing, conducting, or analyzing customer satisfaction surveys, including experience in the methodology used in customer satisfaction surveys. *See* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (Spanish Portion), p. 3, lines 2-3; AP-2020-0025 Evidentiary-20230209\_Meeting Recording 1 [2:21:15] and p. 25, lines 12-25; AP-2020-0025 Evidentiary-20230209\_Meeting Recording 2 [1:11:21]. Attorney González admitted as well to not having analyzed metrics used by electric utilities in the United States to measure customer satisfaction. *Id.*, p. 26, lines 1-4; AP-2020-0025 Evidentiary-20230209\_Meeting Recording 2 [1:11:50].

Attorney González testified that Ms. Laird indicated that there were 750,000 email addresses and approximately 1.4 million customers. *See* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023, (Spanish Portion), p. 2, lines 11-15; AP-2020-0025 Evidentiary-20230209\_Meeting Recording 1 [2:19:18]. However, she later testified to not remembering the fact that Ms. Laird had indicated there were 750,000 email addresses of customers. *Id.*, p. 33, line

25; AP-2020-0025 Evidentiary-20230209\_Meeting Recording 2 [1:19:32]. When questioned on her proposition that surveying customers who visited a commercial office is more representative than surveying customers via email, Attorney González also admitted that 543,682 email addresses were numerically more than the 41,389 customers who visited a commercial office in one month. *Id.*, p. 38, line 5-6; AP-2020-0025 Evidentiary-20230209\_Meeting Recording 2 [1:23:30].

The ICPO has not established how examining the methodology utilized in the J.D. Power Customer Satisfaction Surveys would allow the ICPO to understand if the proper method to conduct the surveys was used. Particularly where the record shows that its witness, Attorney González, admitted not being an expert in the subject matter. Nor does she have any experience designing, conducting, or analyzing customer satisfaction surveys, or experience in the methodology used in customer satisfaction surveys. The ICPO did not establish its expertise to determine whether a particular surveying method is proper.

Instead, the ICPO concludes in a very simplistic fashion that 41,389 customers who visited LUMA's commercial offices for one month are more statistically representative of the universe of customers in comparison with the 4,171 residential customers and 163 commercial customers surveyed by J.D. Power via email. However, that premise omits that Ms. Laird testified that J.D. Power, on an annual basis, sends out 100,000 surveys using a sample selected at random. Each quarter J.D. Power sends 25,000 randomly selected customers, who were not previously selected. The number of customers that respond to those 25,000 becomes the sample size. On average, over a thousand customers have responded each quarter. The ICPO's contention is also based on flawed and unproven assumptions: that all 41,389 customers are different persons; that no one visited the

commercial offices more than one time in that month; that all 41,389 customers would accept to be surveyed and respond to the survey; and that they would reflect a perfect sample size of residential and business customers.

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

**b. Average Speed of Answer**

The ICPO objects to the approval of the Average Speed of Answer Performance Metric based on its understanding that LUMA's actual performance is already in compliance with the proposed targets. *See* ICPO's Brief ¶109. The ICPO based its objection on LUMA's performance in the quarter from January to March 2023. Specifically, its performance as submitted in Case No. NEPR-MI-2019-0007, in a *Submission of Performance Metrics Report for January through March 2023 and in Compliance with Orders of January 12, 2023 and April 3, 2023*. *Id.*, ¶108. As such, the ICPO claims the Energy Bureau should approve a more rigorous metric, as there is no incentive for LUMA to improve its current performance. *Id.*, ¶111.

First, the document titled *Submission of Performance Metrics Report for January through March 2023 and in Compliance with Orders of January 12, 2023 and April 3, 2023*, and filed by LUMA in Case No. NEPR-MI-2019-0007 before this Energy Bureau is not an exhibit of this

proceeding. Nor was it offered as evidence by any of the parties during the Evidentiary Hearing. Thus, ICPO is purporting to introduce new evidence through its legal brief, which is not allowed at this stage of the proceeding. LUMA objects to ICPO's attempt to introduce evidence that the ICPO could have submitted for the record but opted not to use in connection with its pre-filed testimonies and during the evidentiary hearing.

