

**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 Motion to Compel  
Discovery Requests Issued to LECO's  
Expert Witness Agustín Irizarry**

**LUMA'S MOTION TO COMPEL DISCOVERY REQUESTS ISSUED TO  
LECO'S EXPERT WITNESS AGUSTÍN IRIZARRY**

**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 state and request the following:

**I. INTRODUCTION**

On December 27, 2021, LUMA issued its *First and Second Sets of Interrogatories and Requests for Production of Documents* addressed to the Local Environmental and Civil Organizations' ("LECO") expert witness Agustín Irizarry. LUMA's Interrogatories are attached as Exhibit 1-2 of this Motion LECO failed to provide meaningful responses to several Interrogatories, providing no substantive information. LECO's responses to the *First and Second Sets of Interrogatories and Requests for Production of Documents*, served on January 13, 2022, are attached as Exhibits 3-4 of this Motion.

On January 26, 2022, LUMA identified many deficiencies with LECO's responses and asked to supplement the responses by January 31, 2022. LUMA's letter dated January 26, 2022, is attached as Exhibit 5 of this Motion. On January 27, 2022, the parties met and conferred. LECO

agreed to supplement its responses to LUMA's *First and Second Sets of Interrogatories and Requests for Production of Documents* by no later than February 4, 2022. LECO recorded an email summary of the January 27, 2022, meet and confer. *See* Exhibit 6. On February 4, 2022, LECO delivered supplemental responses to LUMA's discovery requests, attached as Exhibit 7 of this Motion. However, LECO failed to provide adequate supplemental responses to Interrogatories Nos. 8, 99, and 100 of LUMA's *First Set of Interrogatories and Request for Production of Documents*.

LUMA has attempted to work in good faith with LECO to get meaningful and essential discovery in this proceeding. However, it is now forced to seek the Puerto Rico Energy Bureau's ("Energy Bureau") authority to compel LECO's compliance with ordinary administrative proceeding discovery obligations. LECO's refusal to respond to Interrogatories Nos. 8, 99, and 100 of LUMA's *First Set of Interrogatories and Request for Production of Documents* is unjustified. LECO has provided supplemental responses to the interrogatories, none of which disclose the facts or documents sought by those interrogatories. In view of the foregoing, LUMA respectfully requests that the Energy Bureau order LECO to provide a complete response to LUMA's Interrogatories Nos. 8, 99, and 100 within ten days.

## **II. ARGUMENT**

Despite LUMA's repeated good-faith efforts to resolve discovery disputes, LECO's responses remain wholly inadequate, forcing LUMA to seek relief from the Energy Bureau. Pretrial discovery is critical in an adjudicative proceeding, and LUMA is entitled to fulsome discovery. Section 8.03(B) of the Puerto Rico Energy Bureau's Regulation on Adjudicative,

Notice of Noncompliance, Rate Review, and Investigations Proceedings, Regulation No. 8543, requires that each interrogatory be fully answered unless it is adequately objected. LECO did not submit objections to most of the interrogatories and yet does not answer in full. For the only interrogatory that LECO posed an objection, said objection is inappropriate and inapplicable. Thus, LECO's deficiencies fall into two categories: (1) inapposite specific objections; and (2) failure to respond to LUMA's interrogatories without justification. Each issue is discussed in turn below.

**A. LECO's Specific Objections Are Inappropriate and/or Inapplicable to LUMA's Interrogatory No. 8.**

LECO's refusal to provide documents in response to LUMA's Interrogatory No. 8 is baseless. As shown below, Interrogatory No. 8 generally seeks Mr. Irizarry's research on renewable energy and copies of any research he has published on that topic. LECO objected to the request to obtain copies of any research Mr. Irizarry has published on renewable energy. It stated that "if LUMA is interested in reading them they can easily locate and obtain them by using the citations provided in the CV. Asking LECO to provide all fifty-four (54) publications is onerous and unduly burdensome to LECO."

LUMA Interrogatory No. 8

Please describe in detail the research you have conducted on renewable energy. Provide copies of any research you have published on this topic.

LECO's Answer to Interrogatory No. 8

Objection: LECO objects to the portion of the request that seeks to obtain copies of any research Agustin Irizarry has published on this topic. Dr. Agustin Irizarry has published fifty-four (54) publications related to renewable energy. The titles to these publications can be found on the curriculum vitae (CV) provided with the Expert Testimony. Therefore, if LUMA is interested in reading them they can easily

locate and obtain them by using the citations provided in the CV. Asking LECO to provide all fifty-four (54) publications is onerous and unduly burdensome to LECO.

