

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

NEPR

Received:

Mar 21, 2022

5:27 PM

IN RE: PERFORMANCE TARGETS FOR
LUMA ENERGY SERVCO, LLC

CASE NO.: NEPR-AP-2020-0025

SUBJECT: OPPOSITION TO
LUMA'S MOTION TO COMPEL
DISCOVERY RESPONSES FROM
AGUSTÍN IRIZARRY

**OPPOSITION TO LUMA'S MOTION TO COMPEL DISCOVERY RESPONSES
FROM LECO'S EXPERT WITNESS, AGUSTÍN IRIZARRY**

TO THE PUERTO RICO ENERGY BUREAU:

COME NOW, Comité Diálogo Ambiental, Inc., El Puente de Williamsburg, Inc.
- Enlace Latino de Acción Climática, Inc., Alianza Comunitaria Ambientalista del
Sureste, Inc., Coalición de Organizaciones Anti-Incineración, Inc., Amigos del Río
Guaynabo, Inc., CAMBIO, and Sierra Club and its Puerto Rico chapter, and Unión
de Trabajadores de la Industria Eléctrica y Riego (collectively, "LECO"), to
respectfully request that the Puerto Rico Energy Bureau deny the relief sought by
LUMA's Motion to Compel. In support, LECO states as follows:

In December 2021, LUMA served 100 interrogatories and 3 document requests
upon Dr. Irizarry to which LECO provided timely responses in January 2022.¹ Later
that month, LUMA sent LECO a letter with objections to sixteen questions and one
document request. In response, LECO provided a supplement to one answer. For all

¹ See LECO's January 13, 2022 Informative Motion Regarding LECO's Response to LUMA's 1st ROI Addressed to José Alameda and 1st and 2nd ROIs Addressed to Agustín Irizarry. <https://energia.pr.gov/wp-content/uploads/sites/7/2022/01/20220113-Informative-Motion-Regarding-LECOs-Response-to-LUMAs-1st-ROI-Addressed-to-Jose-Alameda-and-1st-2nd-Addressed-to-Agustin-Irizarry.pdf>.

other objections, LECO stood by its original response, and notified LUMA that its objections were improper and appeared designed to harass, intimidate, and obstruct LECO. Now, LUMA seeks to compel answers to three out of its 103 questions to Dr. Irizarry. LUMA's claims are baseless, and PREB should deny the relief sought by LUMA.

Response to First Objection, Regarding Interrogatory #8

Through the course of a decades-long career as an engineer and professor, Dr. Irizarry has published fifty-four papers in professional journals.²

LUMA's Interrogatory #8 sought to examine each of Dr. Irizarry's fifty-four publications: in response, Dr. Irizarry pointed to LUMA to the citations in his C.V. The citations in Dr. Irizarry's CV follow standard IEEE citation guidelines³ and include all elements of a standard citation:

- Author
- Title of Source
- Title of Container
- Other Contributors
- Version
- Number
- Publisher
- Publication date
- Location

Each citation pinpoints the exact location within each publication where the paper can be found. Those citations give LUMA a full opportunity to examine each paper, and therefore are sufficient answers to LUMA's Interrogatory, under Sec. 8.03

² See Expert Witness CV, Exhibit 1 to the Expert Testimony of Agustín A. Irizarry-Rivera.

³ See IEEE Reference Guide, <https://ieeauthorcenter.ieee.org/wp-content/uploads/IEEE-Reference-Guide.pdf>

(D) Reg. 8543 on Adjudicative Procedures.⁴ It is a universal practice to use citations in this form to locate papers in professional journals. In fact, LUMA's own witnesses provide similar information for their own publications. See, e.g. C.V. of Branko Terzic pp. 7-10; C.V. of Dr. Juan Lara, pp. 2-4.

LUMA now insists that the professional citation standards used by its own experts do not satisfy the rules of discovery. Rather, LUMA claims that each expert must attach every single one of their publications or provide the link or website where the publication can be found. LUMA does not address the fact that its own witnesses' C.V.s do not conform to LUMA's invented standard. LUMA does not, and cannot, point to any regulation, statute, or case law supporting its claim. Claims without legal support must be dismissed.

Response to Second Objection, Regarding Interrogatories #99 and #100

LUMA's objections regarding Interrogatories #99 and #100 are also invalid. First, LUMA falsely states that LECO provided "Supplemental Answers" on these two discovery requests.⁵ LECO did not do so and did not need to do so, because no supplement was necessary. LECO's February 2022 response to LUMA merely explained why the original answers were sufficient, and again pointed out that LUMA's objections were improper and appeared designed to harass, intimidate, and obstruct LECO.