Admitting new evidence at this point in the proceeding violates the due process rights of LUMA, as it completely impairs its right to examine the evidence and refute it. *See Álvarez v. Junta de Condómines*, 121 DPR 896 (1988) (“a fundamental requirement of the due process of law is the opportunity to present evidence and argue and to be able to rebut contrary evidence”); *Asoc. de Taxis de Cayey*, 142 DPR 109 (*stating* that the right to a public hearing would be meaningless if the administrative agency were allowed to base its decision on evidence outside the hearing without allowing the parties to rebut or cross-examine new evidence or present other evidence to the contrary). In addition, the ICPO's intention to introduce new evidence infringes on LUMA's due process rights and the guarantee that the final decision must be made based on facts in the administrative record. Sec. 3.1 of the LPAU, 3 LPRA § 9641; *see also Fuentes Bonilla v. ELA et al*, 200 DPR 364, 395 (2018).

Second, Ms. Laird, witness for LUMA, rebutted the ICPO's objection to the Average Speed of Answer Performance Metric in a pre-filed rebuttal testimony. In its brief, the ICPO failed to consider that the baseline proposed by LUMA is based on data from PREPA that was available when the baseline was submitted to the Energy Bureau in February 2021. *See* Exhibit 42 of the Evidentiary Hearing, p. 18, lines 360-361, and p. 19, lines 362. Further, the ICPO failed to consider

that LUMA is measured on an annual average, not on the monthly average that ICPO requests be considered. Occurrences such as hurricanes and the hurricane season increase activity if there are outages and many outages. LUMA looks at a yearly average because of the varying call volumes throughout the year. An annual metric enables LUMA to balance cost efficiency, resourcing, and customer demand over a more extended period. *See* Exhibit 42 of the Evidentiary Hearing, p. 20, lines 372-377. The metrics reported to the Energy Bureau in Case No. NEPR-MI-2019-0007 are all monthly figures. Monthly metrics cannot be compared to annual metrics – two to three months of a metric do not equate to a trend. Therefore, one cannot extrapolate the numbers reached in two different months to represent the year. *Id.*, p. 387-390.

As Ms. Laird explained, the metrics reported to the Energy Bureau in Case No. NEPR-MI-2019-0007 are all monthly figures. As such, it is incorrect to extrapolate the numbers reached in three different months to represent what would be a year of performance. The ICPO's argument, solely based on the data pertaining to two months of performance, demonstrates a lack of understanding of how incentive Performance Metrics operate. In conclusion, LUMA contends that ICPO's objection to the proposed Average Speed of Answer Performance Metric is without basis and should be disregarded by the Energy Bureau.

**c. Customer Complaint Rate**

As to the Customer Complaint Rate Performance Metric, the ICPO claims not to understand the reasoning behind the proposed baseline, which is based on data pertaining from May 2019 to February 2020. *See* ICPO's Brief ¶118. The ICPO understands that the period from July 2019 to June 2020 was more trustworthy. *Id.* Further, the ICPO argues that the Customer

Complaint Rate Performance Metric should include all informal complaints filed by customers before LUMA, since the number of claims filed and the reasons behind them, are direct evidence of the quality of service offered by LUMA to customers. *Id.*, ¶118.

Ms. Melanie Jeppesen, as Director of Billing Services for LUMA, submitted a pre-filed direct testimony supporting the Customer Complaint Rate performance metric. She noted that this metric measures the total number of initial customer complaints registered with the Energy Bureau. *See* Exhibit 43 of the Evidentiary Hearing, Revised Direct Testimony of Melanie Jeppesen (September 24, 2021), lines 61-62. To develop the Customer Complaint Rate performance metric, Ms. Jeppesen explained that LUMA looked at the number of complaints received by the Energy Bureau from 2017 to 2020. After reviewing data from March 2020 through February 2021, it was determined that this period was not a strong depiction of operations at PREPA compared to the historical data reviewed over the last four years. The time from May 2019 to February 2020 was selected as it represents the most normal period of operations since Hurricane Maria and prior to the onset of the pandemic. *Id.*, lines 77-82.