Response: I have researched renewable energy systems since 1997, see my Curriculum Vitae for further details including theses supervised and a list of peer-reviewed publications.

*See Exhibit 3 on p. 10.*

Since LECO offered an objection to LUMA Interrogatory No. 8, which had no merit, LUMA objected to LECO's answer through a discovery deficiency letter transcribed as follows:

LECO's partial objection to Interrogatory No. 8 is per se improper. It claims that because Engineer Irizarry has published fifty-four (54) publications related to renewable energy, it is onerous and unduly burdensome to provide copies of those publications. This objection fails on the merits, as the request is proportional, specific, and tailored to the needs of the case. Especially when Engineer Irizarry is proposing metrics related to renewable energy systems. It should not be onerous or unduly burdensome for Engineer Irizarry to locate and facilitate his own publications. After all, it is information that is under Engineer Irizarry's knowledge, custody, possession, or control. Please provide copies of the publications on research conducted on renewable energy, or at a minimum, please direct LUMA to the appropriate websites or databases in which the publications can be located.

*See Exhibit 5 on pp. 2-3.*

In turn, LECO responded the following:

LECO's original response complies with the discovery requirements set forth in Regulation 8543 Section 8; no further response is required. LECO upholds its original objection. LUMA's response contradicts the company's own position on discovery, which is that "[p]ublicly available documents ... will not be produced..." LUMA incorrectly implies that LECO did not facilitate production of these public documents. To the contrary, all publications can be identified and accessed through publications, with the citations provided in Dr. Irizarry's Curriculum Vitae.

*See Exhibit 7 on p. 4.*

LECO at no point states the level of the burden that impeded it to produce Mr. Irizarry's publications, nor the steps that LECO took to determine that burden. Neither LUMA nor the

Energy Bureau can evaluate whether LECO properly invoked burdensomeness to avoid producing the requested publications without this information. Moreover, LECO does not provide evidence to substantiate the objection that the publications can be easily located and obtained using the citations included in Mr. Irizarry's curriculum vitae. LUMA requested LECO, at a minimum, to direct LUMA to the appropriate websites or databases in which the publications can be located. Although LECO implied that it facilitated the production of the publications as they are publicly available, LECO failed to direct LUMA to any website, database, or library in which those publications are located. There is simply no reason for LECO to withhold a complete production of documents to LUMA's discovery request. LECO must produce all documents responsive to these requests.

**B. LECO's Discovery Responses to Interrogatories Nos. 99 and 100 Are Deficient Since They Lack Full Responses.**

LECO refuses to provide the full scope of requested discovery on Interrogatories Nos. 99 and 100, arguing that Mr. Irizarry's responses comply with the requirements of Section 8 of Regulation No. 8543, as he referred to certain sections of specific documents where the information could be located. This is legally incorrect. Section 8.03(D) of Regulation No. 8543 establishes that when the responses to an interrogatory can be found in books, documents, records, or electronically stored information and the weight of obtaining such information can be equally placed in both the requesting and requested parties, it shall constitute a sufficient answer to pinpoint the specific part of the record, book, document, or electronically stored information where the answer can be obtained. However, the requested party must offer a reasonable opportunity to examine, inspect, or audit these sources and prepare copies, compilations, summaries, or printouts.

LECO has not established that LUMA was placed in a position to obtain the information. Thus, LECO has not established that it would constitute a sufficient answer to only pinpoint to LUMA where the information could be located. In any case, LECO was required to offer LUMA an opportunity to examine the documents.

As evidenced below, in his responses to Interrogatories Nos. 99 and 100, Mr. Irizarry refers to the PREPA Holdings, LLC operational agreement and the bylaws of the Puerto Rico Electric Power Authority Board of Directors. Nonetheless, Mr. Irizarry does not provide a reasonable opportunity to examine the documents or copies of them. Nor does he offer the dates of those documents or where LUMA can locate them.

LUMA Interrogatory No. 99

Please describe in detail your duties and powers as a member of the Board of Directors of PREPA.

LECO's Answer to Interrogatory No. 99

PREPA Holdings, LLC operational agreement the "Limited Liability Company and Single Member Declaration" in section III Management, section 3.2 "Matters Reserved for Board of Managers Approval" describe in detail the duties and powers of all members of the Board of Managers of PREPA Holdings LLC.