⁴ LUMA's Motion cites this regulation (incorrectly) to support its second Objection, but not its first. LUMA Motion pp. 5-6. LUMA therefore implicitly acknowledges that LECO's answer was sufficient under this regulation.

⁵ LUMA Motion p. 7.

LUMA's Questions 99 and 100 ask for the powers and duties of a member of the Board of Directors of PREPA, and of a member of the Board of Directors of PREPA Holdings LLC. LECO's answer notes that the precise answer to those questions is in two legal documents: the PREPA Holdings LLC operational agreement and the bylaws of PREPA's Board of Directors. Those documents define the powers and duties of board members: they are the best and most reliable, and arguably the “proper and only”⁶ source for an exact description of the powers and duties of a member of these Boards. After stepping down from these Boards, Dr. Irizarry no longer has access to these documents. By contrast, LUMA is in constant communication with PREPA and could easily ask for these documents. The fact that LUMA has not done so demonstrates that LUMA realizes the documents are not relevant to this case.

LUMA attempts to draw a very tenuous link between these questions and Dr. Irizarry's experience designing and implementing a performance metrics for PREPA.⁷ But Dr. Irizarry provided a detailed description of that experience in response to LUMA-LECO-IRIZARRY-ROI-01-14, 29, 30, 87, and 88.⁸ LUMA's Motion to Compel does not include any objection to those responses, and therefore LUMA has acknowledged that Dr. Irizarry provided a sufficient description of his experience in implementing and designing performance metrics for PREPA. These answers give LUMA and the Energy Bureau more than enough information to verify that Dr. Irizarry has significant experience designing and implementing performance metrics.

⁶ LUMA Motion p. 8.

⁷ LUMA Motion p. 8.

⁸ True and accurate copies of those responses are attached as Exhibit 1.

By contrast, we note that LUMA’s witnesses are unwilling or unable to provide details of their own experience, if any, designing or implementing performance metrics.⁹

Conclusion

Discovery is meant to garner the truth and prepare the parties for hearings. LUMA’s objections achieve neither. Intervenors’ expert witnesses have provided extensive specialized testimony in this case and have put forth very useful information, both through testimony and discovery, to facilitate setting metrics, penalties, and incentives that will protect the public interest and Puerto Rico ratepayers. LUMA's baseless harassment of witnesses for all intervenors is not intended to glean any truths, but rather merely to intimidate the parties and obstruct this proceeding (at the expense of Puerto Rican ratepayers). For the reasons detailed above, PREB should deny the relief sought in LUMA’s Motion to Compel.

Respectfully submitted. In San Juan Puerto Rico, March 21, 2022.

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⁹ LUMA’s responses to RFI-LUMA-AP-2020-0025-LECO-R5-10MAR22-016, and RFI-LUMA-AP-2020-0025-LECO-R6-28FEB22-02 are attached as Exhibit 2.

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CERTIFICATION OF SERVICE

I hereby certify that on March 21, 2022, I served this Response to LUMA's Motion to Compel to the following parties:

- Puerto Rico Energy Bureau: secretaria@energia.pr.gov; secretaria@jrsp.pr.gov; legal@jrsp.pr.gov and atorres@jrsp.pr.gov
- LUMA Energy LLC and LUMA Energy ServCo LLC: mmercado@mercado-echegaray-law.com; margarita.mercado@us.dlapiper.com; yahaira.delarosa@us.dlapiper.com; and ana.rodriguezrivera@us.dlapiper.com
- PREPA: jmarrero@diazvaz.law; kbolanos@diazvaz.law
- Oficina Independiente de Protección al Consumidor (OIPC): contratistas@oipc.pr.gov; hrivera@oipc.pr.gov
- Instituto de Competitividad y Sostenibilidad Económica de Puerto Rico (ICSE): agraitfe@agraitlawpr.com
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Exhibit 1

REQUEST #: LUMA-LECO-IRIZARRY-ROI-01-14

Please indicate if you have any experience implementing performance and/or penalty schemes metrics for an electric utility company. If answered in the affirmative, please describe in detail your experience.