As a result, Ms. Jeppesen explained that the proposed baseline was set considering the total number of complaints received by the Energy Bureau with the classification of NEPR-QR from May 2019 to February 2020 as it is the most normal period of operations for PREPA in the last four years. *See* Exhibit 43 of the Evidentiary Hearing, lines 89-92. This resulted in a baseline of 10.5. *Id.*, lines 91-92. Ms. Jeppesen stated that the baseline represented the calculation of the metric using the data from May 2019 to February 2020, annualized for twelve months, with the baseline set at 146 complaints annually, or 10.5. *Id.*, lines 85-87.



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

In support, Ms. Jeppesen provided data for PREPA from 2017 to 2020, in which claims for high electricity consumption was the reason customers filed informal complaints for 58% of the claims. *Id.*, lines 89-91. Moreover, she noted that consideration must be given to the fact that a customer who files an informal complaint can later file a formal complaint, creating two different complaints, and two counts towards the metric, based on the same set of facts or the same event. *Id.*, p. 6, lines 105-108. This rebuttal testimony by Ms. Jeppesen is uncontested. Thus, LUMA respectfully proposes that the record does not support a proposal to include informal complaints in LUMA's proposed Customer Complaint Rate Metric.

Ms. Jeppesen also testified that Attorney González’s remark on behalf of ICPO on the “number of claims filed and the reasons for filing them is direct evidence of the quality of service provided by LUMA” is unfounded. The ICPO did not provide or suggest any methodology to sustain the statement linking the number of claims to the quality of service despite information requests where LUMA requested additional data references. *See* Exhibit 44 of the Evidentiary Hearing, p. 8, lines 139-141. Although Attorney González stated that her opinion was based on her experience, she also clarified that it is not the ICPO’s function to measure the quality of service of an electrical service company. *Id.*, lines 141-144. Nor did Attorney González provide objective nor verifiable data for any given period or quantifiable methods that could support the statement or show a correlation between the number of customers seeking the ICPO’s assistance and the total number of informal claims LUMA addresses and resolves. *Id.*, p. 8, lines 157-158, and p. 9, lines 159-160. Attorney González did not disclose any information to sustain that the ICPO has a methodology to collect data on customer claims and the time in which the utility resolves them or that the ICPO does collect the data. *Id.*, p. 9, lines 163-166. Thus, in considering LUMA’s proposed Customer Complaint Rate Metric, this Energy Bureau should reject the ICPO’s unsupported contention that the total number of complaints that customers file before the Energy Bureau serves as direct evidence of the quality of the services that LUMA provides to customers.

During the Evidentiary Hearing, to questions posed by counsel for the ICPO, Ms. Jeppesen responded that she would like to make sure the information provided was accurate in relation to the “NEPR-QR” cases included in the worksheet submitted with her pre-filed direct testimony. *See* Evidentiary Hearing Transcript, Vol. 3, February 9, 2023 (English Portion), p. 653, lines 17-

18; AP-2020-0025 Evidentiary-20230209\_Meeting Recording 2 [0:32:44]. Contrary to ICPO's suggestion, Mr. Jeppesen did not provide untruthful testimony, but rather recognized there was room to review the data that had been submitted to correct mistakes.