LUMA Interrogatory No. 100

Please describe in detail your duties and powers when you were a member of the Board of Directors of the Puerto Rico Electric Power Authority.

LECO's Answer to Interrogatory No. 100

The bylaws of the Board of Directors of the Puerto Rico Electric Power Authority describe in detail the duties and powers of all members of the Board.

See Exhibit 3 on pp. 114-115.

LUMA requested LECO to supplement its answers to Interrogatories Nos. 99 and 100 due to the documents being referred by Mr. Irizarry not being produced nor publicly available, as transcribed below:

LECO's responses to Interrogatories Nos. 93, 99 and 100 are non-responsive. The questions required Engineer Irizarry to precisely describe the impact on the system reliability of improvement projects and programs, including their impact before and after implementation and his duties and powers during his tenure as a member of the Board of Directors at PREPA Holdings, LLC and PREPA. Engineer Irizarry answered by referencing documents that were not produced nor publicly available. That is not appropriate for discovery responses. Please promptly supplement to answer the questions asked.

*See Exhibit 5 on p. 7.*

LECO merely supplemented its answers by stating that its responses complied with the requirements of Regulation No. 8543 and that the documents were not in Mr. Irizarry's custody or control. LECO's supplemental answers are reproduced below:

LECO's Supplemental Answer to Interrogatory No. 99

LECO's original response complies with the discovery requirements set forth in Regulation 8543 Section 8; no further response is required. LUMA's improper response appears designed to harass, intimidate, and obstruct LECO. Dr. Irizarry provided reference to the documents that precisely describe the duties and powers of a member of PREPA Holdings LLC's Board. Those documents are not under the custody or control of Dr. Irizarry.

LECO's Supplemental Answer to Interrogatory No. 100

LECO's original response complies with the discovery requirements set forth in Regulation 8543 Section 8; no further response is required. Dr. Irizarry provided reference to the documents that precisely describe the duties and powers of a member of PREPA's Board of Directors. Those documents are not under the custody or control of Dr. Irizarry.

*See Exhibit 7 on pp. 15-16.*

LUMA is not required to accept LECO's representations instead of taking the discovery to which it is entitled. The fact that there are no documents in Mr. Irizarry's custody or control does not excuse LECO from providing this information. Indeed, it renders it even more critical for LUMA and the Energy Bureau that LECO provides the information critical to LUMA and the Energy Bureau. Notably, Mr. Irizarry claims in his responses to LUMA's discovery requests that he has experience in implementing and designing performance metrics in PREPA. For that reason, the extent of his responsibilities as a member of the different Boards of Directors has relevance. Neither LUMA nor the Energy Bureau can verify LECO's representations without such information. Mr. Irizarry is the proper and only party who can explain what the documents establish in his own words. After all, the interrogatories request Mr. Irizarry to describe his power and duties as a member of two different Boards of Directors. Mr. Irizarry should have precise personal knowledge of those powers and duties. Therefore, LUMA requests the Energy Bureau to compel detailed and complete responses to Interrogatories Nos. 99 and 100.

**WHEREFORE,** LUMA respectfully requests that the Energy Bureau enter an Order compelling LECO to provide complete responses to LUMA's interrogatories, compelling LECO to produce all responsive documents, and granting any other relief the Energy Bureau deems appropriate.

**RESPECTFULLY SUBMITTED.**

We hereby certify that we filed this motion using the electronic filing system of this Energy Bureau and that I will send an electronic copy of this motion to the attorneys for PREPA, Joannely Marrero-Cruz, [jmarrero@diazvaz.law](mailto:jmarrero@diazvaz.law); and Katuska Bolaños-Lugo, [kbolanos@diazvaz.law](mailto:kbolanos@diazvaz.law), the Office of the Independent Consumer Protection Office, Hannia Rivera Diaz, [hrivera@jrsp.pr.gov](mailto:hrivera@jrsp.pr.gov), and counsel for the Puerto Rico Institute for Competitiveness and Sustainable Economy ("ICSE"), Fernando Agrait, [agraitfe@agrailawpr.com](mailto:agraitfe@agrailawpr.com), counsel for the Colegio de Ingenieros y



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In San Juan, Puerto Rico, this 10th day of March 2022.



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