RESPONDER:

Agustín Irizarry-Rivera

RESPONSE:

As a member of PREPA's Board, and active member of several Board committees, I closely examined PREPA's performance metrics in several key areas such as: finance (VP of the Board, Executive Committee), customer service (Board Committee on Customer Services), condition of electric infrastructure, transmission and distribution maintenance, vegetation management, electric system planning (Board Committee on Electric Power System State and Improvements), labor and public safety (Board Committee on Labor and Legal Affairs), and fuel procurement and generation plant performance (President of the Board Committee for Audits).

REQUEST #: LUMA-LECO-IRIZARRY-ROI-01-29

Please indicate if you have any experience designing financial performance metrics for an electric utility company. If answered in the affirmative, please describe in detail your experience.

RESPONDER:

Agustín Irizarry-Rivera

RESPONSE:

While with the PREPA Board of Directors, we supervised the creation of financial performance metrics by PREPA's head of finances. We closely monitored metrics and key financial indicators like cash flow and EBITDA.

REQUEST #: LUMA-LECO-IRIZARRY-ROI-01-30

Please indicate if you have any experience implementing financial performance metrics for an electric utility company. If answered in the affirmative, please describe in detail your experience.

RESPONDER:

Agustín Irizarry-Rivera

RESPONSE:

See my answer to LUMA-LECO-IRIZARRY-ROI-01-29.

REQUEST #: LUMA-LECO-IRIZARRY-ROI-01-87

Please indicate if you have any experience designing customer satisfaction performance incentives and/or penalties for an electric utility company. If answered in the affirmative, please describe in detail your experience.

RESPONDER:

Agustín Irizarry-Rivera

RESPONSE:

My experience as PREPA's Board of Governors Member overseeing customer service.

REQUEST #: LUMA-LECO-IRIZARRY-ROI-01-88

Please indicate if you have any experience implementing customer satisfaction performance incentives and/or penalties for an electric utility company. If answered in the affirmative, please describe in detail your experience.

RESPONDER:

Agustín Irizarry-Rivera

RESPONSE:

My experience as PREPA's Board of Governors Member overseeing those who were in charge of implementing customer satisfaction.

Exhibit 2

Performance Metrics**Docket ID: NEPR-AP-2020-0025****Information Response Round 5: LECO Request 5**

REFERENCE: RFI-LUMA-AP-2020-0025-LECO-R5-10MAR22-016**REQUEST:**

On p. 3 of your rebuttal testimony, you refer to your experience working with utilities and energy companies.

- a. Please list each utility you have worked for or advised during your career.
- b. Please list each energy company you have worked for or advised during your career.
- c. For each of the entities you listed in response to (a) and (b) above, please provide a description of the Performance Incentive Mechanisms, metrics, or any similar tools used by the entity during your time working for or advising that entity. Please also state whether you were involved in the design or implementation of each described Performance Incentive Mechanisms, metrics, or tool.

RESPONDER:

Don Cortez

RESPONSE:

- a. The utilities that I have worked for or advised in my career are: Houston Lighting and Power (Utility in Houston, TX), Empresa Distribudora de La Plata (EDELAP - utility in Argentina), Empresa Distribudora de Santiago del Estero (EDESE - utility in Argentina), Houston Industries Energy Inc.(holding company for utilities), Empresa de Energia del Pacifico S.A. (EPSA - utility in Colombia), Eletropaulo (utility in Brasil), CenterPoint Energy (utility in Houston, TX), IBM (Global Technology Company – worked in Global Energy and Utilities sector), AVRA Energy (Renewables company in Mexico) and Quanta Services.
- b. Please refer to response RFI-LUMA-AP-2020-0025-LECO-R5-10MAR22-016 (a) above.
- c. LUMA objects to this request as it is overbroad and unduly burdensome. The request also calls for the production of confidential information pertaining to Mr. Cortez's prior employers or contractors.

Performance Metrics
Docket ID: NEPR-AP-2020-0025

Information Response Round 6: LECO'S SIXTH REQUEST

REFERENCE: RFI-LUMA-AP-2020-0025-LECO-R6-28FEB22-02

REQUEST:

For each utility or energy company you have worked for, consulted for, or regulated: please list and describe each Performance Incentive Mechanism or similar mechanism employed by that utility. For each listed mechanism, please state whether you worked on designing or implementing the mechanism.

RESPONDER:
Branko Terzic

RESPONSE:

LUMA objects this Request as it is overbroad and unduly burdensome. The Request also calls for the production of confidential information pertaining to Mr. Terzic's prior employers or contractors.

Without waiving such objections, I do not recall each of the Performance Incentive Mechanisms or similar mechanisms employed by the utilities or energy companies I worked for or regulated as a Commissioner.