As a result of the discussion that ensued in the Evidentiary Hearing whether the Customer Complaint Rate Metric could include cases that the Energy Bureau classifies as "NEPR-RV" proceedings, on May 11, 2023, LUMA proposed to include both complaints classified as "NEPR-QR" and "NEPR-RV" in the calculation of the total number of complaints in the Customer Complaint Rate Performance Metric. This alternative calculation takes into consideration key concerns expressed by the Energy Bureau Commissioners during the Evidentiary Hearing on the desirability that the Customer Complaint Rate Performance Metric measures a comprehensive view of customer complaints, including those in which a customer may be appealing a decision or determination by the utility.

In support of this proposal, LUMA included, as Exhibit B to *LUMA's Brief in Support of the Request for Approval of the Proposed Annex IX to the T&D OMA*, *LUMA's Performance Metrics Targets* ("LUMA's Brief"), a Sworn Statement executed by Ms. Jeppesen with an Excel workbook as Exhibit C. As noted by Ms. Jeppesen in Exhibit B, the overall calculation methodology will remain the same. That is the total number of customer complaints divided by the total customer count (approximately 1,480,000 customers) multiplied by 100,000. The baseline would comprise the same time period originally proposed from May 2019 through February 2020 annualized. *See* Exhibit B of LUMA's Brief, Sworn Statement of Melanie Jeppesen, ¶8.

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

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

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<sup>3</sup> The proposed baseline, Minimum Performance Level, and Targets for the Revised Customer Complaint Rate Performance Metric were included in the Excel workbook accompanying Ms. Jeppesen’s Sworn Statement, in a worksheet labeled “Table Metric.” *See* Exhibit B of LUMA’s Brief, Sworn Statement of Melanie Jeppesen, ¶21; Exhibit C attached to Ms. Jeppesen’s Sworn Statement.

period between May 2019 and February 2022 and used the same methodology for the Minimum Performance Level and target thresholds.

Finally, LUMA must address an unfounded allegation made in the ICPO's Brief. The ICPO claims that Ms. Jeppesen was untruthful by supposedly stating that she considered the complaints filed before the ICPO when that information was not publicly available and was not requested by LUMA. *See* ICPO's Brief ¶129. Ms. Jeppesen stated in her direct pre-filed testimony that LUMA determined not to include complaints before the ICPO for the Customer Complaint metric baseline because those complaints represent a range that LUMA has not been able to match with the complaints filed before the Energy Bureau. *See* Exhibit 43 of the Evidentiary Hearing, Revised Direct Testimony of Melanie Jeppesen (September 24, 2021), lines 112-116. Contrary to the ICPO's allegations, Ms. Jeppesen did not testify that she reviewed or considered information in the possession of the ICPO.

LUMA respectfully contends that the ICPO's arguments in opposition to the Customer Complaint Rate Performance Metric to include informal complaints in the Customer Complaint Rate Metric are not supported by any evidence in the record of this instant proceeding. Furthermore, the ICPO's concerns on the types of formal complaints to be included are addressed by LUMA's proposed revised calculation submitted on May 11, 2023, which the ICPO did not have at its disposal when it filed its Brief.

### **3. Major Outage Events Performance Metric**

In relation to the Major Outage Events Performance Metrics, the ICPO argues that it was not clear from the testimony offered at the Evidentiary Hearing the applicability of said metric,

specifically its duration and when it concludes. *See* ICPO's Brief ¶143. The ICPO claims that LUMA was not able to clarify if a Major Outage Event was understood to be concluded if the less than 10,000 customers with interrupted service, as stated in the definition, needed to be included within the 205,000 customers that triggered the Major Outage Event. *Id.*, ¶144. The ICPO's subjective contention, which is not supported by specific citations to the record, is incorrect.

The record clearly establishes when and under which circumstances, the MOE applies as provided for in the T&D OMA. As stated in Sections 1.3.4 and Section 2.8 of LUMA's Revised Annex IX, the MOE Metrics apply during Major Outage Events defined as:

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

*See* Exhibit 11 of the Evidentiary Hearing.

As Mr. Terry Tonsi, witness for LUMA, testified during the Evidentiary Hearing, "It's a major – it's something major that happens to the system. And the way it's defined is there are 205,000 customers that are interrupted, which signifies a very significant event for a utility, for more than 15 minutes, and then it has more than 1,500 outage jobs that are tracking through the whole mess. And within that, it has to be an act of God. So to be classified as a Major Outage

Event it has to be an act of God. So it can't be something that's a failure that's from lack of maintenance or an error or a third-party interference. It has to be an act of God." *See* Evidentiary Hearing, Vol. 4, February 10, 2023 (T. Tonsi English), p. 809, lines 24-25 and p. 810, lines 1-13; AP-2020-0025 Evidentiary Hearing-20230210\_Meeting Recording 1 [0:53:49].

Moreover, "[t]he Major Outage Event metrics are triggered when there's a Major Outage Event. And during that period of time in which there is a Major Outage Event metric, that's when they would apply during that time. The Major Outage Event is when there's a very large number of customers that are interrupted for -- . . . what we've seen is when it's triggered when here's a large number of customers, more than 205,000 customers out of the total of 1.4 million so it's significant. And then it continues under the definition until 10,000 customers -- less than 10,000 customers have their service restored for more than eight hours. That's just for the [Major Outage] for that period of time, for the application of those Major Outage Event metrics." *See* Evidentiary Hearing, Vol. 4, February 10, 2023 (M. Hurtado English Portion) p. 832, lines 24-25 and p. 833, lines 1-25; AP-2020-0025 Evidentiary Hearing-20230210\_Meeting Recording 1 [1:22:58].

As Mr. Hurtado testified during the Evidentiary Hearing, the proposal is meant to be practical and equitable: to apply the MOE in lieu of the regular metrics, for the duration of the MOE and considering the nature and extent of the MOE. *See* Evidentiary Hearing, Vol. 4, February 10, 2023 (M. Hurtado Spanish Portion) p. 29, lines 12-19, p. 30 lines 1-21; AP-2020-0025 Evidentiary Hearing-20230210\_Meeting Recording 1 [2:19:07]. Mr. Hurtado further explained, "that during a Major Outage Event . . . the Major Outage Event metrics apply. When you are not in a Major Outage Event, they don't apply. And that's a simple line that can be drawn because you

know when the event happened and you know when it ends.” *See* Evidentiary Hearing, Vol. 4, February 10, 2023, (M. Hurtado English Portion), p. 854, lines 18-25, p. 855, lines 1-3 AP-2020-0025 Evidentiary Hearing-20230210\_Meeting Recording 1 [1:50:55].

Contrary to what the ICPO claims, the evidence introduced in the record of this proceeding establishes when the MOE Metrics are activated and when they cease to apply. To be activated, there has to be an MOE, which requires an act of God. This excludes failure for lack of maintenance of interference from a third party. Then, as a result of that act of God, (i) at least two hundred and five thousand (205,000) T&D Customers are interrupted for more than 15 minutes or (ii) at any point in time during the event, there is one thousand five hundred or more ( $\geq 1,500$ ) active outage events for the T&D System, which are tracked in the Outage Management System (OMS). To cease, the cumulative number of T&D customers remaining interrupted needs to fall below ten thousand (10,000) for a continuous period of eight (8) hours. Thus, for the MOE to end, the number of customers without power has to be less than 10,000 for 8 hours straight. Since only an act of God can activate the MOE Metrics unless there are two different acts of God happening at the same time, for example, a hurricane and an earthquake, it would be very clear when the application of the MOE Metrics will begin, and when it will end. There is no controversy on the application of the MOE Metrics as suggested by ICPO.

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

**RESPECTFULLY SUBMITTED.**

We hereby certify that we filed this motion using the electronic filing system of this Energy Bureau. We will send an electronic copy of this motion to counsel for PREPA, Joannely Marrero-



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In San Juan, Puerto Rico, this 21<sup>st</sup> day of September 2023.



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